

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

MISCELLANEOUS LAND APPEAL NO 83 OF 2020

GIDEON MREMO AGUDIO APPELLANT

VERSUS

MWITA MARWA ISANCHU..... 1ST RESPONDENT

OWIGO ALANG'THONDOE..... 2ND RESPONDENT

*(Arising from Land Case No. 592018 in the District Land and Housing Tribunal for Tarime at
Tarime. Originating from Kigunga Ward Land Case No. 54/2017)*

JUDGMENT

26th November & 18th December, 2020

Kahyoza, J.

Gideon Mremo Agudio sued **Mwita Marwa Isanchu** and **Owigo Alang'thondoe** in the Ward Tribunal for invading his land. **Gideon Mremo Agudio** lost the case. **He** unsuccessfully appealed to the District Land Housing Tribunal (the **DLHT**).

Aggrieved still, **Gideon Mremo Agudio** appealed to this Court raising four grounds of appeal from which I deduced the following issues-

1. Whether the trial tribunal failed to consider the circumstance of the case and evaluate the evidence adduced by the appellant and his witness.
2. Whether failed to consider that some of the members of the ward tribunal did not give opinion.
3. Whether the first appellant tribunal erred not to find that the first respondent did legally inherit the disputed land.

4. Whether the land in dispute was the subject of dispute between the appellant's brother and the first respondent.

Briefly, the dispute between the parties is grounded on the following facts. The appellant sued the first respondent for trespass. He joined the second respondent who is the hamlet chairman on the ground that the second respondent blessed the first respondent's action of invading his land. The appellant submitted during the hearing of the appeal that the second respondent allocated land to the first respondent. I wish to point out that what sparked the dispute is unclear. The appellant gave a different account on how the first respondent acquired the disputed land. The appellant told the tribunal that his late father acquired the disputed land in 1954 and occupied it until he met his demise in 2008. He stated that he is the administrator of his deceased father's estate.

The appellant did not account when and how the dispute ensued. He simply stated that the second respondent directed him to institute the suit. He deposed-

"Kielelezo cha mwisho ni kile kilichotolewa na ofisi ya s/kijiji cha 27/1/2017 ambacho agizo lake halikufanyiwa kazi. Baada ya hayo yote pamoja na kauli ya m/kiti wa kitongoji aliyenishinik[iz]a nikafungue kesi nimeonelea kufanya hivyo baada ya kuona kweli hakuna utekelezaji wa agizo la ofisi ya Kijiji."

On the respondents' part, the first respondent deposed that the disputed land belonged to his father. It was allocated to him during operation vijiji in 1975. The first respondent inherited it. The respondent narrated that his father died in 1998 and the family members stated

utilizing the disputed land without any dispute from 1999 up to 2017. In 2017, the appellant's younger brother uprooted the sisal plantation, which marked the boundary between him and the first respondent. The first respondent reported to hamlet chairman, the second respondent. On the 23rd November, 2017, the second respondent settled the dispute between the first respondent and appellant's younger brother. The settlement reached between the first respondent and the appellant's younger brother displeased the appellant. The appellant complained to Mr. Ismael O. Nyakura, the village executive officer or the village chairman. Mr. Ismael directed the complaint to be attended by the second respondent, the hamlet chairman. On the 27th November, 2017, the respondent invited the appellant and the first respondent on the disputed land and other people to assist him to resolve the dispute. He failed to settle the dispute on the ground that the dispute had no connection with the dispute he settled on the 23rd November, 2017. Aggrieved, the appellant sued the respondents.

This is a second appeal. The appellant lost before the appellate tribunal and the ward tribunal. It is against the above facts I consider the appeal.

Did the appellate tribunal consider the circumstance of the case and evaluate the appellant's evidence?

The first issue is Whether the trial tribunal failed to consider the circumstance of the case and evaluate the evidence adduced by the appellant and his witness. The appellant stated in support of first ground of appeal that the land in dispute was allocated to his father in 1954 and his father died in 2008 and he was appointed to be an administrator of estates

of his father. He stated further that the first respondent's allegation that the disputed land was allocated to his father in 1974 was false. The first respondent's father was not a resident of Ruanda Village but a resident Ikomalire Bunda Village where he died. For that reason, he could not be allocated land during operation vijiji in Ruanda Village.

In his reply, the first respondent argued he had a dispute with the appellant's young brother, which the second respondent settled. After some few days, the appellant commenced another dispute.

I examined the record keenly and found that the appellate tribunal did consider the evidence on record. I have no reason to differ with the appellant and the ward tribunal which found in favour of the first respondent. There is overwhelming evidence that the land in question belongs to the first respondent. It is trite law that where there are concurrent findings of facts by two courts, the second appellate court should not disturb the findings, unless, it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure. (See **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores Vs. A.H Jariwalla tla Zanzibar Hotel** [1980] T.L.R 31.).

I scrutinized the appellant's evidence it is not clear why the appellant instituted the suit at that particular time. The ward tribunal members visited the *locus in quo* and they were unable to find the alleged invasion of the disputed land. The first member of the tribunal who found in favour of the appellant stated that he found in favour of the appellant because the village government did not tender evidence to prove that it allocated the

land to the first respondent during operation vijiji. Had the dispute been in relation to the land allocated during the operation vijiji, then the cause of action would have been by time. I pointed out that the ground that sparked the dispute is not clear. The dispute between the first respondent and the appellant's brother was settled. The appellant's brother was content with the settlement. He did not complain after the settlement nor did he testify before the tribunal. The appellant has a hidden agenda.

The ward tribunal had an opportunity to hear the evidence from both parties and assess the demeanor, and visit the *locus in quo*. Basing on the evidence and demeanor of witnesses, the ward tribunal decided in favour of the first respondent. The appellate tribunal approved the ward tribunal's finding. I have no reason to vary their findings. I dismiss the first ground of appeal for want of merit.

Did the appellate tribunal fail to consider the fact the members of the tribunal did not give opinion?

The appellant complained that the appellate tribunal failed to consider the fact that some of the members of the ward tribunal did not give opinion. The appellant did not clarify this ground of complaint.

The respondents rebutted the ground of appeal. They did not provide explanation during the hearing.

I examined the record and found that the seven members of the ward tribunal gave opinion, which was the bases of the decision of the Ward tribunal. Five members gave opinion in favour of the respondents

and two members in the appellant's favour. Section 11 of the **Land Disputes Courts Act**, [Cap 216 R.E. 2002] (Cap. 216) stipulates that-

11. Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act.

The decision of the ward tribunal was the majority members' opinion. The decision of the ward tribunal is the decision of majority members as provided by section 4 of the Ward Tribunal. Section 4 of the **Land Disputes Courts Act**, which stipulates that-

4.-(5) At any sitting of the Tribunal a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall have a casting vote in addition to his original vote.

Given the above facts and the law, I am of the considered view that the decision of the ward tribunal was arrived at in compliance with the law. There is no reason to fault it. Therefore, I dismissed the second ground of appeal for want of merit.

Did the appellate tribunal err not to find that the first respondent did legally inherit the disputed land?

The appellant complained that the first respondent did not prove that he was the administrator of the estate of his late father.

The first respondent did not refute the fact that he had no letters of administration of the deceased's estate.

I examined the record and found that there was no issue of whether or not the first respondent was an administrator of the deceased's estate before the ward tribunal. Even if, there was an issue, it would have been irrelevant. A deceased person cannot trespass. Thus, I do not envisage a situation under which a person may trespass to land as the administrator of the deceased's estate. An administrator of the deceased's estate is a person appointed by a court to act on behalf of the deceased person's estate. The administrator steps into the shoes of the deceased's person, will have the same powers as the deceased when it comes to managing the deceased's property. There are a number of things the administrator cannot purport to act for the deceased person, such as to commit a tortious act or to commit any criminal act. Such acts do not foster proper administration of the deceased's estate. The doer of such acts must be charged in his personal capacity. For that reason, if the first respondent trespassed to the appellant's family land it was proper to sue him in his personal capacity.

In addition, the appellant is the one who sued the first respondent. It is not proper for him to complain that the first respondent is not a legal representative of his father's estate. One would ask, why did the appellant sue a wrong party?

I examined the grounds of appeal before the first appellate tribunal and found that the appellant did not raise the issue whether the first respondent was a legal representative of the deceased's estate. It was

neither raised before the ward tribunal. It is trite law that an appellate court cannot consider or deal with issues, which were not canvassed, pleaded, and not raised at the lower court. See the case of **Farida and Another v. Domina Kagaruki**, Civil Appeal No. 136/2006 (CAT unreported).

It is on the above stated reasons, I dismiss the third ground of appeal.

Was the land in dispute the subject of dispute between the appellant's brother and the first respondent?

Lastly, I consider the issue raised by the fourth ground of appeal, whether the land in dispute was the subject of dispute between the appellant's brother and the first respondent. The appellant did not expound on this ground of appeal.

The second respondent submitted that the dispute between the appellant and the first respondent was different from the dispute he settled between the appellant's younger brother and the first respondent. He submitted that the dispute between the appellant's brother and the first respondent was over the right to use the land as way or easement. The appellant's brother uprooted the sisals and planted millet blocking the first respondent from passing through. He stated that the dispute between the appellant and the first respondent is over a piece of land.

The appellant replied that the document prepared by the second respondent proved that the dispute between the appellant and the first respondent was over the piece of land and not the way.

I examined the record and found that the document the appellant referred to was a document evidencing the settlement of the dispute between him and the first respondent in 2011. It was not referring to the dispute between the appellant's younger brother and the first respondent.

Even if, the document had any bearing with the dispute between the appellant's brother and the first respondent, still, it refers a dispute over a way and not a piece of land. The document reads "*Utatuzi wa mgogoro wa kati ya Ndg GIDION MREMO mlalamikaji na ndg. MWITA MARWA CHU malalamikiwa.*" I find without hesitation like the both tribunals that the dispute between the appellant and the first respondent was different from the dispute between the appellant's brother and the first respondent. The land may be the same but the nature of the dispute or the type of action may be different. The fourth ground of appeal is meritless, I dismiss it.

In the end result, I dismiss all grounds of appeal and the entire appeal. I uphold the decision of both tribunals, that appellant failed to establish his case against the respondents. I award costs of this appeal to the respondents.

It is ordered accordingly.



J. R. Kahyoza

JUDGE

18/12/2020

Court: I had fixed 17th day of December,2020 as the date to deliver the judgment. Unfortunately, I was on an official duty outside my station. I was unable to deliver the judgment. Parties attended. I will deliver the judgment in the absence of the parties. I direct the Deputy Registrar to notify the parties through their mobile phones to collect copies of the judgment.

The aggrieved party may appeal after obtaining a certificate on point of law from this Court. He is required to lodge a notice within 30 days and file an application for certificate that there is point of law in the intended appeal.




J. R. Kahyoza

JUDGE

18/12/2020