

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**MISC. LAND APPEAL NO. 48 OF 2020**

(Originating from the District Land and Housing Tribunal for Kondoa Land  
Appeal No. 13/2019 original Kalamba heard Tribunal Land case no.  
8/2018)

**JUMANNE ALLY SARAHA..... APPELLANT**

**VERSUS**

**JUMA IDDI SARAHA..... RESPONDENT**

*9/11/2020 & 2/12/2019*

**JUDGMENT**

**MASAJU, J.**

The Respondent, Juma Iddi Saraha successfully sued the Appellant, Jumanne Ally Saraha in Kalamba Ward Tribunal, Kondoa District. Aggrieved with the decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal for Kondoa, at Kondoa. Hence the appeal in the Court.

The Appellant's Petition of Appeal bears four (4) grounds of appeal, thus:-

1. *" That, the District and Land Housing Tribunal of Kondoa at Kondoa erred in law and in fact when it dismissed the Appellant's appeal with costs without considering the evidence adduced by the appellant and his witness during the trial.*
2. *That, the District Land and Housing Tribunal of Kondoa at Kondoa erred in law and in fact without challenging the judgment of Kalamba ward Tribunal which it had no rubber stamp of the chairman of the trial Tribunal in order to verify the legality of the said judgment.*
3. *That, the District Land and Housing Tribunal of Kondoa at Kondoa erred in law and in fact in failing to challenge the evidence of the Respondent given during the trial by saying that he was given one(1) acre by one Iddi Ally Lowa his defense witness while the said Iddi Ally Lowa in his evidence testified in the trial tribunal that he was given by the Respondent two(2) acres while the said evidence was quite contradictory.*

4. *That, the District Land and Housing Tribunal of Kondoa at Kondoa erred in law and in fact by not challenging the trial tribunal's finding by not permitting the Appellant's witness one Issa Juma who was sick on that particular date and he was the very important witness for the Appeal side but the trial Tribunal completely refused to adjourn the case in order to wait the evidence for the Appellant, but instead the trial tribunal pronounced its judgment in favour of the Respondent and against the Appellant."*

The Appellant prayed the Court to allow the appeal with costs.

When the appeal was heard in the Court on the 9<sup>th</sup> day of November, 2020 both parties appeared unrepresented and prayed to adopt the Petition of Appeal and Reply to the Petition of Appeal respectively to form part of their submissions in support of and against the appeal in the Court.

In the trial Tribunal the Respondent sued the Appellant for trespassing to his two (2) acres piece of Land. That, the Respondent got the land from Iddy Ally Lowa who invited him to use the land. That, the Appellant trespassed to the land in dispute in 2018 and cultivated on the land. That, the Appellant had also built on the land. The Respondent had two witnesses, Iddy Ally Lowa who admitted to have invited the

Respondent to use the land in dispute, and Rashid Salim Mkoha who also supported the Respondent's testimony.

On his part the Appellant had a contradictory story. At first he alleged to have brought the land in dispute from the Respondent for TZS 50,000/=. When cross examined by the Respondent and the trial Tribunal's assessors he admitted the land in dispute to belong to the Respondent and added that, it was given to the Respondent by Iddy Ally Lowa. That, he once wanted to buy the land from the Respondent but he did not. The Appellant also alleged that his son had built a houses on the Respondents land, not him.

The Appellant had two witnesses, Omari Jumanne Ally(his son) and Zainabu Omari Mdee who both admitted the land to belong to the Respondent after being given by Iddy ally Lowa. Omari Jumanne Ally alleged also that his father, the Appellant, once wanted to buy the land in dispute but he adviced him not to, and that the Appellant did not buy the land in dispute. He also admitted to have built a house on the land in dispute.

The trial tribunal also visited *locus in quo* and the Respondent managed to show the dermacation of the land in dispute.

Having gone through the record of the trial Tribunal and the first appellant Tribunal, the Court finds that the Respondent proved his case to the required balance of probability. Since he managed to prove how he came into possession of the land in dispute and that fact was not disputed by either party.

The allegations by the Appellant that one of his witnesses was denied a chance to testify in the trial Tribunal, record of the trial tribunal shows he was asked how many witnesses he would bring to testify, he answered two witnesses and both two witnesses testified in the trial Tribunal. Also after the two witnesses, Omari Jumanne Ally and Zainabu Omari Mdee testified, the Appellant prayed to close his defence case.

That said, the appeal is dismissed for want of merit. The parties shall bear their own costs.



  
GEORGE M. MASAJU

**JUDGE**

2/12/2020

