

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND CASE APPEAL NO 2 OF 2020

**(Arising from the decision of the District Land and Housing
Tribunal for SINGIDA in Land Application No. 80 of 2016)**

RAJABU MUGHENYI.....APPELLANT

VERSUS

PATRICK YUNDE KIMU.....RESPONDENT

(Administrator of the estate of the Late Yunde Kimu)

JUDGEMENT

DATE OF JUDGEMENT- 19/2/2021

HON. L. MANSOOR, J.

The dispute is over 10 acres of land situate at Unyankhanya Village, Siuyu Ward in Ikungi District within Singida Region, herein referred to as "the disputed land".

The respondent who is the administrator of the estate of his father, the Late Yunde Kimu, filed a case at the Trial Tribunal claiming for the ownership of the 10 acres of land, which was trespassed by the Appellant herein. He claims that his late father started occupying the land since 1930, and him and his siblings are the successors in title. The respondent also claims that his late father Yunde Kimu inherited 60 acres from his father, the late Kimu Mlade. The Late Kimu Mlade purchased the land from Ghuliku Genene in 1930. The land is bordering the land of the appellant on the northern side. The land of the Appellant is on the Western Part heading to the North. The prominent landmarks that mark the borders are Mitatanku Hill on the North of the Suit land and a tree by the name of Mulegea or Mangungu and a tree known as Mughumo which is located down the valley. The respondent claims that the appellant trespassed into the land in March 2015 and claimed to be his land. He trespassed into the 10 acres out of 60 acres of the land. The land in dispute is therefore only 10 acres. The matter was referred to the Village Land Council, but they have failed to resolve, hence the applicant who is the respondent herein decided to file the case at the District Land and Housing Tribunal. The Respondent brought Sylvester Yunde and Zablon Lissu as his witnesses and

they both confirmed that the land was the property of the Late Yunde Kimu and have been used by the family of Yunde Kimu since long time. That the father of Yunde Kimu purchased this land from Ghuliku Genene since 1930.

The Appellant says he inherited the land in dispute from his late father, Mugheji Majengo, and has been using the land since after the death of his father. That his father cleared the bush land since 1950, when he was still a young boy. He said he had a dispute with Severin Ntandu over the same piece of land in 2009, the matter was resolved by the Village Government, and he was ordered by the Village Government to give 2 acres to Severin Ntandu, which he obliged. He claims that the respondent herein trespassed into the land in 2018 claiming to be his land. This dispute was already resolved in the Village Level, and parties were at peace, but the respondent did not respect the decision of the Village Leaders, and he trespassed again, into the land. Modest Mlale, the witness of the appellant confirmed before the Tribunal that the land in dispute belongs to the Appellant, and the appellant inherited the land from Mugheji Majengo, his father. This confirms that the respondent herein has their own land which is situate at the Southern Eastern Side of the appellant's land.

I have read the entire records, and party's written submissions. I agree that parties herein are related, and they have their land bordering each other. I also agree that the Appellant had a dispute with Severin Ntandu in 2009 and the Village Council had adjudicated upon this same land. The Land was declared to be the property of the Appellant and he was ordered to give 2 acres to Severin Ntandu. It is true that the Village Land Council visited the locus in quo while adjudicating the dispute between the Appellant herein and Severin Ntandu, and the Village Land Council was satisfied that the land belongs to the Appellant but for purposes of mediation, it decided to maintain peace by ordering the Appellant herein to give two acres to Severin Ntandu. Severin Ntandu never appealed against the decision of the Village Land Council. He never even filed a case. Sylvester Yunde, the witness No 2 of the respondents herein was the witness for the Appellant at the Village Land Council in 2009 when the dispute over this same land was being determined by the Village Land Council. He confirmed before the Village Land Council that the land belongs to the Appellant herein. Sylvester Yunde now turns around and is becoming the witness of the respondent in a case over the same land. It is also on record that Sylvester Yunde here was present when the case between

Severin Ntandu and the Appellant was being determined, and he was the witness. He even signed the Mediation Agreement in which it was decided that the land is the property of the Appellant, and that Severin is to be given 2 acres out of the 10 acres. It is uncalled for the witness of the respondent to turn around and be a witness of the opposite side when the other side file a fresh case over the same piece of land over which the Village Land Council had adjudicated upon. This shows lack of truthfulness on the part of the respondent and his witness Sylvester Yunde. I reject the submissions of Advocate Lighola on behalf of the respondent and I hold that the evidence of the respondent, that of Sylvester Yunde was not to be believed, as he himself had an interest in the land in dispute, and the decision was already given by the Village Land Council as who is the real owner of the land in dispute. The decision of the Village Land Council who are the people of wisdom, and people with the knowledge of the history of the land in dispute must be respected, otherwise we shall be inviting chaos and misunderstanding between families in the villages.

It is also on record that the respondent herein participated in the case adjudicated by the Village Council in 2009 over the same piece of land and had signed the Mediation Agreement, as a symbol of agreeing that he

agreed and was happy with the decision of the Village Land Council that the land in dispute is the property of the Appellant here. The respondent is estopped by law and equity to turn around and start a fresh case over the same land.

Again, the records show that in 2015, there was a case between the Appellant herein and Sylvester Yunde over the same piece of land. Sylvester Yunde who is the 2nd witness of the respondent is the respondent's relative and has an interest on this piece of land. In 2015, the Appellant for the second time was declared the owner of this land. The evidence of Sylvester Yunde therefore was not to be believed as he participated fully in the proceedings of the Village Land Council both in 2009 and in 2015 where the Village Council had declared the land to be the property of the Appellant herein.

The evidence given in a previous judicial or quasi-judicial proceeding between the same parties where some of the issues were the same makes his evidence inadmissible. Sylvester Ntandu could not be called as witnesses as his evidence was already taken in another body over the same issue and such his depositions in a subsequent suit is inadmissible in evidence. He cannot be allowed to give contradictory evidence in a Court of

law or Tribunal or Quasi Tribunal, where in the former proceedings he gave evidence in favor of the Appellant herein, and now he cannot be allowed to give the contradictory evidence over the same piece of land in a subsequent proceeding. This makes his evidence not only untruthful but inadmissible.

I also do not agree with the submission of Advocate Lighola when he submits that the evidence of the witnesses of the Appellant i.e., the evidence of Jumane Rajabu Mugheji and Juma Rajabu Majengo were contradictory. They all testified that the land belongs to the Appellant who inherited it from his late father and has been using it for a long time. It is only in 2018, and after the death of Mzee Yunde Kimu, is when the respondent herein started to claim ownership of this land, disregarding in total the decision of the Village Land Council passed since 2009.

For the above stated reasons, this appeal is meritorious, and it is hereby allowed. The decision made by the Village Council in 2009 when determining a case between Severin Ntandu and the Appellant herein be respected.

Appeal allowed with costs.

DATED AND DELIVERED AT DODOMA THIS 19TH DAY OF FEBRUARY 2021




L. MANSOOR

JUDGE

19TH FEBRUARY 2021