IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

(LAND DIVISION)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 17 OF 2020

(Arising from Land Appeal No. 62 of 2019 of the District Land and Housing Tribunal for Kigoma Before: F. Chinuku- Chairperson and original Land case No. 7/2018 of Kagera Ward Tribunal).

MTEI REHANI.....APPELLANT

VERSUS

GAUDENSIA GERVAS.....RESPONDENT

JUDGMENT

05/02/2021 & 05/02/2021

A. MATUMA, J

In the Ward Tribunal of Kagera, the Respondent Gaudensia Gervas successfully sued the Appellant for encroachment of land measuring one footstep width and forty- four (44) footsteps length.

The Appellant was aggrieved hence appealed to the District Land and Housing Tribunal for Kigoma but he lost the appeal hence this second appeal.

The brief facts of the matter is that the respondent and one Sada Majengo Kagozi owned adjacent farms (mashamba) as neighbours. Each knew her boundaries and thus they possessed their respective farms peacefully. It was Sada Majengo Kagozi who was first in the locality and then the respondent in the year 2006 purchased the nearby adjacent shamba from a third party who previously owned it. Sada Majengo Kagozi and the respondent Gaudensia Gervas as I have said did not quarrel as each of them respected their bounderies.

When it got the year 2016 Sada Majengo Kagozi sold her farm to the current appellant Mr. Mtei Rehani and it is when the current dispute arose after the respondent got the appellant farming the farm he bought from Sada but exceeding into her farm for one footstep width and 44 footstep length.

The parties started with amicable settlement involving some neighbors who fixed some boundaries between them but in vain which necessitated the respondent to start/commence a formal suit in the Ward Tribunal as I have herein stated.

The District Land and Housing Tribunal on appeal was satisfied that the trial Ward Tribunal properly adjudged the matter, dismissed the

appellant's appeal. The appellant is now before this Court with seven grounds of appeal whose contextual general claims are that;

i. *The Appellate tribunal erred to have not found that the proceedings at the trial tribunal was a nullity as Sada Majengo was not joined as a co-defendant.*
ii. *The Appellate tribunal erred to have not properly adjudicated his appeal according to the evidence on record.*

At the hearing of this Appeal, both parties appeared in person with no legal representation.

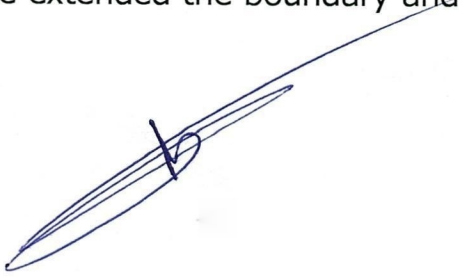
The Appellant submitted in the first set of the complaint that since it was Sada Majengo Kagozi who sold to him the dispute shamba, she was a necessary party to have been sued along with him as a necessary party. That it was wrong to become a witness of the respondent while she did not have any transaction with the respondent but with him.

Responding to that complaint, the respondent submitted that Sada Majengo could not be a defendant and became her witness because she did not sale the dispute piece of land to the appellant. That she sold her own shamba but it was the appellant who encroached to her farm beyond what he bought from Sada.

On this first set of complaint, the Appellant laments that the none-joining of Sada Majengo Kagozi at the trial was legally fatal and ought to have nullified the proceedings of the Ward Tribunal.

It is my firm finding that this complaint is without any substance because throughout the proceedings the dispute was not over ownership of the farm previously owned by Sada Majengo. Sada Majengo herself testified to have possessed such farm and later sold it to the Appellant. That fact was not disputed by the Respondent and in fact acknowledged that Sada Majengo was her neighbor in farms before she sold her farm to the appellant. Therefore, there was no need of joining Sada Majengo as the farm she sold to the appellant was not in dispute. The vendor becomes a necessary party only when what he or she sold is in dispute. The essence is for him or her to be accorded opportunity to justify his or her selling in protection of the purchaser's rights.

In the instant matter the dispute was only on encroachment of land in which the respondent alleged that after the appellant bought the farm from her neighbor Sada, he extended the boundary and encroached into her farm.



To that extent, Sada Majengo suffices to be a witness on the area or farm she sold to the appellant. This complaint is thus devoid of any merit and I accordingly dismiss it.

On the second set of complaint, it is whether both the trial tribunal and the appellate tribunal properly adjudged the matter in its concurrent findings.

The appellant argued that Sada Majengo to testify on the party of the respondent signifies that there was conspiracy between her and the respondent as she ought to be his witness and not of the respondent. He also submitted that even when the trial tribunal visited the locus in quo, Sada did not accompany them. She ought to have accompanied them and show the boundaries within which she sold the farm.

The respondent on her party counter argued the ground by submitting that Sada Majengo had visited the dispute property and observed that the appellant exceeded what she sold to him. That Sada tried her level best to fix the bounderies afresh with the aid of some neighbours but it ended in vain.

I have carefully gone through the proceedings of both tribunals and I am of the firm view that the potential evidence was that of Sada Majengo Kagozi who sold her farm to the Appellant.

In her evidence as a witness of the plaintiff now the respondent, she clearly stated that immediate after the allegations of the encroachment, the respondent approached her to ascertain whether she sold her farm beyond boundaries. She visited the farm and found exactly that the appellant had farmed beyond the boundaries she sold to him. That is reflected from both the cross examinations by the appellant and questions by the tribunal members. A good example is the question by Leonard Gervasi the trial tribunal chairman;

> *"Swali:- wakati ulipokwenda kuangalia shamba ulikuta Mtei amevuka shamba?*
>
> *Jibu:- Ndiyo"*

To that extent, it is obvious the appellant encroached the respondent's farm as evidenced by his vendor. When the trial tribunal visited the locus in quo it found that the dispute was only one footstep width to forty-four footsteps length and decreed it to be the lawful property of the respondent which was encroached by the appellant.

Sada Majengo Kagozi was really fed up of the encroachment lamenting that she sold the farm because her age was high and could not farm but not to bring problems.

She even called the tribunal to assist her get time to refund the appellant the purchase price so that the farm returns back into her, to end up problems which have been created by the appellant by encroachment;

> *"Sasa je kwa kuwa yeye kanunua ndio avuke? Mimi ni mzee afya ya kulima sina ndio maana kuuza hilo shamba sasa nacho kiona mniombee kwa Mtei anipe muda nitafute hela yake nimrudishie ili kuepusha hii hekaheka na panda teremka".*

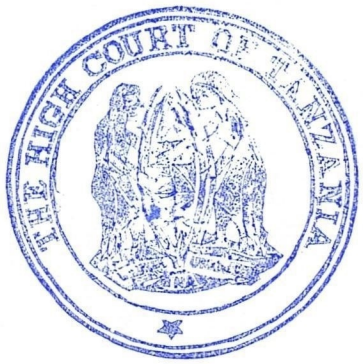
Such piece of lamenting evidence of Sada Majengo Kagozi is very clear that the appellant is a troublesome, he is the source of the dispute by encroaching to the respondent's farm beyond the boundary he purchased.

The Appellate tribunal dismissed the appellant's appeal on the strong of such evidence and I have no any good reason to disturb such findings.

This appeal is therefore dismissed in its entirety with costs.

I order the appellant to immediately give vacant possession to the respondent of the encroached piece of land. Failure of which, this Court shall be entitled to take back to Sada Majengo Kagozi the whole farm he bought and without any refund of purchase price because Sada Majengo lived peacefully with her neighbours and did not sale her farm to bring chaos to her neighbours as she personally lamented.

We need peace in the country and anyone who tries to disturb it deserves a strong deterrence. Right of appeal to the court of Appeal of Tanzania subject to the relevant laws governing third appeals thereto is fully explained. It is so ordered.



A. MATUMA

JUDGE

5/2/2021

Court: Ruling delivered in chambers this 5th day of February,2021 in the presence of both parties in person.

Sgd: A. MATUMA

JUDGE

5/2/2021