

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC. LAND APPEAL NO. 15 OF 2019

ALBERT A. MHANDIKWA.....APPELLANT

VERSUS

PHILIP KABEHO KANG'OMBE.....RESPONDENT

(Arising from District Land and Housing Tribunal of Kahama)

(Paulosi L. Lekamoi (Chairman)

Dated on 23rd day of September, 2019)

in

Land Appeal No. 27/2018

JUDGMENT

10th November, 2020 & 12th February, 2021

MDEMU, J.:

This is a second appeal. In the Ward Tribunal of Malunga, the Appellant lodged a claim against the Respondent for encroachment of his land in Plot No. 1077 Block "L" HD situated in Kahama District at Malunga Street.

The evidence at the trial Tribunal is to the effect that, the Appellant was given the disputed land by his relative one Martha Kayanda. That was in the year 2000. The evidence provides further that, in 2005, Kahama

District Council conducted land survey whereby the Appellant was allocated the disputed land on 23rd January, 2005 through letter with reference No. LD/KDC/14176/2/EKK and No. LD/KDC/4785/2/EKK.

As to the Respondent, the evidence is to the effect that, he applied and consequently was allocated the disputed land by Kahama District Council through a letter with reference No. KDC/16363/2/VKMS. That was on 16th October, 2007. At the end, the trial tribunal on 13th of August, 2018 decided in favor of the Respondent in the following version:

"Baada ya wajumbe wa baraza kwenda kutembelea na kuona kiwanja na 1077 kitalu L HD iliyoko mtaa wa Malunga; Wajumbe walitazama na kubaini kuwa madai ya mlalamikaji kuhusu kiwanja hiki haihusiani na mlalamikiwa kwani mwenye kutoa/kugawa viwanja na kumilikisha ni Halmashauri ya Mji ambayo imeshammilikisha ndugu Philip Kang'ombe kwa maandishi ya barua yenye kumbukumbu na, KTC L 20.1/345 ya tarehe 10/04/2018. Baraza linashauri kuwa Mlalamikaji arudi Halmashaouri ya Mji aombe kiwanja kingine mbadala."

"Baraza limefika uamuzi kwamba mdaiwa (mlalamikiwa) apewe kiwanja chake na 1077 kitalu L High Density iliyoko mtaa wa Malunga kama barua yake ya Ofa na, KDC/16363/2/VKMS ya BARUA ELEKEZI Na KTC/L20.1/345 YA HALMASHAURI YA INAVYOELEKEZA ZIMEWASILISHWA KATIKA Baraza kama kielelezo."

The Appellant was aggrieved by that decision, thus filed an appeal to the District Land and Housing Tribunal, which, on 23rd of September, 2019 decided again in favor of the Respondent. Again, that decision aggrieved the Appellant, hence the instant appeal on the following four grounds: -

- 1. That, the honourable chairman erred in fact and law in dismissing the appellant appeal on holding that the disputed land is the property of the respondent and that it has been allocated by Kahama Town Council, but forgetting that such disputed land was originally acquired by the appellant from her relative one Martha Kayanda who owned a huge farm land of which part of it is a disputed land which was given*

earlier to the appellant in 2000 and in 2005 and such disputed land was surveyed and it was issued with letter of offer in 2005 in the name of the appellant but surprisingly later on the respondent came claiming to be allocated the same land by Kahama Town Council in 2007.

- 2. That, the honourable chairman erred in fact and law for being bias for holding that, the appellant letter of offer is a forged document. The one who is supposed to prove that the appellant document is a forged document is Kahama Town Council who issued the document and not the tribunal chairman.*
- 3. That, the chairman erred in fact and law in holding that the respondent is the lawful owner of the disputed land without considering the evidence adduced by the appellant at the trial tribunal which were more strong than that of the respondent.*

4. That, the chairman erred in fact and law in holding that the disputed land is the property of the respondent by looking on the receipt of payment of land rent forgetting that the first person to occupy the disputed property is the appellant and there is no evidence which shows that the appellant ownership of the disputed land was revoked.

When the appeal came for hearing, Ms. Cecilia Clement Nekwa, under power of attorney, appeared for the Appellant and Mr. Goodluck Herman, Advocate appeared for the Respondent. This was on 10th of November, 2020.

Submitting in support of the appeal, Ms. Nekwa stated that, the Appellant inherited the disputed land from one Martha Kayanda in 2000 and that, it was surveyed in 2003. She went on submitting that, the same Plot No. 1077 was allocated to the Appellant and that, all survey fees were paid. Ms. Nekwa said further that, she was called to land office in 2005 and was handled a letter of offer of plot No. 1077. It was Ms. Nekwa's assertion that, in 2007 when she made follow up so that she could pay fees, she was told that records on the existence of the property is wanting.

Ms. Nekwa submitted further that, the Respondent invaded the disputed land for the first time in 2017 by mobilizing stones therein for construction purposes. She added that, they came to realize that another land officer one Sulus issued another offer to the Respondent. Ms. Nekwa asserted further that, all land tribunals decided the dispute in favor of the Respondent and that, the Appellant was not ready to receive alternative plot as advised by the council authorities. It was her observation therefore that there are some irregularities in the DLHT that prompted the Appellant to file this appeal.

In reply, Mr. Herman submitted in the first ground of appeal that, what is at dispute is not a shamba but Plot No. 1077 that was allocated to the Respondent by the letter of offer issued on 16/10/2007.

On the second ground of appeal, Mr. Herman submitted that, as per the letter dated 1/2/2018, the District Council do not recognize the offer of the Appellant to have been issued to him on 23/1/2005. On this, Mr. Herman said, the DLHT found it to have been altered.

In reply to the third ground of appeal Mr. Herman submitted that, the Respondent tendered a letter of offer, receipts of survey fees and land rent.

He conceded that, the dispute arose when the Respondent started construction works in the disputed plot. It was Mr. Herman's views that, it was correct for the tribunal to consider land rent receipts paid by the Respondent as evidence. Lastly, Mr. Herman submitted that, the Respondent enjoyed possession up to 2018 when the dispute arose over the property.

Rejoining to that, Ms. Nekwa vigorously disputed the Respondent's assertion that, he enjoyed quite possession till 2018. On this, Ms. Nekwa had views that, the Respondent would not be inactive from 2007 till 2018. That was the end of parties' submissions.

I have gone through both parties' submissions together with the trial tribunal's records. In a careful perusal to the grounds of appeal, I will only determine ground 2. Reasons for this position will be given in due course.

There is no dispute that both parties to this case allege to have been allocated the disputed land by land authority of Kahama District Council. On this, the Appellant relies on a letter of offer with reference No. LD/KDC/4785/2/EKK dated 23rd January, 2005 while the Respondent relies

on a letter of offer with reference No. LD/KDC/16363/2/VKMS dated 16th October, 2007.

For whatever decision the court takes by declaring one of the parties to be the lawful owner of the disputed land, it will mean, declaring one part's offer to be invalid. Thereafter, orders that may affect the land authority of Kahama District Council may follow. Is it not necessary for that land authority be joined and heard on its part before directing those orders to it?

In the case of **Benares Bank Ltd. v. Bhagwandas, A.I.R. (1947) All 18** as quoted with approval in the case of **Abdulratif Mohamed Hamis v. Mehboab Yusuph Osman and Another, Civil Revision No. 6 of 2017** provided two tests for a part to be joined in a case as a necessary part. These are; **first**, there has to be a right of relief against such a party in respect of the matters involved in the suit and; **second**, the court must not be in a position to pass an effective decree in the absence of such a party.

In connection to the above shown tests, there is no way that this court's decree will be effective upon declaring one party to be a rightful

owner of the disputed land without joining the land authority. If this court acknowledges one part's offer to be genuine and the other to be not genuine, then there must follow an order for the land authority to cancel or revoke the forged offer and acknowledge the declared right offer. That order, in absence of joining the land authority as a part to the case will be ineffective and the same will be condemning the land authority unheard.

Had the District Land and Housing Tribunal retrieved this mischief, it would not have reached the conclusion it has made. Non joinder of a necessary party to the case is a serious procedural irregularity which breed injustice as was held in the case of **Abdulratif** (supra). This therefore has disposed ground two of the appeal and in a way, disposes of the whole appeal. On that account grounds 1, 2 and 4 of the appeal will not be determined.

With that stance, the entire proceedings of the two tribunals below, judgments and their resultant decrees are hereby quashed and set aside. This matter is, accordingly, pushed back to where it was immediately before the institution of the suit at the trial tribunal. From there, whoever is interested to pursue his rights, may do so by ensuring that all parties concerned are made a part.

Both parties to bear own costs.

It is so ordered.



Gerson J. Mdemu
JUDGE
12/2/2021

DATED at **SHINYANGA** this 12th day of February, 2021.



Gerson J. Mdemu
JUDGE
12/02/2021