

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF KIGOMA)**

AT KIGOMA

(APPELLATE JURISDICTION)

Misc. Land Appeal No. 12 of 2021

(Arising from Misc. Land Application No. 44/2020 of the District Land and Housing Tribunal - Kigoma, Before Hon Waziri M.H., Land Appeal No. 01/2016 of the District Land and Housing Tribunal Kigoma, Original Land Case No. 5 of 2015 Simbo Ward Tribunal)

MARIAM D/O ATHUMANI.....1st APPLICANT

MWAJUMA D/O ATHUMANI..... 2ND APPLICANT

VERSUS

CHAUSIKU D/O HAMIS..... RESPONDENT

R U L I N G

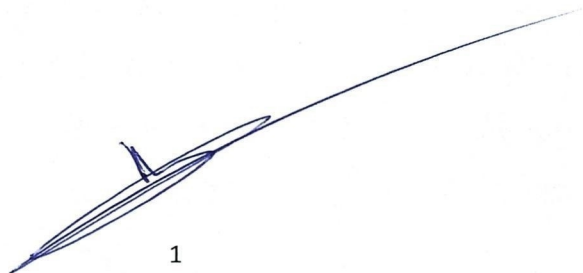
02nd March & 2nd March, 2021

A. MATUMA, J.

When this appeal came on for hearing, I required the parties to address me on whether in the manner the appeal is drafted, I am conferred with jurisdiction to determine it.

The background leading to the issue I have raised is that;

At the trial Ward Tribunal (Simbo), the respondent sued the appellants for encroachment into the dispute shamba.



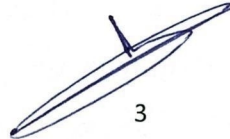
After a full trial the trial tribunal was satisfied that indeed the appellants had encroached into the dispute shamba. They were adjudged losers and ordered to pay costs of the suit.

Having been aggrieved with such finding they appealed to the District Land and Housing Tribunal on six grounds but they were unsuccessful in the appeal. The grounds of appeal at the first appeal were as follows:-

- 1. Kwamba, baraza la kata lilikosea kisheria na kimantiki kumpa haki mjibu rufaa juu ya eneo lenye mgogoro pasipo kuzingatia mipaka ya asili/awali ya mashamba ya kila upande na badala yake kukubaliana na mpaka mpya uliochimbwa na mjibu rufaa mwaka 2015 na hivyo kuleteleza mgogoro huu.*
- 2. Kwamba, baraza la kata lilikosea kisheria na kimantiki kuegemeza ushindi wa mjibu rufaa katika Ushahidi uliotolewa shambani na Mustafa Athumani ambao kimsingi ulikuwa wa mashaka makubwa na uwongo kwani kabla ya mgogoro huu na kugawanywa kwa mirathi mwaka 2014, familia ya Mzee Athumani Nkoyele akiwa ni pamoja na shahidi huyo mwenyewe walikuwa wakitumia shamba hilo pasipo bughudha ya mipaka na mjibu rufaa na kukengeuka kwa maslahi binafsi baada ya mirathi kugawanywa.*



3. *Kwamba, baraza la kata lilikosea kisheria na kimantiki kumpa haki mjibu rufaa pasipo kuzingatia muda mrefu ulipita pasipo mgogoro wa mipaka kati ya wadaawa na au watangulizi wao na mjibu rufaa na badala yake, mgogoro kuzuka 2015 mjibu rufaa alipobadilisha mipaka.*
4. *Kwamba, baraza la kata lilikosea kisheria na kimantiki kumpa haki mjibu rufaa licha ya mkanganyiko wa Ushahidi ulitolewa na Mustafa Athumani kwa mdomo na ule alioutoa wakati wa kuonesha mashamba (site visit) ambao ndiyo uliotumika kumpa ushindi Mjibu rufaa badala ya kumchukulia kama shahidi wa mashaka na kigeugeu.*
5. *Kwamba, baraza la kata lilikosea kisheria na kimantiki katika uchambuzi wa Ushahidi hususani kutokuzingatia Ushahidi thabiti juu ya mipaka ya mashamba ya wadaawa ulitolewa na mzee wa miaka mingi Ndugu Athuman Sango kuunga mkono madai ya waomba rufaa na hivyo kufikia maamuzi yasiyo ya haki.*
6. *Kwamba, baraza la kata lilikosea kisheria kuamua waomba rufaa kulipa Tshs 60,000/= kama gharama za kesi ambazo Mjibu Rufaa hakuomba wala kuzithibitisha kinyume na taratibu na matakwa ya sheria.*



The first appeal as I have said was dismissed hence this second appeal with five grounds namely:-

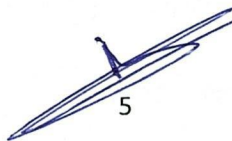
- 1. That, the two lower tribunals grossly misdirected and or non-directed themselves on the analysis and evaluation of evidence as adduced by both parties resulting in an unfair decision in favour of the Respondent over a new trench boundary consuming an acre of land from the Appellants' neighboring shamba*
- 2. That, the two lower tribunals completely misapprehend the substance, nature and quality of evidence as adduced by the parties particularly by hinging the Respondent's victory on the site testimony of only one witness Mustafa Athumani contrary to the law requirements.*
- 3. That, the two lower tribunals erred in law and in fact in the evaluation of evidence by particularly giving little weight to the testimonies by Respondents' witnesses including her husband Haruna Ruvuka and Chausiku Saidi (wife of Hamza Mitarambo – vendor unto her), collaborated by Athumani Sango for the Appellants, on the existence of a previous trench boundary between the parties' shambas as opposed to the newly invented trench by Respondent's son in 2015.*
- 4. That, the two lower tribunals erred in law and in fact in deciding in favour of the Respondent without regard to the many years that the Respondent had kept boundaries of her shamba purchased in 2001*

to 2005 when the Appellants' shamba was acquired and developed at first as a family property of the late Athuman Nkoleye and finally bequeathed unto the Appellants after administration of the estate of Athuman Nkoleye in 2014, all along without boundary disputes which only gushed out in 2015 due to a new trench by the Respondent.

- 5. That the two lower tribunals erred in law and in fact in deciding in favour of the Respondent merely basing on the unsworn site testimony of Mustafa Athumani who in fact had contradicted himself during dock and site evidence on the existence or otherwise of a former trench boundary and a new one thereby shaking the credibility of his evidence.*

At the hearing of this appeal, Mr. Ignatius Kagashe learned Advocate represented the appellants who were also present in person while Mr. Sadiki Aliko learned Advocate represented the respondent who was also present in person. Mr. Kagashe maintained that I have jurisdiction to entertain this appeal because both the two lower tribunals erred in their analysis of the evidence on record. He cited the case of **DPP v. Jaffar Mfaume Kawawa (1981) TLR 143** to the effect that the second appellate court is empowered to look into the records of the lower courts.

On his party Mr. Sadiki Aliko citing the provisions of section 38 (1) of the Land Disputes Courts Act, argued that I have no jurisdiction to entertain complaints against the decision of Ward Tribunals but District Land and Housing Tribunal He distinguished Jaffar Mfaume Kawawa's case and called me to struck out this appeal.



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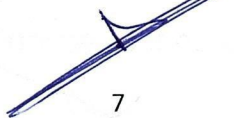
challenged despite the fact that in determining such appeal the court may go further to look into the records of the trial tribunal.

I had time to deal with a matter of a similar nature in the case of **Emmanuel Kanakamfumu @Kadogo versus Twaha Rashidi Bandola, Misc. Land Appeal No. 2 of 2020** High Court at Kigoma in which the appellant in one of the grounds of appeal challenged direct the decision of the Ward Tribunal. In dealing with the matter, I held;

'I would start by stating out right that the first ground of Appeal in the manner it is drafted, it is challenging the decision of the trial Ward Tribunal which is in fact the Ward Tribunal of Gungu to have held in favour of the respondent without him having letters of administration.

That being the case, I have no jurisdiction to entertain the complaint against the decision of the Ward Tribunal unless I am moved as the second Appellate Court. In that respect it would be the decision of the District Land and Housing Tribunal challenged before me and not that of the Ward Tribunal'

I reiterate the same holding in the instant appeal. I have no jurisdiction to correct errors of the Trial Ward Tribunal by way of appeal. That powers are vested in the District Land and Housing Tribunal as per section 19 of chapter 216 supra.



Since the grounds of appeal in the first appeal and in this second appeal are similar, the appellants if thought they were not dully or properly determined, they ought to have brought complaints against the District Land and Housing Tribunal on the manner the grounds were dealt. That would be inviting this court to step into the shoes of the District Land and Housing Tribunal to do what it ought to have done. But that is not the case here. The grounds of appeal are coached in the manner that presupposes that both the District Land and Housing Tribunal and the Trial Ward Tribunal have concurrent jurisdiction and erred together in a single decision while in fact each of the two has its own jurisdiction and issued different judgments though with concurrent findings.

I have tried to think whether it is possible to separate the complaints in the grounds distinguishing the complaints against the Wart Tribunal and those against the District Land and Housing Tribunal so that this appeal can be survived on the grounds of appeal against the decision of the District Land and Housing Tribunal, but I could not.

That being the case I rule out that I have no complaints specifically challenging the Decision of the District Land and Housing Tribunal for me to exercise my appellate Powers under section 38 (1) of chapter 216 supra.

I therefore struck out this appeal for want of jurisdiction. For clarity the appeal has not been heard on merit and therefore the appellants are at liberty to reprocess their appeal subject to the law governing time limitation for appeals of this nature. Right of Appeal explained.

No orders as to costs.



A. Matuma

Judge

02/03/2021

Court: Ruling delivered in chambers in the presence of the appellants in person and their Advocate Mr. Ignatius Kagashe and in the presence of the Respondent in person and her advocate Mr. Sadiki Alik.

Sgd: A. Matuma

Judge

02/03/2021