



**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**MISC. LAND CASE APPEAL NO. 10 OF 2019**

*(Arising from the District Land and Housing Tribunal in Appeal No. 54 of 2010 also originating from  
Kassambya Ward Tribunal in Civil Case No. 73 of 2010)*

**JOSANA RUTUTUKA .....APPELLANT**  
**VERSUS**  
**JOYCE KIWANUKA.....RESPONDENT**

**JUDGMENT**

*Date of last order 05/03/2021*

*Date of judgment 12/03/2021*

***Kilekamajenga, J.***

The appellant has been fighting for his rights from the Village Land Council up to this level. The appellant and respondent own their pieces of land next to each other. It is further alleged the parents of the appellant and respondent were close friends. After the death of the respondent's father, the appellant encroached into the respondent's land. The respondent complained before the village council which decided in favour of her. The appellant took the matter to the Ward tribunal where he also lost the case. Still determined to win the case against the respondent, he appealed to the District Land and Housing Tribunal where he also lost the case. He finally

appealed to this Court challenging the decision of the District Land and Housing Tribunal. The appellant was armed with five grounds of appeal coached thus:

- 1. That, the Hon. DLHT erred in law by ignoring the facts that the main complaint is concerning my planted eucalyptus trees which were planted by me long time ago and for which were not disputed by her late father and her late brother it is when the dispute arrised when the sub village chairman wanted to demarcate boundaries marks by entering into my forest of planted trees it is when refused hence this appeal.*
- 2. That, Hon. DLHT erred in law by regarding the problem as concerning only to boundaries marks when in fact the main problem is encroachment to my eucalyptus shamba for which we had no dispute with my neighbours till after the death of the father of the respondent that was proved by the evidence adduced by my witness Petro Karungo in the judgment of the Ward Tribunal.*
- 3. That the Hon. DLHT erred in law by relying on the allegations of the respondent which were also supported by the Ward Tribunal members who are related to the respondent by hiding the facts that our main complain was the intended fixing of boundaries marks into my forest of planted trees which I refused the sub-village chairman to fix and which was not made as required by law thus causing our problem to remain unsolved the date.*
- 4. That, I pray the Hon. high Court to make revision of this case to start a fresh at the DLHT to enable the DLHT to visit the area in dispute as*

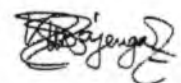


*solution to our problem which if not solved can cause break of piece the act which is bad in law.*

5. *That the Hon. DLHT erred further in law that the claims is time barred when in fact there was no dispute with my neighbours for over 14 years it is when the respondent started to interfere with my area hence this appeal.*

The appeal was finally fixed for hearing; the parties appeared in person and without legal representation. Being lay persons, their submissions were just brief and mostly centered on the ownership of the disputed land. In the oral submission, the appellant submitted that, the disputed land is approximately one acre which he inherited from his father who died in 1970. He stated that, he continued to use the land since then until the dispute arose in 2007.

The appellant further confirmed that the respondent has a land next to the disputed land. He further alleged that, he lost the case before the Ward Tribunal because most of the members of the tribunal were the respondent's relatives. He also assailed the District Land and Housing Tribunal that it just dismissed the appeal without hearing. When the Ward Tribunal visited the *locus in quo*, it was led by the respondent's relatives.

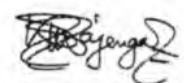


He further argued that he planted trees on the disputed land which are over 30 years old now.

On the other hand, the respondent stated that she inherited the disputed land from her father who died in 1990. Since then, she continued to use the land. She objected the allegation that the members of the Ward tribunal were her relatives. She insisted that the appellant encroached into the disputed land and dug a trench.

When rejoining, the appellant further alleged that the respondent's witnesses were her relatives and he (appellant) is just alone in the village and that there was no dispute over the ownership of the disputed land during the lifetime of their parents.

After considering the grounds of appeal and the oral submission made by the parties, what is pertinent in this appeal is on the ownership of the disputed land. During the trial before Kasambya Ward Tribunal, the appellant summoned two witnesses namely his wife Jesaca Anatory and Petro Karongo. Jesca Anatory stated that they used the disputed land and also planted tree. Petro Karongo also stated that the village chairman set



boundaries on the land. But he was later called and found the boundaries uprooted and that the dispute between the parties arose. Generally, Peter Karongo did not testify on whether the appellant was the lawful owner of the disputed land. The only remaining piece of evidence is that of the appellant's wife.

On the other hand, the respondent summoned two witnesses namely her sister Georgina Kabika and Zubail Mustafa. Georgina Kabika confirmed that the appellant encroached into the respondent's land. Zubail Mustafa who was the village Chairman testified that he received the complaint about the encroachment into the disputed land; he assisted the parties to set – up boundaries but the appellant has been objecting. The Ward tribunal finally found out that the appellant's case was weaker than that of the respondent hence decided in favour of the respondent.

I have also carefully considered the evidence adduced before the trial Ward Tribunal and found stronger evidence of the respondent than that of the appellant. During the oral submission, the appellant constantly alleged that the respondent benefited from the Ward Tribunal because it is mainly composed of the respondent's relatives. He further alleged, the




respondent's witnesses were her relatives and that the appellant and his wife are just alone in the village. In my view, this allegation is unfounded. The appellant lost the case at the Village Land Council, at the Ward Tribunal and the District Land and Housing Tribunal. All these decision making bodies are not composed of the respondent's relatives. I find the appellant's case just weaker as compared to the respondent's case.

At the District Land and Housing Tribunal, the parties were allowed to argue the case by way of written submission but before this Court, the appellant stated that the appeal was not heard but was dismissed. In my view, the appellant is unreliable and might be lying to favour his position. The appellant further insisted that the case should be returned to the District Land and Housing Tribunal so that the disputed land may be visited. However, I am alive of the fact that the District Land and Housing Tribunal was an appellate body and it was not necessary for it to visit the land. Also, I am mindful of the fact that the parties are quarrelling on the land boundary and not on the ownership of the land. The village leaders assisted the parties to set up the boundaries but the appellant was accused of uprooting them.

The Ward Tribunal visited the disputed land and was fully convinced that the appellant encroached into the respondent's. So long as the trial tribunal visited the *locus in quo*, the District Land and Housing Tribunal had no reason to visit the land again. In conclusion, the appellant's grounds of appeal are devoid of merit. I hereby dismiss the appeal with costs. The appellant should vacate from the land and respect the boundaries set by the village chairman. Order accordingly.

**DATED at BUKOBA** this 12<sup>th</sup> Day of March, 2021.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**12/03/2021**

**Court:**

Judgement delivered in the presence of the appellant and respondent present in person. Right of appeal explained to the parties.



  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**12/03/2021**

