

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

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 5 OF 2021

(Arising from Land Appeal No. 57/2014 of the District Land and Housing Tribunal – Kigoma
before M. H. Waziri – Chairperson, Original Land Case No. 38/2014 from Matendo Ward
Tribunal)

EDSON KIBUGUMA..... APPELLANT

VERSUS

MASOUD NTIBENDA RESPONDENT

J U D G M E N T

11th March & 8th April, 2021

I.C. MUGETA, J.

The facts of this case are very brief. The respondent sued on behalf of Pastoralist at Matendo Village. He was their Chairman. The claim was for stopping the appellant from cultivating around the dam which provides water for the pastoralists cattles. The respondent and his two witnesses, Kasiano Ntaheru a retired Chairman of Matendo Village and Isack Mbogo the sitting Chairman of the Village testified that the dispute area is designated as water catchment area for livestock use. Against this evidence, the sole evidence of the appellant was thus: -

*"Mimi sababu ya kumkana ni kwamba nilimuuliza hii
michikichi inayokatwa ni ya nani ni ya Kalela mimi
simtambui aende mbele".*

The Matendo Ward Tribunal ruled that the appellant has no rights over the dispute land. He appealed to the District Land and Housing Tribunal which confirmed the decision of the Ward Tribunal. Dissatisfied, the appellant has appealed to this court advancing five grounds of appeal. The first one is that the District Land and Housing Tribunal erred in scrutinizing the evidence on record. Secondly, that the District Land and Housing Tribunal erred to reach its decision without assessors' opinion. Thirdly, that the District Land and Housing Tribunal erred to hold that upon visiting locus in quo it noticed that the appellant trespassed the dispute land by 1¹/₂ acres. Fourthly, that the District Land and Housing Tribunal erred to hold that Kalela, Kwaga and Matendo Village had been surveyed. Fifthly, that the Ward Tribunal had no jurisdiction.

When the case was called up for hearing the appellant just invited the court to consider his grounds of appeal. The respondent was absent as he defaulted appearance despite service. I shall start with the complaint on jurisdiction. As the appellant did not explain the type of jurisdiction he

referred to, I have failed to understand the nature of the complaint. There is no dispute that the dispute land is at Matendo Village within Matendo Ward. This is according to the evidence of Kasiano Ntaheru.

Regarding assessor's opinion, indeed, the District Land and Housing Tribunal determined the appeal without their opinion. The reason given at page 1 of the judgment is that one of them has passed on and the other had retired. It is unknown when they died and retired respectively. It is just saddening that the hearing of the case was completed on 4/3/2016 and the judgment was delivered on 27/11/2019. Be as it may, and for the stated reason the District Land and Housing Tribunal Chairman was entitled to proceed to deliver the judgment in terms of section 23 (3) of the Land Disputes Court Act [Cap. 216 R.E. 2019]. I wish to add that such lack of assessors' opinion did not prejudice the appellant nor occasioned any failure of justice. The irregularity is served by section 45 of Cap. 216.

The complaint that the villages of Kalela, Kwaga and Matendo are unsurveyed was neither raised nor discussed by the first appellate court. It is also irrelevant to the fact in issue. For those reasons, it cannot be entertained at this second appellate court nor can vitiate the proceedings even where the complaint is held to be true. Regarding the complaint on

visiting a locus in quo, indeed, the Chairman visited the locus in quo on 12/7/2016 then he made the following observation: -

- i. The dispute plot has been seen it is within jurisdiction of Ward Tribunal as it is Matendo Ward. There are cassava and avocado own (sic) by applicant (sic) which led to the dispute since the area is for grazing purpose.*
- ii. It was noted that the area is planned or reserved by village government for Mayange for grazing purpose.*
- iii. The applicant (sic) is truly trespassed (sic) into the area for 1½ acres.*

I have reviewed the proceedings recorded at the locus in quo it is my view that the learned Chairman recorded them without assistance of witnesses as they are not reflected on record. This makes such observations his personal opinion which cannot be used as evidence as the same is of no probative value. Courts visit locus in quo to get evidence from witnesses not to turn themselves into witnesses. I expunge the proceedings at the locus in quo from record for illegality. However, even without this opinion, the evidence on record of the ward tribunal still tilt the scale on the respondent's side.

Finally, is the complaint that the first appellate court did not scrutinize the evidence. Indeed, the District Land and Housing Tribunal casually dealt with

the evidence on record. However, whatever analysis ought to have been made, the appellant did not give any evidence to support his claim over the suit land. The evidence on record from the respondent and the two witnesses, the former and sitting Chairman of the village, on the balance of probabilities, prove that the dispute land is designated as grazing land.

In the event, I find the appeal without merits. I accordingly dismiss it. I give no order as to costs because the respondent defaulted appearance.



A handwritten signature in blue ink, appearing to read "Mugeta".

I.C. Mugeta

Judge

8/4/2021

Court: Judgment delivered in chambers in the presence of both parties.

Sgd: I.C. Mugeta

Judge

8/4/2021