

**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. 13 OF 2021

(Arising from Land Appeal No. 37/2020 of the District Land and Housing Tribunal – Kigoma, before F. Chinuku – Chairperson, Original Land Case No. 1/2019 from Mgombe Ward Tribunal)

JEREMIA CHARLES..... APPELLANT

VERSUS

STAPHODI NDABASHINZE..... RESPONDENT

J U D G M E N T

23rd March, & 8th April, 2021

I.C. MUGETA, J.

The appellant sued the respondent at Nyakitonto Ward Tribunal over the land claimed to have been allocated to him by the Village Council of Mgombe Village. The decision was in favor of the respondent. Aggrieved, the appellant appealed to the District Land and Housing Tribunal where he lost too, hence, this appeal on the following grounds: -

- 1. That the district Land and Housing Tribunal grossly erred in law and fact when it rejected the appellant appeal without considering that the Village Council of Mgombe as allocating authority of the suit land to the appellant was a necessary*



party to the case. Hence the finding of the trial ward tribunal is nullity.

- 2. That the trial district Land and Housing Tribunal grossly erred in law and fact ignored the appellant's appeal without considering that Elias Maliatabu and Isack Pius as sellers of the suit land to the respondent are necessary parties to the suit.*
- 3. That the trial District Land and Housing Tribunal grossly erred in law and fact when it ignores the appellant appeal without considering the judgment entered by the trial ward tribunal in absence of secretary of the tribunal and the same not bearing his signature and seal is nullity.*
- 4. The Ward Tribunal grossly erred (sic) law and fact by dismissing the appellant appeal without considering that the trial Ward Tribunal failed to scrutinize the Appellant's evidence which proved his claim to the standard required by the law.*
- 5. That the trial District Land and Housing Tribunal grossly erred in law and fact when it held in favour of the respondent's evidence and his witnesses were contracting (sic) each other. Hence the judgment un grounded.*
- 6. That the trial district Land and Housing Tribunal grossly erred in law and fact when it held in favour of the respondent while the appellant has been in the occupation of the suit land since 2005 to 2014 when the dispute arose.*
- 7. That the trial district Land and Housing Tribunal grossly erred in law and fact when it upheld the judgment of the*

trial Ward Tribunal without considering the circumstantial evidence on side of the appellant for exhausted improvement over the suit land.

On the hearing of the appeal, appellant was represented by Silvester Sogomba, learned advocate while the respondent appeared unrepresented. Counsel for the appellant combined the first and the second grounds into one ground and he dropped the sixth ground.

Submitting on the combined grounds of appeal, the learned advocate submitted that the Village Council which allocated the plots to Elias Maliatabu and Isack Pius were necessary parties to the suit and they should be joined as co-defendants. Failure to do so, he submitted, vitiated the whole proceedings. To support his argument, he cited the case of **Juma B. Kadal v. Laurent Mkande** [1983] TLR 103 where it was held that sellers and buyers are necessary parties and must be joined as co-defendants.

Citing section 5(3) of the Ward Tribunal Act [Cap 206 R.E 2002] in supporting the third ground of appeal that the Ward Tribunal was not properly constituted due to the absence of the secretary of the Tribunal, the learned counsel submitted that meetings conducted in the absence of the secretary were invalid.

Mgeta

Addressing the fourth ground of appeal, the learned advocate submitted that the evidence of the appellant was not analysed properly by the lower tribunals on the fact that the appellant in the year 2005 was allocated the land by the Village Land Council while the respondent claimed to buy it in the year 2014, hence, the appellant has a better title to that land.

In support of the fifth ground, the learned advocate argued that the respondent evidence on acquisition of the land was contradictory. That the evidence of Elias Maliatabu, a Secretary of the Social Services Committee explained the procedure for allocation of land that one applies to the Village Council, but in this case he testified that he is the one who bought the land on behalf of the respondent which was contrary to the procedures. As per procedure aforementioned, he argued, the land was allocated to the appellant and not to the respondent.

On the seventh ground, the learned advocate submitted that the District Land and Housing Tribunal failed to consider that the appellant has already developed the plot. That he had collected and sent to the plot stones for construction which, unfortunately, the respondent confiscated and used to erect a building there on.

In reply, the respondent submitted generally without reference to specific arguments by the counsel for the appellant. He argued that the land came

into his possession through purchase from Elias Maliatabu and Isack Pius, who possessed the adjoining pieces of land allocated to them by the Village Council. Finally, the respondent submitted that this appeal was filed out of time.

In rejoinder, advocate for the respondent argued that the appeal was filed within time if the final day which fell on non-working days are excluded.

Starting with the combined grounds, 1st and 2nd, the main complaint is that necessary parties were not joined in the suit. It is my view that seller and buyer are necessary parties where the parties to the dispute claim title from the same seller which is not the case here. In the circumstances, the case of **Juma B. Kadala** (supra) is distinguishable. Generally, the complaint is baseless because it is the appellant who sued the respondent without joining those he deemed to be necessary parties. Further, the appellant did not produce any evidence on allocation of the land to him in 2005 as he alleges. His claim of allocation by Village Council is unsubstantiated.

Regarding compliance with section 5 (3) of the Ward Tribunal Act [Cap 206 R.E. 2002], I think the learned counsel misdirected himself. This is because the said section has no subsection (3). However, indeed, it is not reflected on the Ward Tribunal records that the secretary attended each

meeting. Nevertheless, according to section 15 of the Ward Tribunal Act, each Tribunal ought to regulate its own proceedings. There is no any rules in that law which require every member including the secretary to be present at each sitting provided the quoram requirement is met. This ground lacks merit.

The complaint in the fourth ground is that the Lower Tribunals ignored the strong evidence of the appellant. I have examined the record of the Ward Tribunal and found that the respondent claimed ownership of his land by purchase for value from two different people who came before the trial tribunal to testify on that fact. Their undisputed testimonies revealed that they were allocated the plots by the Village Council. On the other side, the appellant said that he was allocated the plot in 2005 by the Village Council. However, he tendered nothing to prove such allocation. The Chairman of the Village (2004 – 2009) one Daniford Kagabo explained well how the land was allocated to those who sold it to the respondent. Witnesses who supported the appellant's case, namely Abel Makulu and Emmanuel Makulu did not state their credentials as far as allocation of land at the Village was concerned. Therefore, on the balance of probabilities, the respondent's evidence was heavier.

On the fifth ground, the advocate for the appellant argued that the evidence of the respondent was contradicting. However, it is my view that he misconceived the evidence of Elias Maliatabu on the procedure of acquiring land that he bought the land for the respondent in cooperation with Isaack Pius. This complaint attracted me to revisit the testimony of the said Elias Maliatabu at the Ward Tribunal. This is what he said: -

"Ninacho kifahamu bwana Staphodi ndie mmiliki wa viwanja viwili alivyomnunulia bwana Elias Maliatabu na bwana Isaak Pius ambao hawa waliuziwa na serikali ya kijiji".

It is my view that the word 'alivyomnunulia' is the one which is misleading. Apart from its plain meaning, the context in which it was used reflects that the plots were own by Elias Maliatabu and Isack Pius and the respondent bought from them. That is why the word is in singular form while the plots bought are two. For that word to mean what the learned advocate suggests it ought to have been 'walivyomnunulia'. The complaint has no merits.

The seventh ground has no merits too. Making development on another person's land cannot lead to acquisition of land. Therefore, the whole appeal has no merits.

Lastly, I have determined the appeal on merits despite the fact that the respondent's complaint that the appeal was time barred has merits too. Responding to this argument, advocate for the appellant submitted that the last date fell on Saturday, therefore, it was right to file the appeal on the next working day. Section 38 (1) of the Land Dispute Court Act [Cap 2016. R.E. 2019] provides for time to file an appeal to High Court from the District Land and Housing Tribunal if the case originated from the Ward Tribunal to be within sixty days after the date of the decision or order. At the District Land and Housing Tribunal the judgment was pronounced on the 14th day of September, 2020. The appeal was filed on 16th day of November 2020. Counting after the date of delivery of the judgement sixty-days elapse on Friday the 13th November 2020 which was a work day. Hence the appeal was filed out of time.

In the event, the whole appeal, I hold, has no merits. I dismiss it with costs.


I.C. Mugeta
Judge
8/4/2021



Court: Judgment delivered in chambers in the absence of the appellant
and in the presence of the respondent.

Sgd: I.C. Mugeta

Judge

8/4/2021