

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. 22 OF 2020

(Arising from Land Appeal No. 133/2018 of the District Land and Housing Tribunal – Kigoma before Hon. F. Chinuku – Chairperson, Original Land Dispute No. 10/2018 from Heru Juu Ward Tribunal)

REWINA NTAYOBHO..... APPELLANT

VERSUS

FESTO NASHONI RESPONDENT

J U D G M E N T

11th Feb. & 12th April, 2021

I.C. MUGETA, J.

The facts of this case are that the respondent bought a land from James Ndagowe. That land adjoins the appellant's family land. The sale was effected in 1992. The two farms are separated by a river stream. In 2017, the respondent, allegedly, crossed over the stream and trespassed into the appellant's land hence this case which was tried by Heru Juu Ward Tribunal. This Tribunal held that the border is the river stream and each party should confine his or her activities to his or her part of the land. The respondent appealed to the District Land and Housing Tribunal which reversed the decision of the Ward Tribunal, hence, this appeal which is premised on six

grounds of appeal. In short, the complaint as can be discerned from those grounds of appeal is that the District Land and Housing Tribunal erred to hold that the suit land belongs to the respondent.

Both parties appeared unrepresented. They prayed the appeal to be disposed of by way of filing written submissions so that they can obtain legal aid to argue the appeal. The prayer was granted and each party has submitted the respective arguments.

The appellant has submitted that the learned Chairperson failed to properly evaluate the evidence on record as there is no proof of purchase of the land in 1992. Finally, she complained that the District Land and Housing Tribunal decided the case on basis of extraneous matter including that the appellant's husband did not testify at the Ward Tribunal.

The respondent replied that he has been in possession of the land since 1992 by way of purchase. He has also argued that the District Land and Housing Tribunal was right to hold that it is the appellant's husband who was entitled to sue on the land.

I have reviewed the evidence on record it is my view that the appellant cannot, at this stage, deny the fact that the respondent purchased the land. In her evidence she said: -

"Tangia anunue hilo shamba alikuwa analima havuki mpaka. Lakini mwaka jana ndipo amevuka mpaka".

This acknowledgement is a proof that the respondent bought the adjoining land and he has been in its effective occupation since then. However, purchase of land was not an issue before the Ward Tribunal. The issue that was before the Ward Tribunal was whether the respondent had trespassed into the appellant's land. The Ward Tribunal answered this issue in the affirmative. The District Land and Housing Tribunal reversed this decision and held: -

"The evidence or record proves that the suit land has been in use and occupation of the appellant for many years, there was no need for the trial Ward Tribunal to distribute the said land among the parties".

With respect the learned Chairperson, she misapprehended the evidence. According to the evidence on record, as I have said, there is no dispute that the respondent owns a parcel of land at the dispute area as established by the appellant's statement above quoted. The issue was whether he has extended into the appellant's land. Further, the Ward Tribunal did not distribute the land. It ordered each party to operate within their farms' boundaries. The fact that the issue is boundaries between the parties is proved also by the evidence of the respondent who testified.

"... tarehe 5/2/1992 nilinunua shamba kutoka kwa James Ndagowe... imekuwa mwaka jana mwezi wa 9 Zungu Bhalandaje alivuka mto akaja niliko".

The dispute is, therefore, founded on boundary which is the river stream. The above evidence by the respondent is a further proof that the parties adjoining lands are separated by a river stream. On that account it was an error for the District Land and Housing Tribunal to decide the case on account of long usage while the issue was trespass made in 2017.

Based on the evidence of the appellant and the respondent as quoted from each of them, hereinabove, it is my view that the District Land and Housing Tribunal misapprehended the evidence to set aside the decision of the Ward Tribunal. Both the appellant ^{and the respondent} admits that their lands are separated with a river stream. The Ward Tribunal so found and gave appropriate orders. I find that the Ward Tribunal's finding that the boundary of the farms is the river stream was well founded in evidence.

In the event, I set aside the decision of the District Land and Housing Tribunal for being erroneous. I here by restore the decision of the Ward Tribunal.



I.C. Mugeta

Judge

12/4/2021

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

Sgd: K. Mutembei

Ag. Deputy Registrar

12/4/2021