

**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. 15 OF 2021**

(Arising from Land Appeal No. 58 of 2019 of the District Land and Housing Tribunal – Kigoma before F. Chinuku – Chairperson, Original Land Case No. 37 of 2018 from Kalya Ward Tribunal)

**JOSEPH VENASI..... APPELLANT**

**VERSUS**

**EDESI MINAZI..... RESPONDENT**

**J U D G M E N T**

21<sup>st</sup> April & 5<sup>th</sup> May 2021

**I.C. MUGETA, J.**

This is a second appeal against a concurrent finding of the two lower tribunals that the suit land belongs to the respondent. At the Ward Tribunal, the respondent sued the appellant for trespassing onto the dispute land. He was declared the lawful owner of the land. The appellant was aggrieved by the decision of the Ward Tribunal and unsuccessful appealed to the District Land and Housing Tribunal.

The petition of appeal has four grounds of appeal with several complaints. However, at the hearing, Mr. Ignatius Kagashe, learned advocate condensed them to one complaint that the two tribunals failed to properly evaluate the evidence.

*Mgeta*

The facts of the case are that the dispute land is situated at Tundubala area, Kashagulu Village. The respondent tendered two payment receipt by which the Village land council granted him two farms at Tundubala. One farm measures four acres and the other occupies fifty acres. The appellant did not produce any evidence to establish his rights to the land. After trial the Ward Tribunal declared: -

*"... kuanzia leo hii tarehe 9/2/2019 bw. EDESI MINAZI mmiliki halali wa maeneo yale kwa kuwa ana vielelezo vinavyomruhusu kumiliki maeneo yale".*

The District Land and Housing Tribunal confirmed this declaration for the same reason. During hearing of this appeal Mr. Ignatius Kagashe, advocate for the appellant submitted that the Lower Tribunals erred to award the respondent fifty four acres while his land measures fifty acres minus 2.5 acres which he gave to the appellant's father. Mr. Sadiki Alik, learned advocate for the respondent replied that this is a new complaint as it was not raised at the first appellate tribunal. On ownership he submitted that the respondent owned all the fifty four acres and he produced evidence to that effect.

With respect to Mr. Sadiki the appellant has not raised new matters. In his submission at the District Land and Housing Tribunal his complaint was that the respondent did not prove his case on a balance of

probabilities. Such argument is based on matters of facts. Therefore, at this court, he is entitled to submit on how the two lower tribunals failed to analyse the evidence on such matters of facts.

Did the lower tribunal err as Mr. Kagashe has submitted? My answer is in the negative. I have reflected on the complaint in relation to the evidence it is my view that Mr. Kagashe has misapprehended the evidence. As I have said the respondent produced evidence that he has two farms at the area measuring fifty four acres in total. It is not clear from the record whether the two farms are adjoining. Therefore, when he said in his evidence that the land is measuring fifty acres he was referring to the fact that the dispute land is part of that land which measures fifty acres and not that with four acres.

It is true and I agree with Mr. Kagashe that the respondent admitted that he surrendered 2.5 acres of his land to the appellant's father. However, this piece of land is not the one involved in this dispute. The evidence is clear that later the appellant trespassed onto the respondent's land independent of his father and that is why he was sued in exclusion of his father. This is what the evidence of the respondent on cross examination tells us: -

*"Ijapokuwa lilikuwa ni eneo langu nikaenda  
nikampa hekari 2.5. Hawakulizika wamechukua*

*eneo langu lingine wanaendelea kulilima ndipo  
nimeamua kulileta hapa kwenye baraza...”.*

From this evidence it is abundantly clear that the dispute land does not involve the 2.5 acres the respondent gave to the appellant's father. It involve another part of the land measuring 3 – 3.5 acres per the respondent's testimony. The appellant on cross examination said it measures 2.5 acres. Be as it may, the dispute does not involve the whole fifty acres land but that area on which the appellant has trespassed be it 2.5 or 3.5 acres. Therefore, since the appellant did not produce any evidence to prove his right to the dispute land he was rightly adjudged a trespasser.

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



*I.C. Mugeta*  
**I.C. Mugeta**

**Judge**

**5/5/2021**

**Court:** Judgment delivered in chambers in the absence of the appellant represented by Mr. Ignatius Kagashe, advocate and in the presence of the respondent and his advocate Mr. Sadiki Alik.

**Sgd: I.C. Mugeta**

**Judge**

**5/5/2021**