

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

MISC.LAND APPEAL NO.13 OF 2020

DAUDI SUWA MBAO..... APPELLANT

VERSUS

AGNESS EDWARD MGEJA.....RESPONDENT

(Appeal from the decision of Kahama District Land and Housing Tribunal,

(Paulos L.S.Lekamoi-Chairman)

Dated 22nd day of June, 2020

in

land Appeal No.1 of 2020,

.....

JUDGMENT

23rd March & 28th May, 2021

MDEMU, J.:

This is a second appeal. In the Ward Tribunal of Sabasabini, Agess Edward Mgeja, the Respondent herein, filed a claim against the Appellant one Daudi Suwa Mbao for encroachment of the land (mbuga) of one Edward Mgeja who was her father. This was on 11th of November, 2019. On 24th of December, 2019, Sabasabini Ward Tribunal decided in favour of the Respondent. The Appellant appealed to the District Land and Housing Tribunal in Land Appeal No.1 of 2020 in which he lost. In a further dissatisfaction, the Appellant lodged the instant appeal on the following two grounds of appeal:

1. That, the District Land and Housing Tribunal erred in law and fact when it deliberately ignored to consider the sacrosanct pecuniary jurisdiction of the trial tribunal to determine land matters of 21 acreages, a result of which it arrived at unfair and unjust decision thereat.

2. That, the District Land and Housing Tribunal erred in law and fact by purposively failed to substantiate the intrinsic documentary evidence tendered that, the Respondent voluntarily consented to the bilateral handling over agreement of the suit land to the Appellant, a thing which culminated to wrong decision thereof.

Parties appeared in persons before me on 23rd of March, 2021 for hearing of appeal. Submitting in support of the appeal, the Appellant stated first to have his grounds of appeal adopted as part of his submissions. He then added that, the Respondent's father was invited by his father to the disputed land for use only and that he remained in that land to his demise. He added that, the said Mgeja was not blessed with any child thus the Respondent has nothing to inherit. He concluded that, there was no any administrator of the estate appointed, not even the Respondent. On those premises, he urged me to allow the appeal.

In reply, the Respondent submitted that, the disputed land was allocated to his grandfather in 1969 who then cleared the same for use. He added that, the said land was inherited by his father in 1982 following the death of his grandfather. Later, in 2010, his father died and he struggled to recover the said land in 2011 as the same got sold. He concluded that, it was in 2017 when the Appellant encroached the said land. He thus thought the appeal has no merit and urged me to dismiss the same.

In rejoinder, the Appellant stated to have made a follow-up himself in recovery of the sold disputed land and not the Respondent as submitted. According to the Appellant, it was after the death of Mzee Mgeja when the said disputed farm reverted into the family of Mzee Mbao. He thus reiterated his previous position to have the appeal allowed.

I have heard the parties and dully considered the evidence of the trial tribunal and further the decision of the DLHT in the first appeal. It is not disputed that originally, the disputed farms belonged to Mbao's family, that is the Appellant's family. In the record, the Respondent on this averment had the following to say:

Asili ya eneo hilo ni kweli lilikuwa la Mzee Mbao sawa, lakini baadaye alimmilikisha ndugu yake Mzee Mgeja baada ya

kumhamishia kutoka alikokuwa akiishi huko Ibelansuha. Mzee Mgeja alipewa hilo eneo likiwa pori na kuanza kulifyeka na baadaye kuanza kulima

Again, the record is clear that, the Respondent's family occupied the said area, through the late Mzee Mgeja who occupied the said farms. What parties are at variance is whether the late Mzee Mgeja was given the land for use only or was allocated to be his. In both cases, there is no documentation or an eye witness when the Respondent's grandfather Mzee Mgeja was given the land for either use or allocated for ownership purposes. This is a matter of evidence.

I should begin with the first ground of appeal on pecuniary jurisdiction of the Ward Tribunal on land disputes. Regarding this, the provisions of section 15 of the Land Disputes Courts Act, Cap.216 provides that:

S.15. Notwithstanding the provisions of section 10 of the Ward Tribunals Act, the jurisdiction of the Tribunal shall, in all proceedings of a civil nature relating to land, be limited to the disputed land or property valued at three million shillings.

From the above provisions, there must be value of the disputed property in monetary terms. In it therefore, there must be valuation report

from a registered valuer indicating the real value of the said immovable property. In the instant land dispute, the value of the said immovable property has not been determined. In fact, even the complaint initiating the claim at the Trial Ward Tribunal did not disclose the value of the disputed land. The claim is reproduced as hereunder:

Mimi ndiye mwenye anuani hapo juu nimefika mbele ya Baraza kumlalamikia ndugu Daudi Suwa Mbao ambaye amevamia eneo la Mbuga ya ndugu Edward Mgeja ambaye ni Baba yangu Mzazi. Kwa hiyo nimefika mbele ya Baraza la Ardhi ili niweze kurudishiwa haki yangu ya eneo hilo lililovamiwa. Na maelezo yangu ndiyo hayo.

In essence therefore and as the disputed property is located within the local limits of Sabasabini Ward Tribunal, then, in terms of the provisions of section 10 of Cap.216, the said tribunal has jurisdiction. The said provisions of the law is reproduced as hereunder:

*S.10. Each Ward Tribunal established under the Ward Tribunals Act shall be a Court for the purpose of this Act, the Land Act * and the Village Land Act * and shall have*

jurisdiction and powers in relation to the area of a District Council in which it is established.

*(2) The provisions of the Ward Tribunals Act, 1985 shall apply as appropriately modified by this Act, and in the event of conflict between this Act, and the Ward Tribunals Act * in relation to Ward Tribunals, the provisions of this Act shall apply.*

On that account, this ground of appeal has no merit and is accordingly dismissed.

As to the second ground of appeal, the main complaint of the Appellant is on failure of the trial tribunal to consider documentary evidence such that, the Respondent willingly remitted back the said disputed farms to the Appellant's family. In the first place, the Appellant did not state which documents both the trial and the first Appellate tribunal never considered in holding that the Appellant is not the rightful owner of the suitland.

As said earlier on, parties differed materially in one item. It is in respect of whether the Respondent's grandfather was given the land by the Appellant's grandfather to use or to own. It is clear in the record according to the Respondent that, Mzee Michael Mbao Suwa allocated the land in

question to mzee Mgeja. The said Mzee Mgeja passed away in 1982 thereby the father of the Respondent inherited the said land. To the demise of Mzee Mgeja in 1982, neither the Appellant nor any person from Mbao's family claimed the land. Actually, had there any evidence that the Respondent's grandfather Mzee Mgeja was given the land for use only, this was the right time to claim back the said land. There was no any such claim.

Essentially, there is evidence that, the Respondent's grandfather was given the land way back in 1969 and that, it was until 2011 when the Appellant started using the land. One would therefore ask where the Appellant was from 1982 when the said Mgeja passed away to 2011 when he started using the land? Again, the late Mzee Mgeja, to his demise, never stated to have rented the said land for cultivation purposes. Part of the evidence reads:

*Swali 5: je alopofariki je Edward alizungunza kwa Wazee
kwamba maeneo hayo aliazimwa?*

Jibu: Hapana sikuwepo

It appears also as per the record; the Appellant was not ready to let those witnessed the sold shamba when returned to owner to testify in the tribunal as evidenced in the following:

Swali(7) wakati unakuja kuyarudisha yalikuwa chini ya nani?

Jibu:yalikuwa chini kwa wale waliyoyanunua

Swali(8)(mlalamikaji) je Masai alirudisha eneo wapi?

Jibu:Aliyarudisha kwetu.

Sawali 9: Je akiitwa Masai Kakola atakubali kuwa alikurudishia?

Jibu:Hakuna haja ya kumwita. (emphasis mine)

From the above evidence, in my view, it is obvious that, the said farms when sold were in the ownership of Mgeja's family and got returned to Mgeja's family from buyers upon assistance of the Appellant's family as testified hereunder by the Respondent:

*Baada ya kifo cha Mzee Edward Mgeja, Mimi na Dada yangu tulikuwa na fikira za kutaka kuyarudisha hayo maeneo mbuga ekari 15 na mashamba ya juu ekali 5. **Nakili kweli ujio wa Mzee Daudi Mbao Suwa toka alikokuwa akiishi Songea alitusaidia sana kurejesha hayo maeneo** baada ya kuwa nimejitambulisha kwake kuwa sisi ni wajukuu wa Mzee Mgeja. (Emphasis mine)*


On that account, it is my humble observation that, the Respondent was rightly declared the lawful owner of the disputed land. This was the position of the two tribunals below. Since the two tribunals below never misapprehended facts leading to their concurrent findings on such facts declaring the Respondent owner of the disputed land, this court will have no justification to interfere on such concurrent findings of the two tribunals below. See **Marther Weja vs Attorney General and Others (1982) TLR 32**

In the final analysis, this appeal has no merit and it is accordingly dismissed. Each part to bear own costs. It is so ordered.


Gerson J. Mdemu
JUDGE
28/5/2021

DATED at SHINYANGA this 28th day of May, 2021




Gerson J. Mdemu
JUDGE
28/5/2021