

**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. 9 OF 2021

(Arising from Land Appeal No. 110/2019 of the District Land and Housing Tribunal –
Kigoma before F. Chinuku, Original Land Case No. 1/2019 from Bugaga Ward Tribunal)

CHONKIJJE NZOWE APPELLANT

VERSUS

AGNES KAYARI RESPONDENT

J U D G M E N T

25th May & 29th July, 2021

I.C. MUGETA, J.

The dispute between the parties is over ownerships of a piece of land at Bugaga Village, Kasulu District. The appellant referred the dispute to the Ward Tribunal at Bugaga which adjudged him the lawful owner of the land. On appeal, the District Land and Housing Tribunal of Kigoma reversed the decision. It declared the respondent the lawful owner of the land hence this appeal. The appellant has advanced three grounds of appeal as rephrased hereunder, namely;



- i. That, the District Land and Housing Tribunal did not decide the case on the grounds of appeal presented and did not give weight to the evidence of the appellant.*
- ii. That, the District Land and Housing Tribunal heard the case ex parte without serving the appellant with the petition of appeal.*
- iii. That, the District Land and Housing Tribunal ignored the evidence given at the locus in quo.*

The respondent defaulted appearance inspite of being served. When the case was called up for hearing, the appellant said he had nothing to add on his grounds of appeal. He urged the court to consider their merits to pass a decision. After the hearing, the respondent appeared and participated in the recording of additional evidence of Boniface Nzowe as it shall be demonstrated later herein.

The brief facts of the case as can be garnered from the record of the Ward Tribunal are that the respondent's husband obtained the dispute land from Boniface Nzowe as compensation for money he borrowed and failed to repay. This deal was executed in 1988 in the presence of Daniely Ziganya and Benedicto Silivesta who testified at the Ward Tribunal in support of the respondent's case. Boniface Nzowe appeared before the Ward Tribunal but his evidence does not appear on record.

While the respondent's claim for title over the land is based on purchase, the appellant claim is based on inheritance of the land from his mother. The appellant and Boniface Nzowe are relatives even if the nature of their relation is not clarified in the Ward Tribunal's record. Two witnesses testified in support of the appellant's case. These are Ndolewe Mkuyu and Antony Ngolomole. While Ndolewe testified that the dispute land belongs to her, Antony Nzowe said the land belongs to his father one Ngolomele. He, however, acknowledge that Boniface gave part of his land to the respondent's husband. He testified further that the dispute land was being cultivated by the appellant's mother before it was turned onto a livestock route. On his part, the appellant testified that it was in 2019 when he realised that the respondent had trespassed the dispute land.

Considering the importance of the evidence of Boniface Nzowe, on 25/5/2021, I directed the Chairperson of the District Land and Housing Tribunal in terms of section 42 of the Disputes Courts Act [Cap 216 R.E. 2019] to visit the dispute area and record the Evidence of Boniface Nzowe. This was done on 28/5/2021 and that evidence is in the record of the District Land and Housing Tribunal. Both parties were involved. Boniface testified that the land he gave to the respondent does not include the land that was

used as livestock route. He also showed a triangular area measuring 243 paces by circumference as the land he disposed of.

In light of the evidence on record and the above background do the grounds of appeal or any of them have merits?

Despite its obscurity, I have keenly examined the Ward Tribunal record and I am convinced that there was a time when the dispute land was designated by the village authority as a livestock route. It seems, later, this route was abandoned, hence, the dispute on ownership.

The Ward Tribunal considered this issue and held: -

"Kabla ya kuwa njia ya mifugo eneo lilikuwa miliki ya Nzowe Ngolomola (marehemu) Baba yake mdai".

The Ward Tribunal further held: -

"Njia ya Mifugo iliyotengwa na Serikali ya Kijiji ambapo ndipo linalo lalamikiwa haikuwa inapita kwenye eneo la shamba la Agness Kayari (mdaiwa) bali kwenye eneo la Nzowe Ngolomole (Marehemu)".

The Ward Tribunal reached the above two findings after visiting the locus in quo.

On appeal the District Land and Housing Tribunal found that the evidence of the respondent was heavier than that of the appellant as it had been proved that the respondent's husband purchased the shamba from Boniface and the respondent has been in occupation since 1980s.

The complaint in the first ground has two parts. Firstly, that the District Land and Housing Tribunal did not consider the grounds of appeal and secondly that it did not attach weight to the appellant's evidence. It is my view that the appellant is not entitled to complain on how the grounds of appeal were considered because he was not the appellant. Regarding the second part of the complaint which covers consideration of his evidence, I find truth in this complaint. The learned Chairperson reached a conclusion that evidence of the respondent was heavier as the respondent's husband purchased the dispute land. However, this finding was correct in the absence of the evidence of Boniface Nzowe. With the evidence of Boniface now on record, the finding is erroneous. Boniface said categorically that the area he sold does not include the dispute land.

On this account the Ward Tribunal was right to rule that the dispute land belongs to the appellant. Since the appellant has not encroached into the land which Boniface showed as the one he disposed of to the respondent's

husband, each party should confine his/her activities in his/her land. There is merits in the first ground of appeal.

The second ground of appeal has no merits. The case at the District Land and Housing Tribunal proceeded ex parte because there was evidence that the appellant was served and defaulted appearance. This is according to the affidavit of the process server one Swaib Abdul who took oath that the appellant was served on 6/8/2019.

Regarding the third ground of appeal, I find no reason to consider it as far as the evidence of Boniface Nzowe has been recorded as additional evidence. Consequently, the appeal is allowed. The decision of the District Land and Housing Tribunal is hereby quashed and orders emanating therefrom are set aside. The decision of the Ward Tribunal is restored. However, the appellant is restrained from trespassing in any land belonging to the respondent other than the livestock route.

Considering the history of this case and its pertaining circumstances and the fact that the parties are neighbours, I give no orders as costs.



Mugeta
I.C. Mugeta

Judge

29/7/2021

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

Right and procedure to appeal to court of appeal explained.


A.J. Kirekiano

Deputy Registrar

29/7/2021