

**THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE APPEAL No. 25 OF 2020**

*(Arising from District Land and housing Tribunal for Muleba at Muleba in  
Application No. 40 OF 2018)*

**JENEROZA PRUDENCE..... APPELLANT**

**VERSUS**

**MATUNGWA SALVATORY..... RESPONDENT**

**JUGDMENT**

**12/07/2021 & 19/07/2021**

**Mwenda, J.**

On 16<sup>th</sup> of April 2020, **Land Case Appeal No. 25 of 2020** was registered in this court attached with six (6) grounds of appeal preferred by Ms. Jeneroza Prudence (the Appellant). She is disputing a judgment in **Land Application No. 40 of 2018** (the Application) delivered by the District Land and Housing Tribunal for Muleba at Muleba (the Tribunal).

The record of appeal shows that the Appellant had filed the Application before the Tribunal on 6<sup>th</sup> August 2018 claiming ownership of a land located at Kyakahoro within Bulembo at Ibuga ward in Muleba District. In his brief statement of facts constituting the claim, the Appellant claimed that:

*"On November 2<sup>nd</sup> 2014 the Respondent unlawfully entered suit land and destroy(sic) two hundred (200) Pine trees worth Tshs. 150,00/=, That trees*

*were planted by the applicant on the consent of the buyer who bought the same on 5.3.1991."*

The Appellant was not satisfied with the decision of the Tribunal as it decided in favor of the Respondent and the reasoning of the Tribunal is found at page 11 of the typed judgment which reads that:

***"The application is hereby dismissed with costs for want of merit. The respondent is declared lawful owner of the land in dispute".***

During the hearing of this appeal the appellant preferred the legal service of Mr. Derick Zephrine, Learned Advocate and the respondent appeared in person without any legal representation.

Mr. Derick Zephrine prayed to merge ground No. 2 with ground No.3, grounds No. 5 with ground No. 6 ground while grounds No. 1 & 4 stood as stand-alone grounds.

In support of ground no. 2 & 3 the counsel for the appellant submitted to the effect that the respondent alleged to have acquired the land in dispute in 1990 from Bulembo Village Council and brought before the tribunal one witness who is the Chairman of the said village and produced a receipt in support of the allegation. According to the counsel for the appellant, at the time when the respondent allege to he acquired the said land he was just an infant and incapable of acquiring land.

Mr. Zephrine went further by submitting that in the year 1990 title of VEO was nonexistent as the government was under one party system so the receipt before the court is forged. He further pointed out that there is contradiction on the year the respondent acquired land and the year when the VEO issued the receipt as the said VEO testified before the Ward Tribunal that he began to work as VEO in the year 1995 to 2015 and for that matter the receipt was issued before he was employed. He also stated that according to **section 11 of the law of Contract Act [ CAP 345 R.E 2019]** a person who has capacity to contract is the one who has attained the age of majority, so under these circumstances the respondent at the time of acquiring the land was at primary school level and incapable of entering into contracts.

With regard to ground no 5 & 6 the learned counsel for the appellant submitted that the appellant filed objection proceeding in Civil case no 1 of 2015 to show that she had interest on the matter, to cement his argument the learned counsel stated that in the Memorandum of appeal they attached a summons that required the appellant to appear as a party to the suit against her husband.

On first ground of Appeal the counsel argued that appellant was not a party to Land case before the Ward Tribunal although she was being summoned to appear. On top of that the size and location of the land in dispute is not shown in the judgment

On the 4<sup>th</sup> ground of appeal the counsel for the appellant submitted that the record clearly shows as to when her land was trespassed and that her efforts to defend the criminal case are clear indications that she is the owner of the land in dispute and as the marriage between her and her husband was subsisting when they bought the said land i.e. in 1991 which later on was transferred to her as a sole owner.

The learned counsel concluded by praying before this Court to allow this appeal and for a declaration that the appellant is the rightful owner of the suit land.

The respondent briefly submitted that he was residing with his grandmother who was taking care of him and supervised the process of acquiring the Land in Dispute. He further submitted that the appellant does not state exactly where the land in dispute is located between Katoma and Bulembo as his piece of land is at Bulembo while (appellant's land is in Katoma and the two hamlets are separated by river Kashasha).

With regards to the criminal case which was registered in Kamachumu Primary Court the respondent submitted that it was decided in his favor and later he sued the appellant's husband at the Ward tribunal but before execution of Decree they registered land application in the District Land and housing tribunal which he also won.

In brief rejoinder the learned counsel for the appellant stated that the appellant's land is in Kyakahoro and this was stated in the District Land and Housing Tribunal and that both parties reside in the same village although the

receipt shows the land is located at Kyembwa. He again concluded by praying for the appellant to be declared as the rightful owner of the suit land and for an order for costs.

*In this appeal the issue for determination is who is the rightful owner of Land in dispute*

Having gone through the submissions by the parties and perusal of records of this appeal, this court noted that the parties' dispute is over the ownership of the land. The appellant in support of her appeal alleged that she acquired the Land in dispute as gift from her husband since 2013. This Land brought by them in 1991 from one Salvatory. She however did not provide any documentation to substantiate her claim of ownership as well as the size of said land.

On the other hand, the Respondent stated that the land in dispute belongs to him as he acquired it from the Village Council from the year 1990 and in support to his claim he availed two documents which are the judgment of Ibuga Ward Tribunal which declared him as the rightful owner and a Land rent fees receipt (*ushuru wa ardhi*) for a piece of land situated at Kyembwa Bulembo.

Going by the appeal's records and submissions by both parties this Court noted in both tribunals i.e. the Ward and District Land and Housing Tribunal the description of the Land was not clearly stated (i.e. the size, location and boundaries). The Appellant stated that she is claiming the land which is situated

at Kyakahoro in Bulembo while the Respondent is claiming his land to be situated Kyembwa Bulembo. This being the case it was unsafe for both tribunals to declare the Respondent as the rightful owner while there is uncertainty on the Location and size of the land in dispute. Under this circumstances the District Land and Housing tribunal ought to have visited the locus in quo to unveil this contradictions.

In the case of ***Said Hassan Shehoza vs The Chairperson CCM Branch & Another Land Appeal no. 147 of 2019 High Court of Tanzania at Dar-es Salaam***, where the circumstances are almost similar to the ones in the present appeal, Maghimbi, J held inter alia that:-

***“Having the same principle in mind, it is the finding of this court that as per the available evidence on encroachment, the contradictions on the size of the land and the boundaries therein, it was a fit case for the trial tribunal to exercise its discretion and make a visit the locus in quo in order to ascertain the boundaries in dispute and the size of the land. I am convinced that by doing so, the tribunal would have made a more informed decision on the issue of encroachment. Failure to do so might have made the tribunal reach into a wrong finding.”***

In our case, although the applicant before the Tribunal (now the appellant) stated the location of the disputed land to be Kyakahoro area,

Bulembo at Ibuga ward, her silence on the size and boundaries was fatal which the DLHT ought to have keenly deal with before delivering judgment.

During the hearing of this appeal and application before the Tribunal the parties contradicted on the location and failed to state the size of the disputed land and as sated above this is a serious omission which may affect execution of Decree. See the case of ***Daniel Dagala Kanuda vs Masaka Ibeyo & 4 Others Land Appeal No. 26 OF 2015 High Court of Tanzania at Tabora.***

The law and practice of this court has been that any land in dispute must state land description with certainty so that it can be distinguished from other lands (see: **Regulation 3 (2) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003, GN. No. 174 of 2003** and precedent in ***Ponsian Kadagu v. Muganyizi Samwel, Misc. Land Case Appeal No. 41 of 2018 (Bukoba District Registry).***

Having said so and considering non- description of the Location and size of the Land in dispute, this Court of hereby quash the proceedings and set aside judgment and any orders emanating from **Land Application No. 40 of 2018 and Civil Case No. 1 of 2015** decided by the Tribunals.

Any interested party may initiate proceedings in the competent Tribunal to try the matter in accordance to the laws.

I award no costs in this appeal. Each party shall bear its own costs as the shortfalls in describing land location and certainty was caused by the parties and blessed by the Tribunal below.

It is so ordered.




  
**A. Y. Mwenda**

**Judge**

**19.07.2021**

This judgment was delivered in chambers under the seal of this court in the presence of the Appellant, Jeneroza Prudence with his learned counsel Mr. Derick Zephryne and in the presence of the Respondent, Matungwa Salvatory.



  
**A. Y. Mwenda**

**Judge**

**19.07.2021**