

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF TANGA**

**AT TANGA**

**LAND CASE APPEAL No. 1 OF 2021**

*(Arising from the District Land and Housing Tribunal for Korogwe at Korogwe in  
Land Appeal No. 53 of 2019 originating from Misima Ward Tribunal in Land  
Dispute No. 28 of 2018)*

**HAMISI HASSANI ----- APPELLANT**

**Versus**

**ABDALLAH BAKARI ----- RESPONDENT**

**JUDGMENT**

**10.08.2021 & 10.08.2021**

**F.H. Mtulya, J.:**

Mr. Hamisi Hassani (the Appellant) and Mr. Abdallah Bakari (the Respondent) are neighbours residing at Kibaya Village in Misima Ward of Handeni District in Tanga Region. The two neighbours are contesting on a piece of land demarcating their lands. Following the dispute, the Appellant took initial steps to approach the village authorities in Kibaya Village which decided the matter amicably between the parties.

However, the Appellant was not satisfied with the decision of the village authorities hence preferred filed **Land Dispute No. 28 of**

**2018** (the case) before **Misima Ward Tribunal** (the Ward Tribunal) complaining, as depicted at page 1 & 3 of the Ward Tribunal proceedings, that:

*Mimi Hamisi Hassani wa Kijiji cha Kibaya nimekuja kumlalamikia Ndugu Abdallah Bakari kutokana na kuingia kwenye eneo langu. Kupitia Baraza la Usuluhishi Kijiji Kibaya na Mimi sijaridhika na Maamuzi hayo. Hivyo, nimeona nilete tatizo langu kwani ndugu huyu anaendelea kuikalia ardhi yangu kinyume...eneo la shamba langu ninalima tangu miaka mingi iliyopita kwani ni shamba letu la asili yetu...Mimi toka udogo wangu niko pale na sijapata mgogoro wowote kwenye eneo lile.*

The reply from the Respondent as depicted at page 6 of the proceedings in the Ward Tribunal was that:

*Eneo analolalamikia Ndugu Mlalamikaji ni eneo la mahame yetu ambayo tulitolewa pale na operesheni Vijiji na tulivyotoka kijijini, kila mtu alikuwa anarudi katika eneo lake kulima kama eneo la shamba.*

Both parties, after registration of their facts and evidences in the Ward Tribunal, remained silent on descriptions of the land or

boundary in dispute in terms of size, location and neighbours surrounding the land. However, the Ward Tribunal at page 28 of the proceedings decided in favour of the Appellant. The reasoning of the Ward Tribunal is found at page 29 of the proceedings:

*Mlalamikaji analo shamba la mabua kwenye eneo la mgogoro ambalo ndilo anategemea kupata riziki ama chakula kupitia mazao kwenye shamba hilo...mlalamikiwa alidai hana kipande chochote alichowahi kukifanyia kazi [kwenye mabua] hata hatua moja.*

This decision irritated the Respondent hence preferred **Land Appeal No. 53 of 2019** (the Appeal) at the **District Land and Housing Tribunal for Korogwe at Korogwe** (the District Tribunal) arguing that the Ward Tribunal erred in law and fact in three levels, namely: first, the Ward Tribunal was not properly constituted; second, the Respondent occupied the land in more than twelve years; and finally, the Ward Tribunal failed to interpret the principle of adverse possession.

After full hearing of the parties, the District Tribunal decided in favour of the Respondent and quashed the decision and set aside proceedings of the Ward Tribunal for want of proper coram and land

specifications. At page 3 of its judgment, the Ward Tribunal stated that:

*...the appeal is allowed...the coram was not proper as well as the size of the suit land...it is very difficult to determine the land in dispute...the land in dispute to continue be on the Appellant's occupation unless otherwise stated.*

It is this last sentence which brought the present appeal in this court by the Appellant attached with five (5) grounds of appeal, including complaint on land size. Today, when the appeal was scheduled for hearing, the Appellant briefly submitted that the land in dispute lacked descriptions and urged this court to suppress the decisions of the two courts below. The submission was not protested by the Respondent as he admitted that he had not mentioned specifications of the land in lower tribunals.

I have perused the record of this appeal and decided to register part of the evidences recorded at the lower tribunals, for purposes of easy appreciation of the matter and allegation on silence of the size of the disputed land. It is obvious at the display that both parties and their witnesses were silent in the Ward Tribunal on location, land size and surrounding neighbours. The law in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land**



**and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) with regard to the words: *the address of the suit premises or location of the land involved in the dispute* has already received precedent of this court in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021. It can now be said that the interpretation of the words: *the address of the suit premises or location of the land involved in the dispute is* certain and settled that the land in dispute must be must be sufficiently described with certainty in terms of size, location, and demarcations surrounding the land (see: **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; and **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015).

The rationale in favour of the practice is at page 6 in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019, where this court stated that the requirement of specific and definite piece of land is intended for certainty and executable decrees emanated from this court. Again, it is the practice of this court and Court of Appeal that the court cannot grant something which was never pleaded in court (see:

**Madam Mary Silvanus Qorro v. Edith Donath Kweka & Another,**  
Civil Appeal No. 102; of **Barclays Bank (T) Ltd v. Jacob Muro,** Civil  
Appeal No. 357 of 2019; and **Samwel Kimaro v. Hidaya Didas,** Civil  
Appeal No. 271 of 2018)

Having said so, and considering there are plenty of decisions of this court on the need of certainty of disputed lands, and noting the Ward Tribunal in the case did not abide with the precedents of this court, I have decided to quash the decisions and set aside proceedings in the Application of the District Tribunal and Ward Tribunal in favor of fair proceedings as per requirement of the law in Regulation 3 (2) (b) of the Regulations. Any interested party in the dispute may initiate a fresh and proper suit in competent forum in accordance to the laws regulating land matters. I award no costs in this appeal as the fault was caused by the parties and blessed by the Ward Tribunal in the case.

It is so ordered.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over the seal.

F.H. Mtulya

**Judge**

10.08.2021

This judgment is delivered in Chamber under the seal of this court in the presence of the Appellant Mr. Hamisi Hassani and presence of the Respondent, Mr. Abdallah Bakari.



A handwritten signature in blue ink, which appears to read "F.H. Mtulya", is written over the seal and extends to the right.

F.H. Mtulya

**Judge**

10.08.2021