

**IN THE HIGH COURT OF TANZANIA  
(SONGEA DISTRICT REGISTRY)**

**AT SONGEA**

**LAND APPEAL NO. 8 OF 2020**

*(Originated from Decision of the District Land and Housing Tribunal of Songea District  
at Songea in Land Case No. 243 of 2016)*

**DR. WADE ASYUKILE KABUKA..... APPELLANT**

**VERSUS**

**ASUMANI RASHIDI .....1<sup>ST</sup> RESPONDENT**

**ALLY AMIR.....2<sup>ND</sup> RESPONDENT**

**MAUA KIBONGE.....3<sup>RD</sup> RESPONDENT**

**ANDENDE DAMLA.....4<sup>TH</sup> RESPONDENT**

**ORDER**

05.08.2021 & 19.08.2021

**U. E. Madeha, J.**

This appeal emanates from the decision of the District Land and Housing Tribunal of Songea in Land Case No. 243 of 2016. The central dispute between the parties is on **PLOT NO. 613 LDRA Block 'NN'**. The appellant alleges that the entire piece of land with a size of low-density belongs to him, he bought it from Dr. Umilila Apaligwe Sengo in 2007 with a structure within. Later, the respondents trespassed on his suit land and elected their

buildings. Before the tribunal, the appellant claimed to be the legal owner of the suit land. He supported his evidence by tendering documentary evidence, including the latter of offer and the transfer of the rights of occupancy, which was admitted by the tribunal and supported by the evidence of the surveyor who works at Songea Municipal land office.

On the other hand, the respondent states that their late father gave the appellant's predecessor a portion of land measuring 20mx20m where he wanted to build a pharmacy. The appellant trespassed by adding another portion of the land which was not his property. When you go through the records, you will discover that there is no dispute that the appellant is the owner of the land, but the dispute is about the size of the land the appellant owns. The document tendered before the trial tribunal did not show the actual size of the appellant's land. The trial chairman decided the matter in favour of the respondent and said that, *"since the land is located sixty meters (60 metres) from the river, the government should take action by restricting anybody from using the land."*

At the hearing of this appeal, the appellant was represented by Mr. Zuberi Mauridi and Mr. Benard Mapunda, the Learned Advocate, whereas the respondents have no legal representation.



Mr. Zuberi Mauridi, the appellant's learned advocate, sought that the case be remitted to the District Land and Housing Tribunal of Songea so that additional evidence can be gathered by visiting the locus in quo, as the existing evidence is insufficient to determine the matter accurately to its finality. By visiting the locus in quo, the trial tribunal will be able to ascertain, apart from other issues, the issue of boundaries, the actual size of the land and the location of the disputed land. They supported their arguments with the case of **Avit Thadeus Massawe Versus Isidory Assenga**, Civil Appeal No.6 of 2017, where the Court of Appeal at Moshi had a similar scenario and decided to order the trial court to take additional evidence, Specifically, by visiting the locus in quo to clear up the contradiction as to the location of the disputed land.

The respondents had no objections to the appellant's prayers and stated that, if their colleagues were to be granted that right, they would have the option of contributing additional evidence as well. The appellant wishes to adduce additional evidence in support of his appeal. This evidence will assist the court in making a fair and just determination of the appeal.

Consequently, in the case of **Avit Thadeus Massawe versus Isidory Asenga** Civil Appeal No. 6 of 2017 the Court then went on to explain the procedure to be followed at the locus in quo.

*"When visit to the locus in quo is necessary and appropriate .... The court should attend with parties and their advocates, if any, and with much each witness as may have to testify in that particular matter in issue, and for instance if the size of the room or width of road is a matter in issue, have the room or road measured in the presence of parties, and not made thereof. When the Court re-assembles in the Court room, all such notes should be read out of parties and their advocates, and comments, amendments or objections called for and if necessary incorporated. Witnesses then have to give evidence of all those facts, if they are relevant and the Court only refer to the notes in order to understand or relate to the evidence in Court given by witnesses. We trust that this procedure will be adopted by the court in future."*



I am inclined to adopt the above decision in handling the case at hand because the situation is similar to that prevailing in the Court of Appeal of Tanzania at Moshi in **Avit Thadeus Massawe versus Isidory Asenga** Civil Appeal No. 6 of 2017 where records were remitted to the trial court for additional evidence. In that case, the appeal was stayed pending the availability of the additional evidence.

In my opinion, guidance on how to add additional evidence has already been provided in the **Avit Thadeus Massawe versus Isidory Asenga** Civil Appeal No. 6 of 2017. I join the appellant advocates and all the respondents who have agreed that additional evidence should be added as to the actual size of the disputed land, location and its boundaries, which can only be gathered at the locus in quo and not otherwise. The person responsible for the survey of the land at Songea, the land officer must be present with all the illustrations of the disputed land, showing on their map all the demarcations and explaining the key features of the land. The evidence does not show how much property they own. They are also required to discuss something related to the sixty meters located near the river.

The evidence of both parties would be more valuable if the map of the suit land is included as the documentary evidence tendered and admitted before the tribunal. Also, this case is a suitable case where the requirement to visit the locus in quo would be applied, so that the tribunal has to satisfy itself about the demarcation, size and other issues related to the land dispute concerned. I find the strength to tell parties to add additional evidence, something that will benefit both parties in this case, by the power conferred on this court under **Section 42 of the Land Disputes Courts Act, (Cap. 216 R.E. 2019)**, which states that.

*"The High Court shall, in the exercise of its appellate jurisdiction, have the power to take or to order the District Land and Housing Tribunal to take and certify additional evidence and whether additional evidence is taken or not, to confirm, reverse, amend or vary in any manner the decision or order appealed against."*

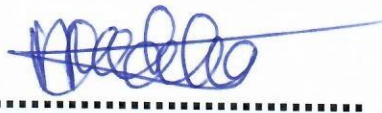
Similarly, by looking at the decisions made in the case of **William Mrema Versus Samson Kivuyo** (2002) TLR 291, the issue was whether the appellate court had the power to take additional evidence. It was held that:



*"In the exercise of its appellate jurisdiction under this part,  
the High Court shall have the power to take or order some  
other courts to take and certify additional evidence ..."*

On the premises, the District Land and Housing Tribunal will take the additional evidence. The additional evidence should commence and be concluded as expeditiously as possible. I refrain from dealing with the merits of the appeal. The hearing and determination of the appeal is stayed pending the availability of the additional evidence. Ordered accordingly.

**DATED** and **DELIVERED** at **SONGEA**, on 19<sup>th</sup> day of **AUGUST** 2021.



**U. E. MADEHA**  
Judge  
**19/8/2021**