

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB - REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 37 OF 2021

(Originating from case No. 01 of 2020 of Mirare Ward Tribunal and arising from Appeal No. 54 of 2020 of Tarime District Land and Housing Tribunal).

GALUS AIDHA OGONGA.....APPELLANT

VERSUS

JOSHUA ODERO..... RESPONDENT

JUDGMENT

9th and 31st August, 2021

F. H. MAHIMBALI, J.:

The case subject to this appeal was instituted before Mirare Ward Tribunal by Joshua Odero. The respondent alleged before the ward tribunal that the appellant had invaded his piece of land by cultivating on it. He told the tribunal that he obtained the land from the village council committee in the year 1992 as the land was an open area. The land he was allocated measured 100 paces by 100 paces (*hatua mia kwa mia*). He decided to grow sisal plant so as to put a boundary on his land but the appellant removed it. That is when he resorted to the legal remedy from the ward tribunal.

On the other hand, the appellant claimed that the village council land committee allocated to them the land they were using before Operational vijiji. The land measured 180 paces and it was residential land. He alleged that they lived peacefully from the year 1996 to 2018. Prior to the year 2018 the land was given to different people for use only.

The trial tribunal heard the parties and decided the matter in favor of the respondent. One of its reasons for its decision is that the land belongs to the respondent as the appellant was allocated the land in the year 1996 while the respondent was already in occupation of the land since the year 1992.

The appellant was unhappy with this decision, hence he unsuccessfully appealed to the District Land and Housing Tribunal for Tarime at Tarime in Land appeal no. 54 of 2020. The appellant was not amused with this decision hence he filed five grounds of appeal before this court. The five grounds of appeal as contained in the petition of appeal in verbatim are as follows;

- 1. That both the trial and appellate Tribunals erred in law and fact in hearing and determining this dispute whilst the value of the*

disputed land is more than four million shillings hence overly jurisdiction.

- 2. That the Trial and Appellate Tribunals erred in law and facts for upholding that the Respondent was allocated the disputed land even though there was no witness even a neighbor to testify nor one of the Village Land Allocation Committee member or allocation letter and there were appellant's trees in the disputed land since 1992.*
- 3. That the Trial Tribunal misdirected itself in believing in evidence dated 12/6/2019 which was meant to solve a dispute and not otherwise and not allocation letter.*
- 4. That the Trial and Appellate Tribunals erred both in law and in fact in contradicting themselves.*
- 5. THAT the Appellate Tribunal erred both in law and fact for failure to consider the evidence of the Appellant which is heavier than the evidence of the Respondent.*

When this appeal came for hearing, both the appellant and respondent were present unrepresented.

The appellant submitted that he was not amused with the decision of the DLHT as per his grounds of appeal. He stated that the pecuniary

value of the plot is more than 4,000,000/= He went further to state that he occupied the land in dispute prior operation vijiji and it was returned to him in the year 1996. He alleged to have planted various trees. He also submitted that the evidence at the trial tribunal was contradictory to each other.

Responding to the submissions, Mr. Odero objected the appeal as he does not see any material error by the tribunals. He stated that he is legally occupying the said land since 1992 as it was dully allocated to him. In regards to the trees , he submitted that they were wild trees and not planted ones. He further stated he has occupied the said land in dispute for 29 years. He prayed the appeal be dismissed with costs.

Re-joining, the appellant reiterated his earlier submission and prayed the appeal be allowed as the testimony of the case is strong on his side.

Having heard the parties' submissions and gone through the court's records the ball is now to the court to determine whether this appeal is meritorious.

The appellant's grief on the first ground of appeal is that the trial tribunal lack pecuniary jurisdiction to entertain the matter as the land in dispute is over TSHS. 4,000,000/=. When this matter was instituted by

the respondent at the ward tribunal, he did not specify the pecuniary jurisdiction of the land. The matter was heard and decided in favour of the respondent. The appellant appealed to the DLHT and that was still not an issue there. He has raised this ground now and he has not stated how they came up with the conclusion that the land is more than the pecuniary jurisdiction entertained at the ward tribunal. It is my humble view that the appellant was supposed to raise his eyebrows and show the court how the ward tribunal lacked jurisdiction to entertain the matter as they both submitted themselves to the pecuniary jurisdiction then. The Court of Appeal of Tanzania in **SOSPETER KAHINDI vs MBESHI MASHINI** (in **Civil Appeal no. 56 of 2017**) insisted that

"We would also stress that parties cannot confer jurisdiction to a court or tribunal that lacks that jurisdiction. Indeed, the [Emphasis added] Much as we agree that the issue of jurisdiction can be raised at any time, we think, in view of the orality, simplicity and informality of the procedure obtaining at the Ward Tribunal level, the appellant's concern on jurisdiction ought to have been raised at the earliest opportunity, most fittingly at start of the proceedings. It is noteworthy that in line with the applicable procedure, the parties did not exchange any pleadings and, therefore, all questions for trial were based upon the claimant's oral statement of claim and the

respondent's oral reply as recorded by the tribunal. Both parties, then, presented witnesses to establish their respective claims of title.

..... We are of the view that the jurisdictional issue raised could not be determined without evidence on the value of the subject matter”.

However, Considering the precedent by the Court of Appeal in **SOSPETER KAHINDI vs MBESHI MASHINI and SHYAM THANKI AND OTHERS V. NEW PALACE HOTEL** (supra) pecuniary jurisdiction being a matter to be disclosed by the parties to the case, it must have been raised by the parties themselves at the earliest opportunity of the case. In the instant matter, as all facts are silent and undisturbed at the lower tribunal, raising it now the fact which was never deliberated at the trial serves no any useful legal purpose at this stage. Worse of the story, the appellant being the claimant at the trial tribunal. Thus, I am inclined to hold that the appellant's request for termination of proceedings on this ground came rather belatedly and serves no any useful legal purpose in the circumstances of the instant appeal.

This court holds that this point is a mere allegation and thus this ground is devoid of merits.

The second complaint of the appellant is that the respondent did not bring witnesses to show that he was allocated land in the year 1992. The law is settled that it does not matter the number of witnesses called but the court will consider the quality of the testimony. See; **YOHANES MSIGWA vs R (1990) TLR 148**. In that regard, this ground is devoid of merits and it is dismissed.

The appellant's grief on the third ground is that the trial tribunal believed the evidence dated 12/6/2019 which was meant to solve the dispute and not prove of allocation of the land in dispute. I have gone through the tribunal's reasons for reaching its decision and none of it is about the letter dated 12/6/2019. The first reason for declaring the respondent the legal owner of the land is that he was allocated first in the year 1992, the second reason is he occupied the land for a longer time without disturbance. Hence this ground is meritless and it is dismissed.

On the fourth ground of appeal , the appellant's complaint is that the trial tribunal and the first appellate tribunal contradicted themselves. The main reason being how is it possible all the finance and planning members are dead. I have gone through the records and I did not see any contradiction. In regards to the death of the finance and planning

members being dead, that is something beyond human control hence this ground is meritless. If not so, the appellant would have established the otherwise of the truth.

The fifth grief of the appellant is that his evidence was heavier compared to the evidence of the respondent. It is a common ground that a civil case is proved on a balance of probabilities. As earlier stated, that the tribunal heard the parties and it also gave its reasons for the decision reached in its judgment. In this case the appellant has not shown how his evidence is heavier. I have gone through the records and I am fully satisfied that the trial tribunal exhausted all the issues and came up with a proper decision. Having stated the above, this ground is meritless.

In fine, this court finds all grounds of appeal devoid of merits and dismisses this appeal with costs.

DATED at MUSOMA this 31st day of August, 2021.



F. H. Mahimbali

JUDGE

31/08/2021

✓ **Court:** Judgement delivered this 31st August, 2021 in the presence of both parties.



F. H. Mahimbali

JUDGE

31/08/2021