

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND APPEAL NO. 44 OF 2019

*(Originating from the decision of Hondomairo Ward Tribunal
in Land Case No. 21 of 2018 and arising from the District
Land and Housing Tribunal for Kondoa at Kondoa in
Land Appeal No. 72 of 2018)*

ADAM MSAFIRI.....APPELLANT

VERSUS

HINTAY DANDU.....RESPONDENT

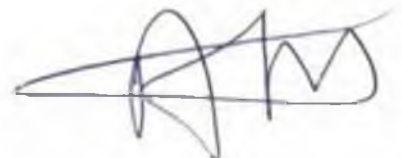
JUDGEMENT

Date of last Order: 04/08/2021

Date of Judgment: 13/08/2021

A. Mambi, J.

This appeal originates from an appeal filed by the appellant namely **Adam Msafiri** who challenged the decision of the District Land and Housing Tribunal. Earlier, at Hondomairo Ward



Tribunal the appellant Adam Msafiri sued the respondent Hintay Dandu for trespass in his land. The records reveals that the trial Tribunal, the appellant testified that he got the suit land in 1996 and his host was **Juma Jengu**. The appellant further stated that that in 2002, he was issued a permit for clearing his land and he cleared a part of it but he had never farmed. The appellant testified that in 2017 he realised that the respondent trespassed his land by clearing shrubs ready to develop.

Responding to the appellant's allegations, the respondent at the Ward Tribunal testified that he owned the disputed land a total of 25 acres. He stated that he had been the owner that of land since 1990 before he cleared it in the years of 1994, 1995 and 1996. The respondent stated that since then he has been using some part of that land for farming and the other part for grazing. The respondent further stated that in 2014 he had a dispute in the same Ward Tribunal on the suit land with one Ally Athman who is the appellant's brother in law and he won the case in both the Ward Tribunal and the District Land and Housing Tribunal.

. Aggrieved, by the decision of the DLHT the appellant filed his appeal to this court by preferring four grounds of appeal as follows:-

1. That, the appellate Tribunal erred in law and in facts by disregarding crucial evidence adduced by appellant and his witnesses on the fact that he is the lawful owner of the land in dispute and has been occupying the same since 1996.
2. That, the first appellate Tribunal erred in law and in facts to hold that a respondent is the lawful owner of the land in dispute basing on weak and contradicting evidence adduced by the respondent and his witnesses.
3. That, the first appellate Tribunal misdirected itself by concluding that there was a former land case involved the respondent and one Ally Athumani.
4. That, the first appellate Tribunal erred in law and in fact by ignoring the observation made by the Trial Tribunal through site visit to the land in dispute

During hearing before this Court both parties appeared in person. The appellant briefly submitted that he was allocated the land by the village authority, and he cleared it. He argued that he was astonished to see the respondent trespassing into his land in 2017. The appellant proceeded to submit that the respondent failed to prove his claim before the trial Tribunal and the DLHT

and added that the DLHT did not consider what the trial Ward Tribunal observed at the locus in quo.

In response to the appellant's submission, the respondent contended that he is the legal owner of the suit land since 1990. He further submitted that he is the legal owner of the disputed land since he won the case against Ally Athumani in both Ward Tribunal and in the DLHT. He argued that the appellant trespassed some 6 acres in the middle of his land.

I have considerably gone through the grounds of appeal and the parties' submissions, including records from both, the Ward Tribunal and the DLHT. Before going far, at the outset I wish to state that all the grounds of appeal and the submissions made by the parties raises that is, who is the legal owner of the disputed land.

There is no doubt that each that is the appellant and the respondent in all tribunals claimed maintained that the suit land to them. The evidence on records reveal that the appellant claimed that his land was about 6 acres and out of it he cleared only 2 from 1996 to 2018 when he instituted a case against the

respondent in the Ward Tribunal. My perusal from the records show that the appellant tendered his exhibit that is a permit issued in 2002 by the Mtiryangwi Village Executive Officer (VEO) shows that he was permitted to clear 2 acres. This means under the disputed land the appellant was only allocated 2 acres out of 6.5. This implies that the other remaining 4.5 acres of the land belongs to the respondent. Reference can also be made to the appellant witnesses, one Juma Dengu Mwenda who testified before the Ward Tribunal that he is the one who owned all the forest land since 1988 and in 1992 he gave part of it to his brother in law Mr Hintay Dandu (the respondent) and in 1996 he gave another part of the land (2 acres) to Adam Msafiri (the appellant). It papers from the evidence and other records that the appellant had only two acres while the respondent and 4 acres in the disputed land. There is also other evidence that show that the whole area of the disputed land measured at 6.5 acres. This is evidence by the observation made by the Ward Tribunal during its visit of locus in quo. The records shows that the Ward Tribunal members when visited the locus in quo made the following observation:

1. *"Eneo lenye mgogoro halitumiki kwa kilimo.*

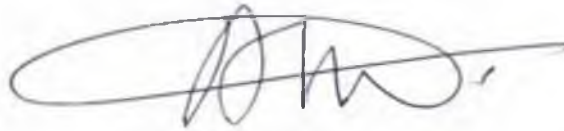
2. *Baraza liliona mafyeko ya siku za nyuma.*
3. *Baraza iliona mipaka ya eneo lenye mgogoro.*
4. *Baraza lilipima na kuona eneo lenye mgogoro inaukubwa wa ekari 6 ½ eneo la mlalamikaji''*

The Ward Tribunal also noted that the suit land borders with the respondent's land in the southern while in the western it borders the road. Indeed the appellant did not claim ownership of the whole land in dispute but just part of it that is 2 acres. Now reckoning the appellant's evidence that he only cleared two acres out of 6.5 acres it means the rest belonged to the respondent. Considering the appellant's and respondent's evidences at the Ward Tribunal and considering the Ward Tribunal observations at the locus in quo, this Court is satisfied that, the appellant is entitled to 2 acres and the respondent is entitled to 4.5 acres.

I wonder as to why the DLHT Chairman made his decision without giving reasons. Indeed the Chairman also differed with his assessors without giving clear reasons.

From my analysis and observations, I find some of the grounds of appeal has meritorious. In the premises and from the foregoing reasons, this appeal is partly allowed by declaring that the appellant the legal owner of **two acres** and the remaining **4.5 acres** to be under the ownership of the respondent. The decision

of the District Land and Housing Tribunal is reversed. In the event I make no orders as to costs. Each party to bear its own costs.

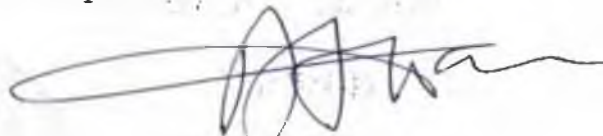


Dr. A.J. MAMBI,

JUDGE

13/08/2021

Judgment delivered in Chambers this 13th day of August, 2021
in presence of both parties.



Dr. A.J. MAMBI,

JUDGE

13/08/2021

Right of appeal explained.



Dr. A.J. MAMBI,

JUDGE

13/08/2021