

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB- REGISTRY OF MUSOMA
AT MUSOMA**

MISCELLANEOUS LAND APPEAL NO. 14 OF 2021

**THE REGISTERED TRUSTEES OF
S.D.A CHURCH MRITO VILLAGE.....APPELLANT**

VERSUS

**THE REGISTERED TRUSTEES OF
E.A.G.T CHURCH MRITO VILLAGE.....1ST RESPONDENT
JULIUS CHACHA MANGURE2ND RESPONDENT
GOTORA CHACHA MANGURE3RD RESPONDENT**

*(Arising from Land Application No 77 of 2014 of the District Land and Housing Tribunal for
Tarime at Tarime)*

JUDGMENT

11th August & 16th September, 2021

Kahyoza, J.

The District Land and Housing Tribunal (the DLHT) dismissed the claim for a piece land, the Registered Trustees of S.D.A Church instituted against the Registered Trustees of E.A.G.T Church (the Trustees of E.A.G.T), Julius Chacha Mangura and Gotoru Chacha Mangure. Aggrieved, the Registered Trustee of S.D.A Church (the Trustees of S.D.A) appealed to this Court. They raised two grounds of appeal that;

1. That, the Hon. Trial tribunal erred in both law and fact for deciding that the disputed land is separated by a road, hence, two pieces of land owned by the appellant and respondents respectively.
2. That the trial tribunal erred in both law and fact for failure to correctly consider and evaluate evidence on records and consequently arriving at a wrong decision.

The Trustees of S.D.A and the Trustee of E.A.G.T, owned adjacent pieces of land. The Trustees of S.D.A alleged through Samson Mrimi Gesasi (**Pw1**) that they acquired their land including the disputed land in 1974 during the Operation Vijiji. They applied for allocation of the land in 1993 as they wanted to construct buildings. The village land allocation committee allocated them land including the disputed land and defined boundaries.

Magoigwa Muromi Werema (**Pw2**) who was the village executive officer in 1993 and Chacha Ryoba Marwa (**Pw3**), a member of the village land allocation committee in 1993, supported the evidence of Samson Mrimi Gesasi (Pw1). Samson Mrimi Gesasi (**Pw1**) deposed further that Julius Chacha Mangure trespassed to part of their land, (the disputed land) and sold it to the Trustees of E.A.G.T.

The respondent's case was that Julius Chacha Mangure (**Dw3**) owned a piece of land including the disputed land from 1974 during the operation Vijiji. Julius Chacha Mangure (**Dw3**) testimony was that his father owned the disputed land from 1970. During operation Vijiji his (Julius's) father fenced the land with sisal plants. Joseph Mangire Henry (**Dw2**) who was the village chairman of Mrito Village from 2010 to 2014, supported the evidence of Julius Chacha Mangure (**Dw3**), that the latter sold his land within the fence to the Trustees of E.A.G.T Joseph Mangire Henry (**Dw2**) witness the sell agreement between Julius Chacha Mangure and the Trustees of E.A.G.T.

There is also the evidence of Abia Mwita Chacha(**Dw1**) whose name appeared in the list of members of the village land committee in 1993, who allocated the land to the Trustees of S.D.A. The name is listed in the minutes of the Committee Exh.P2. Abia Mwita Chacha (**Dw1**) denounced to have been a member of the village land committee in 1993. She contended that she became a member in October 1993 and started working in November 1993. During cross-examination, she started that four months before she was summoned to testify one Julius Rich, a Church leader met her with a letter of 1993.

The DLHT visited the *locus in quo*, where it observed that there were two separate pieces of land separated by a road and that Julius Chacha Mangure's land was fenced with sisal plants.

It is against the above evidence on record, this first appellate court is called upon to re-evaluate the evidence and consider the grounds of appeal.

Was the DLHT justified to hold that there were two piece of land separated by road and that the disputed land belonged to the Trustees of E.A.G.T?

The Trustee of S.D.A were represented at the hearing of the appeal by Mr. Angelo learned advocate, who submitted that the DLHT abandoned its duty of evaluating the evidence and decided the case on the evidence gathered from the *locus in quo*. He submitted further that the Trustees of S.D.A owned the disputed land which was allocated to them by the village authority. The committee defined the boundaries and the neighbours were involved. He added that the members of the land committee testified. He contended that there was no evidence that the land committee allocated land to the respondents. The respondents invaded the land. He concluded that Trustee of E.A.G.T did not tender any evidence to prove that it

acquired land by procuring it from Julius Chacha Mangure. He submitted that it was an established principle that an institution cannot own land without evidence on how it obtained it.

Mr. Nickson, who appeared for the Trustees of E.A.G.T's submitted emphatically that the disputed land belonged to the Trustees of E.A.G.T. The Trustees of E.A.G.T bought the land from Julius Chacha Mangure. He added that the DLHT visited the *locus in quo* and saw the boundaries. He contended that there were Julius Chacha Mangure's family tombs within the area. He added that one of the people alleged to be members of the Village Land Committee refused to part in allocating land to the Trustees of S.D.A. She testified.

Julius Chacha Mangure, the second respondent, submitted that they disputed land belonged to them. They lived at that place for long time and the land is fenced. He submitted that he sold that piece of land to the Trustees of E.A.G.T at the time his late father was still alive.

Mr. Angelo, the appellant's advocate replied that Julius Chacha Mangure's father was among the neighbours involved in 1993 when the village authority allocated land to the Trustees of S.D.A.

Having heard the rival submissions, I am of the view that the evidence on record shows that Trustees of S.D.A have land in Mrito Village as well as Julius Chacha Mangure have land in Mrito village. The land owned by Julius Chacha Mangure and that owned by the Trustees of S.D.A are adjacent. The dispute is whether the disputed land belongs to the Trustee of S.D.A. The Trustees of E.A.G.T contended that they bought the land from Julius Chacha Mangure. After considering the evidence on record, I find that there is ample evidence that the disputed land belonged to Julius Chacha Mangure. There is uncontroverted evidence of Joseph Mangure Henry (Dw2) and Julius Chacha Mangure (Dw3) that the disputed land is within the fenced land, which belongs to the family of Julius Chacha Mangure. It is further on record that Julius Chacha Mangure's father lived at that land from 1970 and he fenced the land before Operation Vijiji in 1974.

The DLHT visited the locus in quo and found it established that the disputed land was within the fenced land that belonged to Julius Chacha Mangure.

The trustees of S.D.A's evidence was that they acquired the land during the operation Vijiji in 1974 and applied to be allocated the same in

1993. They tendered Exh.P2, the minutes of the Village Land Committee that allocated the land to them including the dispute land.

I find the evidence of the Trustee of S.D.A. shaky for the following reasons; **one**, one of the members of the Committee Abia Mwita Chacha (**Dw1**) refuted to have taken part in allocating of the land as alleged. She contended that the Church leader went to meet her four months before she testified. All these raise eyebrows as to the authenticity of the document. **Two**, I scrutinized at Exh.P2 the minutes of the Village Land Committee which were approved by the village chairman and the village executive officer, one side, and the letter from the Village Chairman, on the other, and found the village stamps impressed on the documents differed. The two documents were prepared during the same period from the same office but with two different stamps. The difference is the way the words of the stamps are set up. The difference is vivid. Not only that but also, there is evidence that Julius Chacha Mangure's land was fenced before Operation Vijiji in 1974, thus, at the time the Village Land Committee allocated land to the Trustees of S.D.A ought to take into consideration the right of people who were occupying the land. For that reason, even if it was true that the village land committee allocated the disputed land which belonged

to Julius Chacha Mangure to Trustees of S.D.A that allocation could not be valid in law.

Given the evidence on record and the above analysis, like the DLHT, I find that the disputed land belonged to the Julius Chacha Mangure his. There is uncontracted evidence that Julius Chacha Mangure sold the disputed land to the Trustees of E.A.G.T. I totally agreed with the contention that an institution cannot own land without evidence on how it acquired it. The Trustees of E.A.G.T have evidence that they procured the disputed land from Julius Chacha Mangure. Julius Chacha Mangure had unquestionable title to the land having occupied the land from 1974. However, If the same principle is applied against the Trustees of S.D.A's evidence, the conclusion that there is no evidence how the Trustees of S.D.A acquired the disputed land and the undisputed land, prior to 1993 is missing. An institution like the Church, cannot own land customary or by occupying and tilling the virgin land.

I also found that it does not matter whether there exists a road separating the Trustees of S.D.A's land from the Trustees of E.A.G.T's land or not: What matter is whether there is evidence that the disputed land belongs to the Trustees of E.A.G.T. The answer is simple, that there is

ample evidence, as shown above, that the disputed land, once the property of Julius Chacha Mangure, belongs to the Trustee of E.A.G.T.

In the end, I uphold the judgment of the DLHT and dismiss the appeal for lack of merit with costs.

I order accordingly.



J. R. Kahyoza

JUDGE

16/9/2021

Court: Judgment delivered in the virtual presence of Mr. Angelo, the appellant's advocate and in the physical presence of Pastor Moses Peter and Pastor Nickson Zerubaberi for first Respondent, Julius Chacha Mungure, the second respondent. B/C Ms. Millinga Present.



J. R. Kahyoza

JUDGE

16/9/2021