

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF BUKOBA)**

**AT BUKOBA**

**LAND CASE APPEAL NO. 19 OF 2021**

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land Appeal No. 3 of 2020 and original Civil Appeal No. 21 of 2019 at Kaagya Ward Tribunal)*

**GOZIBERT FRANCIS KASHAGA.....APPELLANT**

**VERSUS**

**HALMASHAURI YA KIJIKI KATANGALALA.....RESPONDENTS**

**JUDGMENT**

*Date of judgment: 17/09/2021*

*Mwenda J,*

Mr. Gozibert Francis Kashanga (the Appellant) was dissatisfied with the judgment of the District Land and Housing Tribunal for Kagera at Bukoba in land Appeal No. 03 of 2020. He thus preferred this appeal with a total of four (4) grounds.

When this appeal was scheduled for hearing both parties invited legal services of learned counsels, that is Mr. Nyikiza Seth for the Appellant and Mr. Daniel Mbaki for the Respondent.

When Mr. Niiikiza Seth was given the floor to address this court in support of their appeal, he submitted that this matter has a long history. Katangalala Village Council filed a civil suit against the respondent claiming encroachment of a piece

of land in **Civil Case No. 21 of 2019**. He said the size of the land was not disclosed.

He went further by submitting that, the appellant lost in that case as a result he appealed before the District Land and Housing Tribunal of Kagera at Bukoba claiming that the Village Council failed to prove ownership of the land in question. Before the District Land and Housing tribunal the appellant stated that the Ward Tribunal did not analyse the evidence properly on balance of probabilities.

On his first ground of appeal, the counsel for the appellant submitted that the lower tribunals erred when they declared the respondent as winner while they failed to prove that facts. According to him the land in dispute is the property of his client and the evidence adduced by the appellant before the Ward Tribunal was sufficient, on the balance of probabilities that he had interest on the land in dispute.

He went further by submitting that the evidence by the Katangalala Village Council before Ward Tribunal was to the effect that the land in question was the property of Katangalala Village Council but they did not bring any evidence to substantiate their allegation. The counsel for the appellant also submitted that, the respondent stated that the land in question was the property of NEMC but they did not produce any evidence to that effect as compared to exhibits tendered by the appellant.

The counsel for the appellant went further by submitting that, the judgment of the Ward Tribunal did not establish foundation of ownership of Land by the respondent it ruled out that the land in dispute is the property owned by NEMC while the District Land and Housing Tribunal decided the appeal before it basing on the mere fact that, it is a forest within the village. Mr. Seth submitted that they believe that, the one with heavier evidence should win the case and to bolster his argument he cited the case of **Hemed Said V. Mahamed Mbiru [1984] TLR 113** at page 114.

He went on by submitting that, they are questioning how the respondent acquired the said land including to produce certificate of ownership to establish boundaries before the ward tribunal.

The counsel for the appellant cited the case of **Charles Mushatshi V. Nyamiaga Village Council and Another, Land Case No. 8 of 2016** whereby at page 19 the court made reference to the case of **National Agricultural and Food Corporation V. Mulbadani Village Council (1985) TLR 88**, the court reproduced a paragraph giving directions on how the villages can prove ownership of land.

He went further by submitting that, the District Tribunal ought to have directed the Ward Tribunal to comply with the above procedures.

According to him even if the Katangalala village Council own the land in dispute, they were required to substantiate how they have acquired it and be able to

determine the size of the land and therefore the judgment by the tribunals is un-maintainable.

On the second ground of appeal, the size and location of the land in dispute, the learned counsel for the appellant was of the view that the size and location is unknown, even the claim before the ward tribunal is a piece of land "***kipande cha ardhi.***" According to him the whole records do not show the size and location and the District Land and Housing Tribunal did not bother to consider and satisfy itself on this important information.

He went further by submitting that, if these anomalies exist this court may quash the proceedings by the lower tribunal as the said decisions are not executable and whoever has any claim can pursue this matter in a proper forum.

On the third ground of appeal the counsel for the appellant submitted that, his client, produced documents on how he acquired the said piece of land as he was the administrator of the said land whose probate matter was still underway. According to him the Ward Tribunal ought to have treated him as the administrator and also the District Land and Housing Tribunal ought to have considered the same while giving its decision.

He also submitted that, the District Land and Housing Tribunal questioned the legality of appellant's ownership while the records show there was evidence to that effect. Before the District Land and Housing Tribunal it was stated that, the appellant failed to prove his ownership and he was declared as a trespasser and a

stranger. According to the learned Counsel for the appellant this occasioned injustice to the appellant and with these anomalies it is clear that justice was not done. To him requiring more proof on ownership was to require the appellant to prove his case beyond the required standards of balance of probabilities. To cement his argument he cited the case of **Daniel Apael Urio V. Exim ( T) Bank, Civil Appeal No. 185 of 2019** and referred at page 17 of the typed judgment. The counsel for the appellant concludes by submitting that the lower tribunals erred in principle and he prayed for both decisions to be quashed and set aside with costs.

In reply to the submission by the counsel for the applicant, Mr Mbaki the learned counsel for the respondent submitted that, with regard to the first ground of appeal, the records are clear that before District Land and Housing Tribunal the respondent attended but did not attend just on few occasions.

On the issue of location and size of the land in dispute, the counsel for the respondent submitted that, the same are on record as in the decision by Ward Tribunal at page 3, para 2 indicate that the appellant produced evidence with regard to his 110 acres but the Katangalala Village Council claimed a small portion which the appellant harvested tree and it is a source of water. According to him this evidence shows the appellant was proving ownership on the wrong location. The Counsel for the respondent submitted that, the location of the land is Ibembela which is clearly stated in the decision of Ward Tribunal.

On prove of ownership of Land, the counsel for the respondent submitted that, the duty of Katangalala Village Council is to protect the natural forest and source of water. According to him both decisions referred the village's mandate to protect the reserved land and a source of water as a basis of proof of ownership.

He went further by submitting that, the appellant contradicted himself when he said he inherited the land from his grandfather while in a form No. IV he showed the probate matter was still underway.

With regard to **Mulbadaw's case** (supra) cited by the counsel for the appellant, the counsel for the respondent submitted that it is distinguishable, as in the present case the Katangalala Village Council is duty bound to protect the land as mentioned. On the issue of certificate of title, the counsel for the respondent was of the view that, the village owns all the land of the village and even if it was produced it would not assist the appellant.

In the case of **Hemed Said** (supra) the counsel for the respondent submitted that it is true that the party with heavier evidence wins in our case the appellant said he knew the boundary of his land had 8 beacons but when visiting Locus in quo he failed to locate and show the said beacons and for that matter it is not conclusive that his evidence is heavier as it is full of doubt.

The counsel for the respondent concluded by submitting that, prayers made by the appellant, since the lower tribunals decisions are justifiable, he is praying this

court to uphold it, as the area in dispute is the source of water and will jeopardize the interest of the community. Therefore, he prays this appeal to be dismissed.

In rejoinder, the counsel for the appellant submitted that, when the Tribunal ordered parties to file written submissions, the respondent did not comply with the scheduling order.

On argument that the land in question is under control of the Katangalala Village Council, counsel for the appellant submitted that, if that is the case then the Village Council had no Locus Standi as it does not own the land. Apart from that the counsel for the appellant submitted that the respondent did not produce any evidence to prove that the village is empowered to protect the said area. He went further by insisting that the Village Council failed to prove ownership, size of the land and the evidence mandating them to protect the area. Therefore, the counsel for the appellant concluded with prayers to quash the lower Tribunals' decisions.

After going through the records and submissions by both parties this court found out that the issue to be determined is whether this appeal has merit.

This court went through submissions by both parties and noted that the dispute between the parties is on the ownership of land. It was the appellant's submissions that the lower tribunal's erred to find that the appellant is a trespasser while there were no proof with regard to the location, size and boundaries of the land in dispute. On his part, Mr. Mbaki the learned counsel for the respondent submitted

that the location, size and boundaries of the land in dispute appear in the records of the Ward Tribunal.

This court went through the records of the ward tribunal and found out that the ward tribunal proceedings indicate the respondent's claim as against the appellant was trespass on the piece of land belonging to Katangalala village Council and illegally harvesting trees. The said claim is coached in the following words;

***"kuingilia kipande cha ardhi ya halmashuri ya  
Kijiji Katangalala na kuvuna miti yake bila idhini"***

*The use of the words a "piece of land", (kipande cha ardhi) without mentioning the size of the disputed land leaves a lot to be desired.*

With regard to the location of the land in dispute,-the records of the ward tribunal especial at page 6 of the ward tribunal's judgment it was stated as follow, that;

***"Mdaiwa anatakiwa kutambua kuwa hajazuiwa  
kutumia eneo ambalo lipo upande wa Kijiji chao  
kama amepewa huko lakini atakuwa ameweka  
alama za kutenga mipaka"***

By a simple translation it means the respondent should know that he is not forbidden to use the land located at his village as long as the same is allocated to him.

Also in the same page the ward tribunal is recorded to state the follow;



***".....halmashauri ya kijiji haijamdai huko maana hajapagusa, inamdai eneo la msitu wa asili, kipande kidogo tu achacho ameingilia na kujimilikisha kisha kuvuna miti ambayo huhufadhi vyanzo vya maji kwa matumizi ya viumbe."***

From the statements above it is not clear whether the land in dispute is on the same village, of what size and surrounded by which boundaries.

The law and practice of this court has been that any land in dispute must state land description with certainty so that it can be distinguished from other lands as stipulated in **Regulation 3 (2) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003, GN. No. 174 of 2003** reads as follow :

**Reg. 3(2) "An application to the tribunal shall be made in. The form prescribed in the second schedule to these regulations and shall contain:  
(b) the address of the suit premise or location of the land involved in the dispute to which the application related."**

Also in the case of ***Jeneroza Prudence v. Matungwa Salvatory, Land Case appeal No. 25 of 2020*** this court citing the case of ***Said Hassan Shehoza V.***

***The Chairperson CCM Branch and another, Land Appeal No. 147 of 2019***

held inter alia that:

***"Having the same principle in mind, it is the finding of this court that as per the available evidence on encroachment, the contradictions on the size of the land and the boundaries therein, it was a fit case for the trial tribunal to exercise its discretion and make a visit the locus in quo in order to ascertain the boundaries in dispute and the size of the land. I am convinced that by doing so, the tribunal would have made a more informed decision on the issue of encroachment. Failure to do so might have made the tribunal reach into a wrong finding."***

Also in the case of ***Rwanganilo Village Council and 21 Others V. Joeseeph Rwakashenyi, Land Case appel No. 74 of 2018*** (unreported) citing with approval the case of ***Daniel Dagala Kinogi (As administrator of the Estate of the late Mbalu Kushaha Bulude) V. Masaka Ibeho and 4 Others, Land Appeal No. 26 of 2015*** this court stated inter alia that

***“.....I highly subscribe to the view and findings because it may be grave injustice and dangerous to decide a case which its size and location is unknown... [emphasis added]***

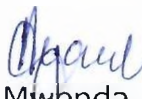
Since the records of the ward tribunal show that there was a visit on locus in quo, it is the view of this court that before delivering its judgment, the ward tribunal was required to make sure that it clears the uncertainty on issue of the size of the land encroached, boundaries and the location of the land in dispute.

Having said so and considering non- description of the Location, size and boundaries of the Land in dispute, this Court hereby allow the appeal, quash the proceedings and set aside judgment and any orders emanating from Land Appeal No. 03 of 2020 and Civil Case No. 21 of 2019 decided by the Lower Tribunals.

Any interested party may initiate a fresh suit in the competent Tribunal to try the matter in accordance to the laws.

I award no costs in this appeal and therefore each party shall bear its own costs as the shortfalls discussed above were caused by both parties and blessed by the Tribunals below.

It is so ordered.

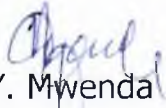
  
A.Y. Mwenda

**Judge**

17.09.2021

Judgment delivered in chamber under the seal of this court in the presence of the appellant Mr. Gozibert Francis Kashanga and in the presence of the respondent Halmashauri ya Kijiji Katangalala.



  
A.Y. Mwenda

**Judge**

17.09.2021