

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

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 31 OF 2021

(Arising from Land Appeal No. 56/2018 of the District Land and Housing Tribunal – Kigoma before F. Chinuku, Original Land Dispute No. 5/2017 from Bugaga Ward Tribunal)

MOSHI CHUBWA APPELLANT

VERSUS

YAHAYA TALIYE RESPONDENT

JUDGMENT

12/8 & 8/10/2021

L.M. MLACHA, J.

This is a second appeal. The dispute originates in Application No. 5 of 2017 of Bugaga Ward Tribunal, Kasulu District. It is a dispute over a piece of land estimate to be 10 acres. It was alleged that the appellant, Moshi Chubwa had invaded the land and was occupying it illegally. The respondent, Yahaya Tariye was the applicant at the Ward Tribunal. The Ward Tribunal received evidence from both parties and recorded it properly. The respondent made his account and called PW2 NTUNGURU NTAMLEYA (80), PW3 GERVAS MBEGWA (63) and PW4 NTUMBUYE NKUKULA (62) to support him. The respondent's case was that he is the lawful owner of the land which he inherited from his late father, Tariye

Kasembe. His father died around 2005. They continued to use the land as a family up to 14/11/2017 when it was invaded by the appellant. He added that the appellant was present on the burial ceremonies but could not raise any claim.

The appellant's case was that he inherited the land from his late father, Mzee Chubwa Sindi. His father died in 1999 while he was still young. Soon thereafter, elders moved into the land and divided it to his children. The late Tariye was present when they were taken around but could not object. He went on to say that the respondent's mother was given a piece of land by his father on the lower side, not the upper lands which is the suit land. She is still owning the land todate. He added that they lived peacefully with Mzee Tariye up to the time when he died. There was no dispute till when he and the respondent came into a conflict (2017). He had the support of DW2 Obedi Katinyika (80) and Raphael Chubwa Saidi (54).

The Ward Tribunal found for the appellant. It declared him the lawful owner of the land. The respondent appealed to the District Land and Housing Tribunal (DLHT) in Land Appeal No. 57 of 2017 but could not be successful. He thus preferred a second appeal to this court armed with three grounds of appeal which can be put thus;

- 1. That, the District Land and Housing Tribunal erred in examining the evidence on records thereby arriving at an erroneous decision.*
- 2. That, the District Land and Housing Tribunal erred in fact and law in falling to know that the appellant was in occupation of the land since 1965 and thus the lawful owner.*
- 3. That, there was no evidence to prove that the and belonged to the respondent.*

The parties appeared in person fending for themselves. Submitting in support of the appeal, the appellant said that there was no evidence showing that his father gave the respondent's father any piece of land on the upper area. He said that he was given on the lower side (bondeni), not on the upper side. He said that the respondent's father was given six pieces of land on the lower side, adding that an acre can have 10 pieces. He proceeded to say that the sketch map was drawn contrary to the reality. He showed the area but they drew it differently. They put a house and a grave which are not existing. He ended by saying that the disputed land is 6 acres not 10 acres as alleged.

Submitting in reply, the respondent said that they are not quarrelling over the wetlands. They are fighting over the upper lands. He said that even a small boy at the village know that the land belongs to his father. He used to cultivate maize and cassava but have failed to develop it due to the dispute.

The appellant made a short rejoinder and said that the upper lands belongs to them. His father gave them the lower lands.

I had time to read the records of the two tribunals carefully. I must admit that the records of the Ward Tribunal were well kept. The secretary recorded the evidence properly. I could see clearly what transpired at the Ward Tribunal. I plan to discuss all the grounds of appeal together.

Going by the records of the Ward Tribunal, it is clear that the parties are neighbours who claim ownership of their lands from their parents who died some years back. The appellant's father died in 1999 while the respondent's father died in 2005. Their fathers were neighbours and they never happened to quarrel. The disputed land is on the up land opposite the lower side (the Wetlands) which is not in dispute. The respondent described the disputed land as 10 acres while the appellant calls it 6 acres. No one has clear dimensions. They are just estimates. But despite the dispute of the size, each one knows the disputed land.

The two tribunals found for the respondent. They all said that there was evidence showing that the land belongs to the respondent. This is a concurrent finding of facts of two courts. We can interfere with the findings of fact by the courts below if we are satisfied that the findings of facts were based on a disregard of an established principle or practice, misinterpretation of evidence, omissions to consider the available

evidence, a misapplication of applicable law and/or misdirection or none directions on the evidence. We can also interfere on being convinced that the appellant was not given a fair hearing by the courts below (see **SAMWEL DAUD AND MWITA MATIKO V. REPUBLIC**, Criminal Appeal Nos. 177 and 178 of 2011 Page10. The court was following its earlier decision in **EMILIAN AIDANI FUNGO @ ALEX and ANOTHER V.R**, Criminal Appeal No. 278 of 2008 (CAT unreported)”. See also **JILALA JUSTINE v. THE REPUBLIC**, CAT Criminal Appeal No. 441 of 2017 (unreported). I could not see those elements in this case. The parties were fully heard and the tribunals directed themselves properly in evidence and the law.

The evidence is clear that the respondent had a better case than the appellant. His evidence was good and corroborative. The ward tribunal which saw the witnesses could not doubt their credibility. They saw them as witnesses of truth. To the contrary the appellant’s case left much to be desired. I will point out three areas; One, whereas the evidence shows that the appellant (39) was 21 years old when his father died in 1999, the year when the land was divided, it is not known why he could not take any step to develop the land up to 2017, 18 years later. There was no explanation given to justify the delay. Two, he said that, his father gave the respondent’s mother a piece of land on the lower side. He takes the

respondent to the lower side on this basis. But his witness (DW2) says that the appellant's father gave the land in 1967/68. The question is how could he know this fact while he was yet to be born? It is obvious that what he says is nothing but hearsay. Three, the respondent's father died in 2005. The parties are neighbours and it is said that the appellant was present at the burial ceremonies. The question is why didn't he raise the claim in 2005? If he had a genuine claim, he could raise it in 2005 or earlier and not in 2017.

That said, the appeal is found to be devoid of merits and dismissed. Costs to follow the event. It is ordered so.



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L.M. Mlacha

JUDGE

8/10/2021

Court: Judgment delivered in chamber in the presence of both parties.

Right of Appeal Explained.



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L.M. Mlacha

JUDGE

8/10/2021