

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

AT BUKOBA

MISC. LAND APPEAL NO. 6 OF 2021

*(Arising from the District Land and Housing Tribunal in Appeal No. 73 of 2019 and Original Civil Case No. 110 of 2018
Kahororo Ward Tribunal)*

EDGAR MUGISHA AUGUSTINE..... APPELLANT

VERSUS

1. DOMINA PROJES

2. ARISTIDIA SEPILIAN

.....RESPONDENTS

JUDGMENT

Date of Judgment: 28/09/2021.

Mwenda, J.

Edgar Mugisha Augustine (the Appellant) approached Kahoro Ward Tribunal and lodged Civil Case No. 110 of 2018 complaining that Domina Projest and Alistidia Sepilian trespassed unto his land and destroy the crops as well demolition the toilet. The Ward Tribunal after a full hearing of the dispute, decided in favour of the Respondents. The reasoning of the Ward Tribunal is found at page 2 of the handwritten decision:

***"kutokana na maelezo hayo baraza linaamua
kuwa mipaka ya maeneo hayo irudishwe kama
ilivyowekwa na kiongozi wa serikali (Afisa***

***Mtendaji wa Kata) na SU II Alistidia Sepilian
arudishiwe eneo lake na mipaka iheshimiwe na
pande zote mbili (mdai na wadaiwa)”.***

The decision and reasoning of the Ward Tribunal irritated the Appellant hence he preferred Appeal No. 73 of 2019 at the District Land and Housing Tribunal for Kagera at Bukoba. The District Land and Housing Tribunal dismissed the appeal in favour of the Respondent. The reasoning of the District Land and Housing Tribunal is found at pages 5 & 6 of the judgment of the Tribunal.

The appellant being aggrieved by the decision of the District Land and Housing Tribunal preferred the present Misc. Land Case Appeal No. 6 of 2021 before this court with four (4) grounds of appeal.

When this appeal was scheduled for hearing the appellant enjoyed the legal service of Mr. Victor Blasio the learned counsel while the respondents appeared in person.

During his submissions the learned counsel for the appellant prayed to argue ground no. 1, 2 and 4 collectively and ground no. 3 separately.

In his submissions in chief, in ground no.1, 2 and 4, the learned counsel for the appellant submitted that, the 2nd respondent claimed to be the owner of the suit land, as she purchased it from the appellant. According to him there was no any evidence to support that allegation. He went further by submitting that, the 2nd

respondent alleged to have sale agreement but she did not tender it as evidence before the tribunal. According to him the evidence in proof of transfer was so weak and to support his argument he cited a case of **Omary Mahomed vs. Godson Same Chemaku, Land Appeal No. 103 of 2019** at page 4 last paragraph.

With regard to 1st respondent who complained over boundaries, the learned counsel for the appellant submitted that, the said evidence is insufficient, that the boundaries fixed by Village Executive Officer (VEO) be undistorted as it is not known under what authority was the VEO acting.

He went further by submitting that, the respondents had no evidence other than their own testimony which were so weak.

With regard to the third ground of appeal, the counsel for the appellant submitted that, the mentioned contracts were illegal as the 2nd respondent did not know the witness. According to him failure to sign the contract before the street chairman make the said contract illegal.

The counsel for the appellant also submitted that, they pray before this court to declared the appellant as the rightful owner as he bought the said land and brought the witness who is the wife of deceased seller. On the issue of ownership before the Ward Tribunal the counsel for the appellant submitted that, the respondents claimed that, the appellant is not the owner of the suit land for failure

to bring any evidence. So according to him he is of the view that, there was no dispute over his ownership.

The counsel for the appellant concludes by praying for this appeal to be allowed with costs and any other relief this honourable court may deem fit and just to grant.

In reply to the submission by the counsel for the appellant, the 1st Respondent had this to say, during hearing at the Ward Tribunal they called upon the witnesses, they visited the locus in quo but the appellant did not bring any witness. She submitted that, the witnesses showed the boundaries but later the appellant removed them. She also submitted that, before the Ward Tribunal they were told to respect the boundaries fixed, but the appellant was dissatisfied by the decision and he appealed before District Land and Housing Tribunal for Kagera at Bukoba and the tribunal decided in their favour. The 1st respondent concluded by submitting that, before the Ward Tribunal she tendered the transfer deed and called the witness.

The 2nd Respondent replied to the effect that, the appellant approached her with intention to sell his piece of land. She bought that piece of land for Tshs. 420,000/= at the first instalment of Tshs. 390,000/=. She went further by submitting that, they visited the land and she was comfortable with it. She submitted that, thereafter they prepared a sale agreement which was prepared by

appellant himself and Peter Bishanga was brought by the Appellant and signed the agreement.

She went further by submitting that she took possession of the land and cultivated for about 6 seasons. According to her the problem started when she started building activities and that is where the appellant appeared and stopped the builders and told her that she is trespasser on his land. She went further by submitting that, she went to the street Chairman who demanded her a letter i.e transfer Deed and she tendered and before the street chairman they saw her as a rightful owner. The 2nd respondent submitted that, she decided to report the matter to the police station for the destruction of property but they were advised to file a suit before Ward Tribunal. According to her before the Ward Tribunal, the appellant had no witness and they visited a locus in quo and the ruling of the tribunal was in her favour. She concluded by submitting that, she tendered the transfer Deed and she was declared the rightful owner. Then the appellant appealed before District Land and Housing Tribunal where she was declared again the owner of the suit premises.

In a brief rejoinder the counsel for the appellant submitted that, with regard to 1st respondent's submission that they called witnesses, he prays for the Ward Tribunal records to guide this honourable court. On the issue of boundaries the counsel for

appellant submitted that, they were fixed before filing the case, so in the Ward Tribunal there were no order to that effect.

On the issue of transfer Deed by the 2nd respondent the counsel for the appellant submitted that the document was not tendered before the tribunal.

Having gone through the submission by both parties and after a thoroughly perusal of the Ward Tribunal and the District Land and Housing Tribunal's records this court came up with only one issue for determination that is who is the rightful owner of the disputed land.

Going by the records of lower tribunal it is clear that both parties claim that the land in dispute belong to each side. The records of both lower tribunals, from the ward tribunal to the District Land and Housing Tribunal there is nowhere it is shown that any of the parties tendered any document in prove of ownership. Apart from that no one between the respondents or the appellant who stated before the tribunals where exactly that land is located.

It is trite law that in dispute related to land, land description must be clearly stated. This is in accordance with **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.

It is also the requirement of the law that an application before the tribunal shall state the address of the suit premise or location of the land. Before the tribunal this requirement of the law was not complied with. The claim before the ward tribunal reads and I quote:

***"anamlalamikia Domina Projest na Alistidia
Sepilian kwa madai ya kuivamia eneo lake na
kuharibu mazao na kuvunja choo."***

From the claim above, the appellant did not state where exactly the land in dispute is located and it was therefore very dangerous for both tribunals to declare the respondents as rightful owner where the land description was not clearly stated.

In the said circumstances the decisions of both tribunals are not executable. In the case of **Rwanganilo Village Council and 21 Others vs. Joeseph 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) vs. 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 at page 2 of the hand written judgment 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. 73 of 2019 and Civil Case No. 110 of 2018 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.

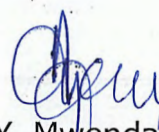
It is so ordered.




A.Y. Mwenda
Judge
28.09.2021

Judgment delivered in chamber under the seal of this court in the presence of the appellant Mr. Edgar Mugisha Augustine and in the presence of the 1st respondent Domina Projest and in absence of 2nd respondent Alistidia Sepilian.




A.Y. Mwenda
Judge
28.09.2021