

**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. 41 OF 2021**

(Arising from Land Appeal No. 78/2014 of the District Land and Housing Tribunal – Kigoma before Hon. F. Chinuku – Chairperson, Original Land Case No. 21/2013 Kasulu Ward Tribunal)

**NKOLOMO S/O AMOS.....APPELLANT**

**VERSUS**

**GODRIVA S/O DIGIMBA.....1<sup>st</sup> RESPONDENT**

**VICTORIA S/O RAPHAEL .....2<sup>nd</sup> RESPONDENT**

**J U D G M E N T**

03/12/2021 & 03/12/2021

**L.M. MLACHA, J.**

The appellant, Nkolomo Amos was the respondent in the Ward Tribunal of Kasulu Ward in Application No. 21/2013. The respondents, Godriva Digimba and Victoria Raphael were the applicants. The respondents' case was that the appellant had built his house across the boundaries of his plot thereby encroaching part of their plots. The ward tribunal found for the appellant who was allowed to proceed to enjoy his Plot No. 793, Block 'N' Kasulu township and the plots of the respondents; plots Nos. 797 and 795. The

tribunal proceeded to issue an order to Kasulu District Council to allocate other Plots to the respondents. On appeal to the District Land and Housing Tribunal for Kigoma (the DLHT) in Land Appeal No. 78 of 2014, it was found that the appellant had no legal right to take the respondents' plots. It was further found that the ward tribunal had no power to order Kasulu District Council, who was not a party to the case, to give alternative plots to the respondents. Aggrieved by the finding and decision, the appellant has come to this court by way of appeal.

The appeal is premised on the following grounds;

- 1. That, the District Land and Housing Tribunal for Kigoma erred in law and in fact to decide in favour of Respondents who did not prove their claim to the standard required by law.*
- 2. That, the District Land and Housing Tribunal for Kigoma erred in law and in fact to reverse the decision of the trial ward tribunal without considering the evidence adduced by the Appellant.*

*3. That, the District Land and Housing Tribunal for Kigoma erred in law and in fact to decide in favour of the Respondents, decision which was reached by shifting burden of proof to the Appellant.*

Ms. Doto Banga appeared for the appellant while the respondents had the services of Mr. Ignatus Kagashe. The appeal was heard by oral submissions.

Ms. Doto Banga submitted on ground one and later argued grounds two and three together. Submitting on ground one, counsel had the view that, there was no evidence to justify the victory given to the respondents. Counsel submitted that the DLHT found that each of the parties was owning his plot legally but gave victory to the respondents. He said that his client bought plot No. 793 legally and built the house. He must be left to occupy it, he submitted.

In ground two and three, counsel had the view that the ward tribunal was better vested to know the dispute than the DLHT because it is the one which heard the parties. He submitted that Land surveyors visited the plot and found that the appellant's house had crossed to the respondents' plots and advised for alternative plots. She found that to be the best idea given the fact that the appellant had already built his house. This advice was adopted

by the ward tribunal, she said. Counsel support the finding and decision of the ward tribunal. She could not see justice in the decision of the DLHT which ordered the appellant to demolish part of his house.

Mr. Kagashe made a general submission which combined all the grounds of appeal, for in his view, all the grounds of appeal were related. He told the court that the parties are neighbours. Each has his plot; Godriva owns plot No. 795 Block 'N', Victoria owns plot No. 797 Block 'N' while Nkolomo the appellant, owns plot No. 793. He proceeded to say that the appellant bought a house from Mr. Ranford Bishuli in 2001 which he demolished and built the current house. The respondents were there and had no dispute with Mr. Ranford. The dispute started after the appellant had built the house across the boundary. The Land Officer visited the plots and established this fact. He then advised the respondents to be given other plots which advice was accepted by the ward tribunal and formed the basis of its decision. He added that the respondents who were present in the area earlier before the sale of the house were ordered to move out to the alternative plots without compensation. He supported the finding and decisions of the DLHT.

I had time to peruse the record. I have also considered the submission. The evidence is clear that the respondents were living in the area with their

neighbor, Mr. Ranford without any problem. The Land was surveyed at a later stage and each was given a plot number. There was no problem. Mr. Ranford opted to sell his plot to the appellant. He left. His plot had a house which was also sold. The appellant pulled the house down and erected the current house.

Parties agree that the Land Officer visited the area with the survey maps. He checked the becons and it was established that the appellant had built across his boundaries. Part of his building fell in the plots owned by the respondents. This is fully agreed. The issue is who is to move out?

The ward tribunal decided that the respondents must quit. It ordered them to get out. It directed the council to fit them somewhere else. The DLHT said No. It ordered the portion of the appellant's house which moved across the boundary to be pulled down to allow the respondents to proceed to enjoy their peaceful occupations of their respective plots.

I have reasoned out carefully. I think that, the decision of the DLHT is sound in law and has to be upheld. I find that, it was correct to vacate the decision of the ward tribunal for it was not based on the law but sympathy. It also lacked logic for it was not correct to order the respondents to vacate from

their houses and plots which they have occupied for a long time with their families, without any compensation.

That discussion disposes the appeal but before going to the end, I think I should say some words to the appellant for future guidance.

I find this as a very simple case but it has kept the parties in court from 2013 to date. If it is not in dispute that the appellant's house has been built across his boundary to the respondent's plots, there is no way in which the respondents can be removed from their respective plots without an understanding between them. Once a person has been given a right to own a plot, he cannot be removed by force save on matters of public interest. Even where public interests so demands, he must be given compensation before being moved out. It was thus a case for the appellant to negotiate with the respondents to see if they could agree to move out rather than fighting in court. I don't see logic in the fight. It was not needed.

That said, the appeal is found to be devoid of merits and dismissed. I proceed to restate that, the appellant must demolish part of the house which have crossed the boundary to respondents plots within 60 days from today or else buy the respondents' plots at a price which may be agreed between

them. I put it clear that, if the appellant will not reach an agreement with the respondents within 60 days from today, the part of the house which have crossed the boundary to the respondents' land must be demolished. It is ordered so. Costs to follow the events.



**L.M. Mlacha**

**Judge**

**03/12/2021**

**Court:** Judgment delivered in the presence of Ms. Doto Banga Advocate for the appellant who is also present, absence of the first respondent and presence of the second respondent.

Right of Appeal explained.



**L.M. Mlacha**

**Judge**

**03/12/2021**