

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

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPEAL NO. 42 OF 2021**

(Arising from Land Appeal No. 20/2016 of the District Land and Housing Tribunal – Kigoma  
before F. Chinuku, Original Land Case No. 3/2015 from Bugaga Ward Tribunal)

**MOSHI NZOWE ..... APPELLANT**

**VERSUS**

**ANTONY NZOWE ..... RESPONDENT**

**JUDGEMENT**

1/11/2021 & 19/11/2021

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

The appellant, Moshi Nzowe sued the respondent, Anthony Nzowe who is also his brother for trespass to his land as of an acre (70 x 70 paces) at Bugaga Ward Tribunal in Application No. 3/2015. He stated that the respondent trespassed to family land which he cut four pieces, each  $\frac{1}{4}$  of an acre, and gave two pieces to his sisters. The ward tribunal conducted length proceedings which involved the visit of the locus in quo and drawing a sketch map. It in the end found that the respondent had no colour of right to divide the land and give it to his sisters. The case was decided in favour of the appellant.

On appeal to the District Land and Housing Tribunal for Kigoma (The DLHT) in Land Appeal No. 21 of 2016, the decision of the ward tribunal was vacated and set aside. The DLHT found that the respondent was wrongly sued. It nullified the proceedings and decision. The appellant could not see justice in the decision hence the appeal.

Before moving to consider the grounds of appeal and submissions, a brief background may be useful. The parties are brothers as hinted above. They are children of the late Nzowe who died in 1988. The late Nzowe left behind two wives. It is alleged that he had 3 others but the record shows that he had left them long before coming to settle at the suitland. He left farms which were divided to his children. There is no issue on them. The problem is on the land, one acre, where he lived with his two wives; the mother of the appellant and the mother of the respondent. There was no misunderstanding between the parties from 1988 up to 2014. The problem started in 2014 when the respondent came at the homestead in the company of the village Executive Secretary, the hamlet Chairman and some other people to divide the land. He is not living there himself. He has his homestead somewhere else in the village. The appellant and his mother occupy one part of the land while the respondent's brother occupy the other side. The appellant has no dispute

with the respondent's brother. The respondent's mother appears to be dead. The Land was divided to 4 pieces described to as 'roborobo'. The first piece was given to the appellant, a second piece was given to the respondent's brother while the two others pieces were given to the two sisters, Leticia and Teresia. Leticia and Telesia are children of Nzowe from the divorced wives. They are elderly women (60) who were married long time ago. They sold their plots quickly and left. The appellant and his mother did not see justice in what was done for according to their understanding, the land had two parts only; the part of the appellant's mother and the part of the respondent's mother. Leticia and Teresia had no right in the land which was left for the occupation of the two wives, in exclusion of others.

The appellant sued the respondent. The ward tribunal found for the appellant but as I have pointed out, the Decision was vacated and set aside by the DLHT on grounds stated. The appellant lodged an appeal to this court. The grounds are lengthy but can be reduced to read thus;

- 1. That, the District Land and Housing Tribunal erred in law and fact in failing to see that the estate of the late Nzowa had long been distributed customarily in 1988 after the death of Mr. Nzowa.*
- 2. That, the District Land and Housing Tribunal erred in law and fact when it failed to see that the appellant had no mandate to distribute*

*the land because he had no letters of Administration of the estate of the late Nzowa.*

*3. That, the chairman of the District Land and Housing Tribunal manifested biasness when he visited the suit premises in the absence of the appellant.*

Hearing was done by oral submissions.

The parties being layman could not address the court on the grounds of appeal straight. They made general submissions each trying to point out the problem in his own way. The appellant acknowledged that the respondent is his elder brother. They share the father but each has his mother. That they are fighting over a piece of land which is approximately 70 x 70 paces used for residential purposes at the village. The land was left to him by his late father and it is the place where he lives with his mother and relatives. The respondent wants to evict them from the land. The respondent accepted the relations saying the appellant is his young brother as aforesaid. That, they are living in the same village but he lives nearby. That, his grandfather divided the farms in 1988 after the death of his father. The disputed land was left without being distributed. It was left for residential purposes.

He went on to say that his father had 5 wives. Four had kids, one did not have kids. And that, Teresia and Leticia who are daughters from the other wives, came to him and claimed their respective shares of the land. He went to see the Village Executive Officer (VEO) who divided the land to 4 plots. Each was given a plot. The appellant was not happy hence the case. They sold their plots and left.

I had ample time to study the record. I have the view that the DLHT misconceived the facts. The facts are clear that the respondent is the one who acted under the cover of village leaders to divide and sell the land in the names of his sisters. He appear to have had an evil mind otherwise there was no need of selling the land so quickly. He was the one who was active in the matter and thus correctly sued.

In response to ground one, I agree that, the late Nzowa had 5 wives but he had left the rest at the time of his death. The evidence is clear that he was living in some other area long before he came to settle at the suitland. He came with two wives and lived with them at the suitland till his death. The clan sat after the death of Mr. Nzowa and divided the farm lands. This is clear from the evidence and is not disputed. The suitland remained under the control of the two wives and their children. This is also clear.

In ground 2, I have the view as, correctly stated that the respondent was supposed to act as an administrator of the estate. His status as the elder brother did not give him power to divide the land by force. Equally, the VEO did not have such powers. At most, he could act as a mediator. Those are powers which are reserved to administrators of the estate of the deceased and the courts not the respondent or VEO. It follows that what was done by the respondent and the VEO to divide the land and give two pieces to the two sisters was null and void. That applies to the sales, if any.

I could not see evidence of biasness on the part of the chairman which is the subject of ground 3. But, before going to the end, I wish to point out that, the respondent appears to be a mere trouble maker. It does not come to my senses that, a woman at the age of 60, who was married many years ago, can return and pick a piece of land at home in the manner explained and sell it by force. It is rather the respondent not his sisters who had an interest in the land. What he did is illegal and unacceptable.

The appeal is allowed with a directive that the appellant and his mother should proceed to occupy the land without any disturbance. The sale of the land is declared illegal, null and void. Any structures erected as a

result of the illegal sale must be demolished. It is ordered so. Costs to follow the event.



  
L.M. Mlacha

**JUDGE**

**19/10/2021**

**Court:** Judgment delivered. Right of Appeal Explained.



  
L.M. Mlacha

**JUDGE**

**19/10/2021**