

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**BUKOBIA DISTRICT REGISTRY**

**AT BUKOBIA**

**LAND CASE APPEAL NO. 73 OF 2020**

*(Originating from Application No. 22 of 2017 in the District Land and Housing Tribunal for Muleba at Muleba)*

**FRANCIS PETRO----- APPELLANT**

**VERSUS**

**THE REGISTERED TRUSTEES OF ELCT NW DIOCES -----RESPONDENT**

**JUDGEMENT**

**Date of Last Order: 07/010/2021**

**Date of Judgment: 12/11/2021**

**Hon. A. E. Mwipopo, J.**

The Appellant namely Francis Petro has filed the present appeal against the decision of the District Land and Housing Tribunal for Muleba at Muleba in Application No. 22 of 2017 before Hon. J.K. Bantulaki, Chairman, which was delivered on 23<sup>rd</sup> June, 2020. The Appellant was aggrieved by the decision of the trial Tribunal which was delivered in favour of the Respondent namely the Registered Trustees of ELCT NW Diocese. The Appellant filed a Petition of Appeal which contains five (5) grounds of appeal as provided hereunder:-

1. *That the Respondent having failed to disclose in her pleading/application and evidence sufficient particulars of the suit land allegedly trespassed on and unlawfully developed by the Appellant, the trial Tribunal lacked jurisdiction to hear and determine a land complaint before it (Application No. 22 of 2017).*
2. *That the suit between the parties which was initially filed in the District Land and Housing Tribunal of Kagera at Bukoba as Application No. 51 of 2012 was transferred to the District Land and Housing Tribunal of Muleba at Muleba contrary to the law.*
3. *That the trial Tribunal erred in law and facts in making the findings in favour of the Respondent without first there being evidential proof of such Respondent's existence.*
4. *That the Respondent having asked in the pleadings/application only for order requiring the Appellant to vacate Respondent's land and remove hi offending structures, the trial Tribunal lacked jurisdiction to declare the Respondent as legal owner of the disputed land.*
5. *That the Respondent's pleading/application did not disclose the cause of actions as against the appellant herein.*

On the hearing date, the Applicant appeared in person unrepresented, whereas the Respondent was represented by Mr. Lameck John Erasto, Advocate.

Briefly, the Applicant submitted on all grounds of appeal jointly. He said that tribunal erred to transfer the case from the District Land and Housing Tribunal of Kagere at Bukoba to the District Land and Housing Tribunal at Muleba without assigning the reason. For that reason he was prejudice as the case started a fresh and by that time he has already filed some written statement of defence. He stated that he inherited the land in dispute from his father and he have been living there for almost 30 years. That, he proved his case by tendering the will from his late father, the will of his Grandfather, and a copy of sale agreement of the piece of land bought by his father. He stated that his land has its boundaries which is known. That, the secretary of the Diocese failed to state the size of their land and to bring any document proving their ownership and the boundaries of their land. The house in the Plot was built 35years ago.

The Appellant added that the Tribunal relied on the weakness of his case by relying on the testimony of his siblings whom they have no good relations. They testified for the Respondent to show that he encroached into the Respondent's land. These witnesses admitted that the will was valid and legal. Thus, I don't know why they came to testify if they agree that the will is valid. He said that his evidence proved that he is the owner of the land in dispute and that he did not encroached into Respondent's land. The tribunal rejected to

receive the decision and proceedings of the Ibuga Ward Tribunal in the dispute between myself and Richard Kagoro. The first dispute with Richard Kagoro was settled amicably but after 5 or 6 years the disputes has emerged once again.

In response, Mr. Lameck John submitted that the Application No. 51 of 2012 at Kagera District and Land Tribunal was transferred to the District Land and Housing Tribunal at Muleba following established of the District Land and Housing Tribunal of Muleba at Muleba. The proceedings shows that on 01.03.2017 the Tribunal at Kagera made decision to transfer the case to the Tribunal at Muleba in the presence of both parties. The Tribunal at Muleba has jurisdiction to entertain the matter pecuniary and territorial. It is not true that the Appellant has been in the land for other 30 years, the Appellant encroached into the Respondent land and dispute arose in 2006. This is reflected in the evidence of witnesses as seen in page 3 of the typed proceedings. The testimony of AW1, AW2 and AW3 shows that the Appellant was living in Shinyanga and came back to the village on 2001. The testimony John Bosco – AW3 shows that the Respondent came back on 2011 and uprooted the bamboo three which was the boundary between the lands. Thus, the dispute did arise on 2006 and the time he alleges to live in the disputed area is without justified. The Counsel said that the Respondent objected tendering of those will but the court admitted it as

its weight will depend on the evaluation. The alleged sale agreement tendered by the Appellant was found to be invalid as the same was not signed.

The Respondent's Counsel added that the Appellant's witness namely Leticia Petro Lazaro – RW3 stated in cross examination that Mwanzi used to be boundary mark separating litigants but the same is no longer there. RW2 Alistides Rweyemamu stated in the cross examination that the boundaries, separating the parties is eilembo (pathway). But the Appellant stated in his testimony that their boundary between the Appellant and Respondent is the road from Bukoba to Kamachumu.

On the issue that siblings who testified against the Appellant has grudge, the Counsel said that this is an afterthought since it appears for the first time in ~~this submission. During hearing, the Applicant did not raise the issue or question~~ the witnesses on the issue during cross examination. This position was taken by the court in the case of **Kwiga Masa V. Samwel Mtabatwa, [1988] TLR** page 103 where it was held that where the party is not challenging what is stated in cross examination, the said is supposed to be true.

Regarding Appellant's claims that the General Secretary of ELCT NW Diocese AW2 does not know the boundaries, the Counsel said that the General Secretary of ELCT NW Diocese – AW2 testified that he know the boundaries and named them in re - examination. The Appellant uprooted the boundary of Mianzi

between the parties herein. In his testimony, AW2 testified that the land was acquired from the Chief known as Mkama Kalembera in 1934 who provided the area to be used by the church.

Mr. Lameck John then submitted on the allegation that the Tribunal rejected to admit the proceeding of the previous dispute between the Appellant and representative of the church namely Richard Kagoro. He said that Richard Kagoro instituted a Civil Case No. 3 of 2006 in the Ward Tribunal as representative of the church where he won but the Appellant appealed to the District Land and Housing Tribunal in Appeal No. 211 of 2006 which found that Richard Kagoro had no Locus standi and quashed the proceedings and decision of the trial Tribunal. As the decision of the Ward Tribunal was nullified it means that there was nothing to take from the Ward Tribunal. The record shows in page 108 the Appellant requested the Tribunal to go to Bunywambele Village to take testimony of his witness on 09/10/2019, but on 14/02/2020 the Appellant told the Tribunal that he no longer intend to use the said witness and requested to leave him and proceed with other witnesses. Thus, it is not true that he was denied by the tribunal opportunity to call witness or tender any exhibit. The Counsel is of the view that the evidence by the Appellant is tainted with falsehood and the same should not be relied by the court. He made reference to the case of **Mathias Timothy V. Republic [1984] TLR page 86** where it was

held that in testimony of a witness where the issue is that of false evidence the falsehood has to be considered as a whole. And the effects of falsehood is reliability of the testimony of the witness otherwise is corroborated by other independent evidence.

In his rejoinder, the Appellant said that the mianzi tree is not a boundary in his custom. Road and Eilembo are pathway which even the car use to reach the road. A road from Bukoba to Kamachumu is far from the land. The eilembo joins the road after 400 meters. He said that he is not the one who uprooted the Muanzi.

The issue for determination of this appeal is whether or not the appeal has merits.

The Appellant first ground of appeal is the issue of jurisdiction where he stated that the Muleba District Land and Housing Tribunal had no jurisdiction to determine the matter as the Respondent did not give details of the suit land and that the case was transferred from Bukoba District Land and Housing Tribunal to Muleba District Land and Housing Tribunal contrary to the law.

In Tanzania, all Courts are created by statutes. This means that their jurisdiction is also statutory as it was held in the case **Shyam Thanki and Others V. New Palace Hotel [1971] 1EA 199**. The territorial jurisdiction of the District Land and Housing Tribunal, according to section 22(1) and (2) of the

Land Disputes Courts Act, Cap. 216, is in each district, region or zone as may be established by the Minister. The Tribunal established exercises jurisdiction within the district, region or zone in which it is established. The case at first was instituted at District Land and Housing Tribunal for Kagera at Bukoba as Application No. 51 of 2012 on 24<sup>th</sup> February, 2012. The reason is that at that time there was no Tribunal established for Muleba District but the Bukoba District and Land Tribunal has jurisdiction over all of the Kagera Region. The said application shows that the value of the suit land is Tshs. 4,000,000/= and the location of the suit land is Bunywambele Village, Ibuga Ward at Kamachumu. The said area is within Muleba District even though the same was stated.

After the Muleba District Land and Housing Tribunal was established, the Bukoba District Land and Housing Tribunal decided to transfer the case to the Muleba District Land and Housing Tribunal and the typed record of proceedings shows that on 01<sup>st</sup> March, 2017 the order to transfer the case to Muleba District and Land Tribunal was made since the suit land is situated at Muleba District. The order was made in the presence of both parties and the Appellant did not object the transfer. Thereafter, both parties agreed to proceed with the earlier framed issues and the witnesses were called to testify. The Appellant's allegation that he was prejudiced has no merits since at the time of transfer he has already filed his written statement of defense and the Tribunal gave him right to cross



examine witnesses and to present his case. Thus, I find that the issue that the Tribunal had no jurisdiction to determine the application has no merits.

On the Appellant issue that the Respondent did not prove his existence, the ground is raised for the first time at this appeal. It was not raised during trial which means that there was no issue of existence of the Respondent before the Tribunal. The same was supposed to be raised at trial Tribunal so as to give the Respondent an opportunity to respond. The Appellant stated that he inherited the land in dispute from his father and he have been living there for almost 30 years. However, the evidence in record prove that the Appellant was living in Shinyanga and he returned to the village in 2001. In 2006 the dispute arose and the Respondent instituted the case before the Tribunal in 2012. This means that from the year the dispute arose it took only 6 years for the Respondent to institute the case at tribunal. Thus, the issue of Respondent existence and living in the suit land for 30 years has no merits.

In the petition of appeal, the Appellant in ground No. 4 alleged that the tribunal erred to declare the Respondent as a legal owner of the disputed land and he prayed for the order that the Appellant to vacate the land and to remove his offending structure. As it was stated by the Appellant, the Respondent in his application claimed for an order for the Appellant to vacate from his land and removing his offending structure. The prayer simply mean that the Appellant has

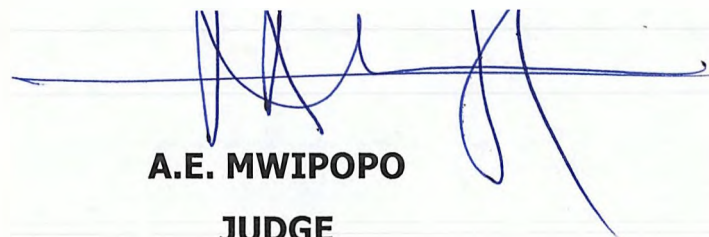
erected his structure in Respondent's land and the Respondent is praying for an order to remove him from the land. Thus, whether the prayer to be declared legal owner of the suit land was made by the Respondent or not the Tribunal has duty to determine the ownership of the land in dispute. In the end, the owner of the land has to be declared by the Tribunal before it made other consequential orders. Thus, this ground also has no merits.

The Appellant's last ground of appeal found in his petition of appeal is that the Respondent's pleadings did not disclose the cause of action as against him. I have thoroughly perused the record and read the Respondent's pleadings (Form No. 1) which stated in item No. 6 that the cause of action constituting the claim is that the Appellant has unlawfully invaded the Respondent's land, planted trees and erected structures therein without the consent of the owner. Thus, the cause of action was stated in the pleadings.

Further, the Respondent did not end to mention the cause of action, he proved by calling witnesses who proved that the Appellant encroached into the church land by removing mianzi tree which were boundary between the land owned by the Appellant and that of the Respondent. The facts that the mianzi trees were in the boundary between the land owned by the Appellant and the Respondent was supported by Appellant's witness namely Leticia Petro Lazaro – RW3 who in cross examination stated that mwanzi used to be boundary mark

separating Appellant's land and Respondent's land and that the same is no longer there. The Respondent proved that the remaining boundary mark is a rock which is still present and that the Appellant after removing the mianzi tree, he shifted the boundary and planted ebilamula tree as boundary. The Appellant argument that the rock and mianzi trees are not boundary trees according to the custom has no basis since the Respondent is religious institution and there is evidence in record to prove that the boundary was rock and mianzi trees. Thus, the issue that the Respondent's pleadings did not disclose the cause of action as against the Appellant has no merits.

Therefore, I find this appeal in its entirety is lacking merits and I hereby dismiss it with Cost.



**A.E. MWIPOPO**  
**JUDGE**

**12/11/2021**