

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 94 OF 2021

(Arising from Appeal No 199 of 2020 at the District Land and Housing Tribunal for Mara at Musoma and Original from case No. 24 of 2020 of Butuguri Ward Land and Tribunal)

JUMA MAGESA APPELLANT

VERSUS

WEGESA EDISONRESPONDENT

JUDGMENT

26TH & 26TH May, 2022

F. H. Mahimbali, J.:

The appellant in this case has been aggrieved by the decision of the District Land and Housing Tribunal of Mara at Musoma which reversed the decision of the trial Ward Tribunal. He has preferred three grounds of appeal namely.

- 1. That the trial tribunal erred in law and fact to issue the unfair judgment to appeal No 199 of 2021. Hence the judgment issued favour the respondent without a legal criterion.*
- 2. That the trial tribunal erred in law and fact after failed purposely to identified the Appellants Legal land*

documents which issued by the village government as an offer to disputed land.

3. That the trial Tribunal Erred in law for failed to Heed that land dispute Especially to ignore the Appellant's key witnesses. Witness No 1 Jackson Nyamhandi (Hamlet Leader) who represent the village government which offer the Appellant that dispute land.

On these grounds of appeal, he prays that the High Court to do the following in respect of this appeal.

- i) That the decision of Buguri Ward Tribunal (trial Tribunal) as fair and proper
- ii) To nullify the judgment/orders of the DLHT – Musoma as it is unfair.
- iii) To declare the appellant as lawful owner of the disputed land
- iv) Costs of the appeal
- v) Any other benefit as the High Court may deem fit to grant.

Originally, the appellant had successfully won a suit against the respondent at the trial Ward Tribunal in which the respondent sued for a claim of land against the respondent on a claim of land invasion. Dissatisfied with that decision, the respondent successfully challenged the said decision of the trial Ward tribunal to the Land and Housing Tribunal District. This is now the second appeal.

The main issue for determination is whether the appeal is merited. I have critically traversed the records in respect of this appeal. The following facts as per proceedings at the trial tribunal are vivid.

That the respondent is a widow who owned land together with her deceased husband. That upon the demise of her husband, the appellant at one time in the absence of the respondent, invaded the respondent's land and fraudulently involved the local leaders of the said village for them to recognize him as lawful owner of the whole land including the portion of land encroached to the respondent. The land was then demarcated and the appellant became the recognized owner by the village authority.

Upon knowing of that invasion/encroachment, the respondent unsuccessfully, challenged the ownership of the said land by the appellant at the trial tribunal. The trial tribunal on reliance of documentary evidence provided by the appellant from the village authority, ruled in favour of the appellant as lawful owner.

The District Land and Housing Tribunal (DLHT) at appellate level, upon digest of the whole evidence as adduced, was of the considered view that what the appellant did was encroaching the land of the respondent and legalised it by obtaining a certificate of recognition by

the Village Authority. As the move by the appellant to get recognition by the village Authority didn't involve the land neighbours, it considered the exercise as illegal and calculative move to dispossess the respondent's land. It then reversed the decision and declared the respondent as lawful owner to the extent of her encroached land.

On the basis of the testimony of Jackson Wambura Nyamhanga (SM2), it is evidently clear that the respondent has no colour of rights of claiming the said land. It is clear that the appellant's chain of possession of the said land is not rooted. That the land in question was originally owned by the parents of the respondent's husband. The relevant evidence of SM2 which was not challenged by the appellant goes this way, I quote:

" Eneo lililong'ang'aniwa sio lake ni la bibi yake Ghati Bugugu aliemzaa mama yake na mdaiwa na huyo mama waliempa eneo hilo ni Nyitembe Shinganye mama mkwe wake na madai pamoja na Marwa Magori ambae ni shemeji yake na mdai. Huyu bibi yake na Mdaiwa akitokea Lyamisanga na eneo la Mdaiwa la baba yake Magesa Maloto na yeye alitokea Ryamisanga akaja akaomba kwa Nyitembe Maburule Magori na mzee Wambura Wabare. Hapo ndipo Magesa alikuwa anaishi akiwa na mama yake na vijana wawili ndugu zake. Alipoomba eneo la kuishi na sehemu ndogo ya kulima ambapo ni Zaidi ya heka moja lakini sio

zaidi ya heka tatu, ndipo mama yake mdaiwa alipoolewa na Mzee Magesa akiwa ameachika katika ndoa ya kwanza. Wadogo zake walipo tawanyika, Mzee Magesa alibaki na Mke wake pamoja na mtoto ambae ndie mdaiwa. Baada ya Mzee kufariki, eneo hilo lilibaki la mdaiwa Juma Magesa. Hilo ndilo eneo lake. Eneo la pili hili analodai kwamba ni lake kama hakupewa na bibi yake basi hilo alivamia na kujiwekea mipaka ambayo sio halali"

The appellant on his part, on how he came into possession of the said land, testified:

" Mimi nilituma maombi kwenye kijiji baada ya kuwa eneo la bibi yangu likiwa wazi. Kijiji kikanijadili nikakubalika. Walitumia kamati kuja kinipatia eneo. Walipofika walipima bikoni zao, wakapima mti wa Hadson na mchongoma"

With this appellant's evidence, it is astonishing then why upon the demise of his grandmother, he decided to seek ownership of the said land through village authority so long as the said land belonged to his grandmother. He could only do that upon all probate proceedings in respect of the administration of his grandmother's estate has been commenced and concluded.

In that absence, he had no any justification. What is clear, his calculative move was unjustifiable.

In scaling the evidence of SM2 and the evidence of the appellant himself on how he came into possession of the said land, it is more dubious. It is dubious because the said land was not allocated to him by the village authority as claimed as there was no any such application. What he did was to legalise his possession, the process that was not done honestly and properly. As per facts of this case, it was not proper for the appellant to claim possession of that land which partly belonged to his grandmother and the respondent. As he was not the owner of the said land but his grandmother, it was then wrong/not proper for him to commence allocation process of the said land without involving the neighbours including the respondent.

That said and considered, I am of the considered view that the appellant had no legal justification to seek demarcation and recognition of that land from the village authority in the absence of his neighbours as it was not the land under village control but the respondent and other persons. Village authority can only grant ownership of land to any applicant in respect of land under its full control but not otherwise. In the circumstances of this case, the demarcation process by village authority would have only been justified had it involved the neighbours of the suit land. As it was not done, the demarcation process was

unjustified and unlawful. On that basis this appeal fails. It is dismissed in its entirety. In its place I order the following:

- The purported allocation of the said land to the appellant by the village authority is unjustified.
- The respondent is the rightful owner to the portion of land encroached and allocated to the appellant.
- As the respondent has not entered appearance for the prosecution of this appeal, no costs are ordered.

It is so ordered.

DATED at MUSOMA this 26th day of May, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 26th day of May, 2022 in the presence of the appellant, Mr. Gidion Mugo, RMA and respondent being absent.

F. H. Mahimbali

JUDGE

26/05/2022