

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 128 OF 2021

(Arising from Application No 24 of 2019 in the District Land

and Housing Tribunal for Mara at Musoma

SAMAGA KATETI APPELLANT

(Administrator of the estate of the Onjiri Nyamiri)

VERSUS

EDWARD GAVANA RESPONDENT

JUDGMENT

25th & 31st May, 2022

F. H. Mahimbali, J.:

This appeal traces its etymology from the decision and orders of the District Land and Housing Tribunal sitting at Musoma in which the appellant being administrator of the estate of the late Onjiri Kateti Nyamari claimed that the respondent was interfering with his pieces of land but lost in favour of the respondent.

The historical background to the dispute as per the appellant's story is that in 1987 the respondent was welcomed by the appellant's family (PW2) to use the said land temporarily. The respondent then cultivated the said land but in 2013 started complaining that the appellant was interfering with his land. On the other hand the

respondent's version of the ownership of the land is that he was allocated the said land by Masaba Village Council (now known as Nyaisori Village Council) in the year 1987. So he claims to be the owner of the said land.

This situation of claim of the said land by parties led to the land dispute in the trial Tribunal which heard the matter and finally declared the respondent, rightful owner of the suit land. The appellant was aggrieved and he filed the present appeal.

In fact, this is now the second time this court deals with this appeal. In the first appeal, this court it was ordered that the proceedings of the trial tribunal were nullity for being adjudicated by assessors who didn't hear the suit dispute. Thus, it was ordered trial de novo before another chairperson sitting with new set of assessors and that there be a strict compliance to the applicable laws in place. That was in May, 2020.

The subsequent proceedings then commenced in August, 2020 and got finalised in November 2021. Again the appellant lost the suit, now this present appeal based on three grounds of appeal namely:

1. That the trial tribunal erred in law and fact for giving judgment in favour of the respondent by relying on a document (D-1) which was drawn by the Planning, Finance and Economy Committee which had no mandate to allocate village land to the respondent.
2. That trial tribunal erred in law and fact for failure to consider that the respondent and his witnesses adduced evidence that they do not know even the size of land which was allocated to the respondent but it was just mere big forest.
3. That the trial tribunal erred in law and fact for failure to consider that all the procedures which are required to be followed before anybody to be allocated a village land were not met by the respondent.

During the hearing of the said appeal, the appellant was duly represented by Mr. Mdimi Thomas Ilanga advocate whereas the respondent defended for himself.

In arguing the appeal, Mr. Mdimi learned advocate, jointly argued the first and third grounds of appeal. He submitted that the procedure of acquiring village land pursuant to section 8 (5) of the village Land Act, was not complied with for the respondent to own that land as alleged. On the second ground of appeal he submitted that neither the

respondent nor his witnesses knew the size of land which was allocated to the respondent. That was then improper as per law to declare such a person the owner of land he doesn't know his size. The respondent on the other hand resisted the appeal.

Reacting on the first and third grounds of appeal, the respondent submitted that, before the enactment of the current legal regime in the administration of land in 1999, there were legal regimes in place and that they had full mandate of allocating land as done.

On the size of land he owned, he submitted that it was 16 acres of land. He thus prayed that the appeal be dismissed with costs for want of any merit.

I have gone through the evidence in record, the appeal grounds and submissions thereof, the vital question to ask is whether the appeal is merited.

It is the legal cardinal principle that who alleges must proof (see section 110 and 111 of TEA).

This being a specie of Civil dispute, the standard of proof is that of balance of probability. The one with heavier and superior sound

evidence, is the one who must win. This being a land dispute, I am interested to know whether there is proof of ownership.

In the current matter this being the first appellate court is fully mandated to step into shoes of the trial court and re-evaluate evidence.

Considering the appellant's evidence at the trial tribunal, it is that he claims ownership of the said land through probate title. That their father owned virgin land from 1954. The short of that evidence is proof of that assertion. No one proved that their father who owned the said land, started occupying it from 1954 as alleged. The argument that the respondent was just welcomed there in 1987 temporarily by PW2 (brother of the appellant) lacks merit and truth. If by 1987 the owner of the said land was their father (who was still alive by then) how came that PW2 welcomed the respondent to use the said land? First he had no title to do that if he actually did. Secondly, there is no cogent evidence to support the assertion. On the other hand, the respondent's story is convincing. Though the said exhibits may not be legally authoritative but there is evidence that by 1987 the local authority recognized him as occupier and user of that land which is now part of the suit land. I grade him to have a superior title in comparison than the appellant as propagated.

On the second ground of appeal, the record speaks vast that the respondent's land measures 16 acres whereas the appellant alleged 8 acres. There is further undisputed evidence that PW2 borders part of the undisputed land with the respondent. This evidence supported the assertion that the respondent was also owning land prior to the alleged invitation as propagated.

That said and in totality of the whole evidence in record, the appellant's claims are unestablished. The appeal is thus dismissed with costs. The findings and orders of the trial tribunal are hereby affirmed and upheld. The respondent is re-affirmed being the rightful owner of the alleged suit land by the appellant.

I so find and ordered.



DATED at MUSOMA this 31st May 2022

F. H. Mahimbali

Judge

Court: Judgment delivered this 31st day of May, 2022 in the presence of both parties and Mr. Gidion Mugo.

F. H. Mahimbali

Judge

31/5/2022