

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

(PC) CIVIL APPEAL CASE No. 29 OF 2021

*(Arising from the District Court of Musoma at Musoma in Civil Appeal No. 18
of 2021 Originating from Mugango Primary Court in Civil Case No. 6 of 2021)*

JIRABI RUHUMBIKA BISEKO APPELLANT

Versus

KIRIGINI SAOKE RESPONDENT

JUDGMENT

16.06.2022 & 06.07.2022

Mtulya, J.:

A bulky case file was brought in this court on 16th June 2022 containing three (3) case files attached with several resolved disputes starting from civil clashes, land disputes to criminal cases in judgments, rulings and orders of subordinates courts and land tribunals. At one point in time, during resolving one of the disputes between **Mr. Jirabi Ruhumbika Biseko** (the appellant) and **Mr. Kirigini Saoke** (the respondent), the resolving forum was confused as to whether the dispute before it was a normal civil suit or land dispute hence be filed in an appropriate forum entrusted with such specific mandate to resolve the matter.

Similarly, the parties themselves are lay persons unaware of what exactly is locking their horns from 2009 to date. At one point their differences were resolved by this court sitting in Mwanza.

However, that was not the end of the story. Early last year, a fresh dispute was initiated at the **Primary Court of Mugango at Mugango** (the primary court) in **Civil Case No. 6 of 2021** (the case) and took all the procedures to this court in **(PC) Civil Appeal Case No. 6 of 2021** (the appeal) via the **District Court of Musoma at Musoma** (the district court) in **Civil Appeal No. 18 of 2021** (the civil appeal).

In the appeal, the parties are at fierce contest propelling arsenals to each other. They are asking this court to reply an issue: *whether illegally harvested trees and crops in appellant's land by the respondent can be compensated by the respondent*. Glancing at the issue, as such, a reply is obvious that: *illegally harvested trees and crops in the appellant's land by the respondent can be compensated by the respondent*. However, in the present appeal, a reply to the issue does not, as such, resolve the real dispute of the parties. The question which may resolve the matter is: *whether the dispute between the parties is land or civil*. I will expound the matter for purposes of easy appreciation of the dispute between the parties and what exactly has brought them in this court.

On 9th February 2021, the appellant approached the primary court and filed the case complaining against the respondent that:

Kwamba mnamo tarehe 03/02/2021, Mdaiwa aliingia shambani kwangu na kuharibu mazao yangu ambayo ni mihogo na kukata miti yenye thamani ya 1,280,000/=.
Hivyo, naomba Mahakama inisaidie kulipwa deni hilo na gharama za usumbufu.

After full hearing of the case, on 27th April 2021, the primary court delivered its decision against the appellant and reasoned at page 3 of the decision that:

Baada ya kupitia ushahidi wa pande zote mbili, ushahidi uliopo mahakamani pamoja na vielelezo vilivyotolewa na upande wa mdaiwa vinaonyesha kuwa ardhi ambayo ilikuwa na miti pamoja na mihogo ni mali ya mama wa mdaiwa ambaye katika shauri hili hakuhusika na lolote.
Hivyo, japokuwa mdai naye aliambia mahakama hii kwamba ardhi ni mali yake, hana vielelezo vya umiliki na hakuweza kuvitoa mahakamani. Mahakama hii imeona kiini cha shauri hili kimejikita zaidi katika mgogoro wa ardhi ambao kisheria mahakama hii haina uwezo wa kusuluhisha mashauri yanayohusu ubishani juu ya umiliki wa ardhi.

Finally, the primary court offered an advice at page 4 of its judgment that:

...mdai kama [anaona] ana haki katika shamba hilo basi ni vyema kwenda katika mamlaka ambazo zinahusika na usuluhishi wa ardhi ambapo akiweza kuthibitisha [madai] yake, shauri hili lingeweza kupatiwa suluhu.

This reasoning of the primary court and its associated advice aggrieved the appellant hence approached the district court and filed the civil appeal to dispute the reasoning of the primary court. The district court after full hearing of the civil appeal, it dismissed the appeal without costs. The reasoning of the district court is found at page 4 of the judgment that:

...there is no strong evidence that proves the destroyed properties belongs to [the appellant]. The appellant had a duty of proving to the court on how he managed to cultivate the land which does not belong to him and without consent of the owner of the land.

This reasoning did not satisfy the appellant hence approached this court and filed the appeal with two (2) reasons to protest the decision of the district court, which in brief are: first, the lower courts erred in law in stating the dispute is a land matter; and second, the land in dispute was improved by the appellant hence entitled to compensation. When the appellant was summoned to appear in this court on 16th June 2022 to clarify his grounds of

appeal, he was very brief. He submitted that the complaint is on compensation of unexhausted improvement of cassava and other trees which were on his land, and not in the respondent's land. In reply of the appellant's submission, the respondent contended that the land in dispute belongs to Mama Petronira Mtani who owned it since 1974 when she was allocated by Kwikuba Village Council. According to the respondent, the appellant had a small land sized 40 x 50 meters next to Mzee Malegeri Kisija. The Respondent further stated that the appellant had trespassed part of Mzee Malegeri Kisija and Mama Petronira's lands hence was sued in **Mugango Ward Tribunal** (the ward tribunal) in **Land Dispute No. 8 of 2009** (the dispute) by Mama Petronira Mtani and the matter was resolved in favour of Mama Petronira Mtani.

This court noting there is a decision on the dispute resolved by the ward tribunal to the execution stage in the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) resolved in **Misc. Application No. 186 of 2016** (the execution application), and noting the record is silent on instrument constituting the appointment of the respondent as an administrator of the estates of his deceased mother, Petronira Mtani, commonly known *Form Number Four* (FOMU YA USIMAMIZI WA MIRATHI),

this court invited the parties to cherish the right to be heard in explaining the confusions in the record.

The appellant, as usual, had a very brief submission contending that he came to this court to claim compensation of his properties cassava and other trees uprooted by the defendant and registered the appeal to protest against the decision of the district court in the civil appeal. According to the appellant, he cannot be questioned on previous decisions of the ward and district land tribunals. On his part the respondent argued that the land in dispute belonged to Mama Petronira Mtani who had expired and left the same to her five children, four (4) men and one (1) woman, including himself. In replying the issue of *locus standi*, the respondent submitted that he holds a power of attorney, representing all other family members.

From the record, it is obvious that the claim of the appellant cannot be established or granted unless the land issue is resolved to the finality and the status of the land owned by Mama Petronira Mtani is certain and settled. I glanced the record of the primary court in the proceedings conducted on 2nd March 2021, as depicted at page 4 of the typed proceedings, and found the appellant testifying that:

nasema shamba ulilokata na kuharibu miti na mazao ni mali yangu. Ninazo nakala za hukumu zinazoonyesha kuwa ni shamba ni mali yangu.

Similarly, the respondent was quoted by the primary court to have stated, at page 11 & 13 of the typed proceedings conducted on 15th April 2021, that:

Shamba hilo ni letu ambalo mama alinunua kutoka kwa Mzee Mafuru Nyamsumuri...miti iko kwenye eneo langu. Mdai alikuwa anaingia kwa nguvu. Miti ilipandwa na Mzee Nyamsumuri Mafuru.

It is obvious from the record that the parties are disputing on land ownership and their dispute cannot be resolved in primary court seating as civil court. The judgments and guidance pronounced by the primary court on 27th April 2021 and district court on 18th August 2021 were proper and this court shall support the move. It is unfortunate that the present case has several ups and downs associated with confusions and muddles on several uncertainties moving from the issue of *locus stand* in land disputes, enforcement of previous decisions in land matters to the need of proper parties in land disputes, which, in any case, cannot be resolved by civil court.

All disputes which invite determination of a rightful owner of the land and its associated attachments or compensation of the same, must be filed and resolved by appropriate land machinery entrusted in resolving land disputes (see: section 13 & 16 of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] section 62 (2) (a)-(e) of the **Village Land Act** [Cap 114 R.E 2019] (the Village Land Act) and section 167 (1) (a)-(e) of the **Land Act** [Cap 113 R.E 2019] (the Land Act).

Until when land disputes are resolved according to the law regulating land matters in an appropriate forum, the appellant cannot succeed in compensation through civil court. The decisions of lower courts are hereby upheld and this appeal is dismissed for want of jurisdiction of proper forum in resolving land matters. Costs are awarded to the respondent as the appellant had sued a wrong party and cherished forum shopping which amounts to abuse of court process (see: **Commissioner General, Tanzania Revenue Authority & Another v. Milambo Limited**, Civil Appeal No. 62 of 2022).

This is a court of record and must ensure proper application of the laws (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017; and **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case

Appeal No. 12 of 2021; and **Joseph Siagi Singwe v. Boniphace Marwa Wang'anyi**, Misc. Land Appeal Case No. 111 of 2021). It can cannot close its eyes in vivid breach of the requirement of the laws regulating land matters.

Ordered accordingly.

Right of appeal duly explained to the parties.



F. H. Mtulya

Judge

06.07.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Jirabi Ruhumbika Biseko and in the presence of the respondent, Mr. Kirigini Saoke

F. H. Mtulya

Judge

06.07.2022