

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APEPAL NO 106 OF 2021

(Originating from Application No 09 of 2019 of District Land and

Housing Tribunal for Tarime at Tarime)

IBRAHIM WAMBURA MAHENDE APPELLANT

VERSUS

RAYMOND FRANCIS MAGITA RESPONDENT

JUDGMENT

30th March & 2nd May, 2022

F. H. MAHIMBALI, J.:

The appellant Ibrahim Wambura Mahende in his original Land Application No 9 of 2019 before the District Land and Housing Tribunal of Tarime, sued the respondent claiming for the following reliefs amongst other namely:

- 1) An order that the Applicant is the legal and lawful of the disputed land.

- 2) A permanent injunction be issued against the respondent and his agents from trespassing the disputed land.
- 3) The said claims were disputed by the respondent
- 4) In proof of the said claims by the appellant against the respondent, four witnesses testified for the appellant and so is for the respondent's case.

Upon hearing of the said suit, the DLHT gave judgment for the respondent that he invaded then respondent's land measuring 30 paces from the boarded zone.

The appellant has not been amused by the DLHT's findings thus this appeal, armed up with a total of four grounds of appeal. In digest of the same as all grounds of appeal revolve into the issue of fact, can be condensed into one main ground as who between the two is the rightful owner of the area of the land.

In reaching that end I will revisit the evidence in record.

According to the evidence in record, it is undisputed that the two parties boarder the said land in dispute. In a digest to the appellant's evidence, it is clear that the land in dispute is only 30 paces. Whereas the appellant claims that the disputed 30 paces as belonging to him and

that the respondent has protruded to it. On the other hand the respondent counters the argument and testified that the disputed land is his and that the purported producing is unjustified but was the appellant's own invasion to that plot by secretly planting some trees allegedly to encroach the respondent's land

In digest of the evidence by both sides it is convincing that the purported encroached land which is 30 paces size in balance of convenience dwells to the respondent. I say so basing on the available evidence in record on the etymology of the said land. The respondent's father (DW2) told the DLHT in his testimony that he has been using the disputed land since 1953. In 1984, he gave that land to the respondent who is his son. He gave him for farming purposes. In 2014, the said DW3 divided the said land to his children. He described the disputed land as bordering with the applicant's grandfather. Their land was separated by Mriba tree. It was astonishing that in 2016, the appellant brought WEO to separate the way between him and the respondent, the exercise he did without involving him or the respondent. There after the appellant secretly planted trees in the forest within the respondent's land. This testimony is corroborated by the testimony of DW4 who testified that the appellant's land has title deed and measures 280

paces. But when measured at the visit in locus in quo his land measured 310, suggesting excess/encroachment by 30 paces.

The appellant on the other side, claims possession of the said land dating from 2004. He admits bordering with the respondent. However, he does not state how he came into possession of the said land in 2004 until when he got the title deed. Was it by inheritance, sale or grant. He being 55 years in 2020, suggests that he was born in 1965. He stated in his testimony that in the said land, there is a grave of his fathers grandmother who died in 1956. He thus claims that the respondent encroached the said land. He wants the original boundaries to be respected.

What can be gathered from the testimony of PW1 and his witnesses (PW2 and PW3) is the fact that there was allocation of land to the appellant in 2004. Though it is not clear when allocating the said land to him whether it was by purchase, inheritance or grant. I say so, because in Tanzania, one can acquire land by sale, inheritance, grant or invasion (adverse possession). Apart from these modes, none can acquire land. Those authoring land by grant of certificates normally trace possession of land from these modes.

In the current case, though PW2 and PW3 were involved into the said allocating land to PW1, have not stated who was the original owner of the said land. Otherwise it is doubtful if the procedure of allocating village (if it was virgin) complied with the provision of sections 22 and 23 of the village land Act which vests the Village General Assembly as the authorising authority in allocating village land after an application before the village council.

In my digest of the evidence in record, it is clear that the respondents evidence is weightier than the appellant. Those who purported to take part in the said allocation of the said piece of land to him, did not properly involve the real neighbours. Thus, the purported boundaries put/erected, rightly protruded into the land of the respondent to the total of 30 paces.

Therefore, as per verification done during the visit at the locus in quo as per page of the 25-26 of the typed proceedings (dated 23/08/2021) it is clear that the encroached land belonged to the respondent at excess of 280 paces. The argument that the steps of the verifying person were shorter than that of the original person in my considered view does not hold and is unverified. I am of the considered view that as the original demarcating tree (point) was found

to be at 280 paces , then it is true that the appellant encroached the respondent's land. the argument that the steps of the verifying the steps of the verifying officer were shorter than that of the original owner is uncalled for and unjustified in the circumstances this case, where there is a spitted demarcated tree near Mwiba tree.

That said the appeal is dismissed with costs. Each party to bear own costs.

DATED at MUSOMA this 2nd day of May, 2022.



F.H. Mahimbali

JUDGE