

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 30 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at
Tarime in Land Appeal No. 65 of 2021 Originating from Kitembe
Ward Tribunal in Land Dispute No. 9 of 2019)*

MUSA OCHIENG APPELLANT

Versus

ODHIAMBO OGILA RESPONDENT

JUDGMENT

16.08.2022 & 16.08.2022

Mtulya, J.:

A dispute arose during the proceedings in the **Kitembe Ward Tribunal** (the ward tribunal) in **Land Dispute No. 9 of 2019** (the dispute) as to whether: *the ward tribunal had the pecuniary jurisdiction to entertain the dispute*. According to Mr. Musa Ochieng (the appellant), the dispute concerns a land sized 7.5 acres that can be resolved by the ward tribunal, whereas Mr. Odhiambo Ogila (the respondent) says the land in dispute is sized more than thirty (30) acres and the tribunal has no mandate to determine the matter.

In order to resolve the matter in terms of the complained size the ward tribunal visited *locus in quo* on 22nd April 2020 to

have a glance at the disputed land and found that the land in dispute is estimated at 25 acres. Finally, the tribunal resolved that:

...[kuhusu] thamani ya ardhi hii yenye mgogoro, Baraza hili limetoa hukumu kuwa shauri hili lifunguliwe katika Baraza la Ardhi na Nyumba la Wilaya.

This decision dissatisfied the appellant hence preferred **Land Appeal Case No. 65 of 2021** (the appeal) before the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal), which nullified the proceedings of the ward tribunal in the dispute and ordered, at page 4 of the decision, that:

Namuelekeza mrufani, kama bado ana nia ya kudai ardhi hiyo yenye mgogoro afungue shauri lake upya kwa mujibu wa sheria.

The decision of the district tribunal aggrieved the appellant hence lodged a second appeal in this court, registered as **Misc. Land Appeal Case No. 114 of 2021**, (Misc. appeal) praying for nullification of the proceedings of the first appellate tribunal and declare the appellant as a legal owner of the disputed land. When the Misc. appeal was scheduled today for hearing, this court noted the dispute was not resolved to the finality of the

matter to declare the rightful owner of the land. Again, the court was well aware on the enactment of section 45 of the **Written Laws (Miscellaneous Amendment) (No.3) Act, No. 5 of 2021** (the Amending Act) which amended section 13(2) and 16(1) of the **Land Disputes Courts Act** [Cap. 216. R.E 2019] (the Act) which stripped off powers of the ward tribunals in hearing and determining land disputes, which, as such, renders the present dispute to have been overtaken by event. Similarly, there is a precedent of **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021, in place which requires a display on exact land size, demarcations, location and value.

The parties were consulted on the subjects to cherish the right to be heard, and the appellant had decided to invite legal services of Mr. Emmanuel Werema, learned counsel, whereas the respondent appeared in person, without any legal representation. According to Mr. Werema, the ward tribunal had legal mandate to resolve the dispute but declined to do so and following the new enactment in section 45 of the Amending Act, it is impossible for the ward tribunal, as of current, to hear and determine the dispute.

On the available remedies, Mr. Werema contended that the proceedings of the lower tribunals may be nullified for the parties to prefer current enactment of the law. However, Mr. Werema pressed for costs of the suit contending that one of his prayers in the petition of the Misc. appeal is related to nullification of the proceedings.

This submission was not received well on the respondent's side, who argued that the ward tribunal had decided the matter to its finality. To substantiate his argument, the respondent stated that it was the appellant who was busy appealing against the respondent. In his opinion, the appellant cannot be awarded costs as he was the one who disturbed the respondent to appear in courts instead of concentrating in economic developments. However, the respondent stated that he has no problem with the nullification of the proceedings and decisions of the lower tribunals in favour of the current laws regulating land matters.

I think, in my considered opinion, this dispute has been overtaken by event as the parties were contesting on the mandate of the ward tribunal in determining land disputes, the power which is no longer in existence after the enactment of section 45 of the Amending Act. I need not be detained on the

subject as even the land size and value is not exactly known. Following that enactment and decision of this court in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra), it is obvious that this court cannot resolve the issue whether the ward tribunal had mandate to hear and determine the dispute. As of current, and for need of proper application of the laws, the appropriate course is to prefer the new enactment in section 45 of the Amending Act.

I have therefore decided to nullify the proceedings and decisions of the lower tribunals for want of proper application of section 45 of the Amending Act and precedent in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra). I am aware that Mr. Werema pressed for costs as he so claimed that one of his prayers in the petition of appeal is nullification of proceedings and decision of the lower tribunals.

However, this dispute has not reached its finality in substance to identify a wrongdoer. It will be inappropriate to order costs in a situation where the law has taken its course and the dispute has yet to be resolved to its finality on merit. Any interested party in the dispute is at liberty to prefer fresh and

proper land suit in an appropriate machinery in accordance to the current laws regulating land disputes.

It is so ordered.



A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the left.

F. H. Mtulya

Judge

16.08.2022

This judgment was pronounced in the presence of the Mr. Emmanuel Werema, learned counsel for the appellant and in the presence of the respondent, Mr. Odhiambo Ogila.

A blue ink signature of F. H. Mtulya, written in a cursive style with a long horizontal stroke extending to the left.

F. H. Mtulya

Judge

16.08.2022