

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. LAND APPEAL CASE NO. 20 OF 2022

(Arising from Judgment of the District Land and Housing Tribunal for Dodoma at Dodoma, Land Appeal Case No. 173 of 2019 dated 4/3/2022, original from Mwitikira Ward Tribunal in Land Case No. 01 of 2019)

PATRICK MASIMA..... APPELLANT

VERSUS

BEZALELI MSIGALA RESPONDENT

1/8/2022 & 19/8/2022

JUDGMENT

MASAJU, J

The Respondent, Bezaleli Msigala, successfully sued the Appellant Patrick Masima in the Mwitikira Ward Tribunal at Bahi, Dodoma for trespass. Aggrieved with the decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal for Dodoma at Dodoma hence the appeal in the Court.

The Appellant's Petition of Appeal is made up of four grounds of appeal thus;

"1. That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent without considering that the Ward Tribunal was not properly composed during hearing and in decision of the case.

2. *That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent without considering that the land in dispute is legally owned by the Appellant.*
3. *That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent while disregarding the strong and supportive evidence testified by the Appellant and his witnesses.*
4. *That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent basing on weak, wrong adduced by him and his witnesses.*

WHEREFORE, the Appellant prays for this Honourable Court to allow this appeal with costs."

When the appeal was heard in the Court on the 1st day of August, 2022 both laymen parties appeared in person. The Appellant prayed to adopt his Petition of Appeal to form his submissions in support of the appeal in the Court and allow the appeal with costs.

The Respondent contested the appeal by submitting that, he lived with the Appellant although he was not his biological son. That, even his mother was buried in the land. That, the dispute is about the boundaries of the suitland. That, the Appellant has been trespassing on his land.

In rejoinder, the Appellant submitted that he has been using the land after the death of Mr. Mwaluko Matonya who was the owner of the suit land. That, the problem is that, the Respondent sold part of the land to another person, hence the dispute. The Appellant prayed the Court to allow the appeal with costs.

That is what was shared by the parties in support, of and against the appeal in the Court.

The dispute in the instant case is about the boundaries of the suitland between the parties. The Respondent alleging the Appellant to have trespassed to his land. In the trial Tribunal the Respondent and his witnesses managed to prove how Appellant had trespassed by cultivating vegetables to the Respondent's land. Even William William, the Hamlet Chairman testified in the trial Tribunal to that effect.

The Appellant and his witnesses' evidence was that the dispute was about ownership of the whole suitland contrary to what was claimed by the Respondent in the trial court, that is trespass to a part of the suitland/boundaries.

The village leaders, Aksa Manesa, ten cell leader and William William, Hamlet Chairman both testified on the Respondent's side acknowledging the Appellant to have crossed his boundaries to the Respondent's side. They added that, they had once dissolved the dispute by setting the boundaries between the parties who both agreed to respect their boundaries. This fact was also conceded by Bedisoni Mwaluko Matonya, one of the Appellant's witness who is the son of the late Matonya Mwaluko who once owned the land before his passing on leading to the Appellant inheriting the suitland. The witness even wondered in his testimony why the dispute had once again arose since it had been settled by clearly setting the boundaries.

As regards the 1st ground of appeal that the Coram of the trial Tribunal was not in accordance with section 14 of the Land Disputes Courts Act [Cap 216] since four members sat to entertain the dispute as required by the law instead of three members provided for in law. It is true. Nevertheless, the said inadvertent error did not occasion failure of substantial justice, hence the error cured under section 45 of the Land Disputes Courts Act, [Cap 216] in the interest substantial justice.

That said, the Court is of the considered position that, the trial Tribunal rightly decided the parties to respect the boundaries set by the village Authority since they both agreed on it bearing in mind that the trial Tribunal visited the "*locus in quo*" and thus was well informed of the dispute as the Court of first instance.

The appeal is hereby dismissed for want of merit. The parties shall bear their own costs.




GEORGE M. MASAJU

JUDGE

19/8/2022