

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

CONSOLIDATED MISC. LAND APPEALS NO. 128 AND 129 OF 2021

BETWEEN

JOHN MGENDI NG'OMBE APPELLANT

VERSUS

GWESAME NG'ONGO RESPONDENT

JUDGMENT

A. A. MBAGWA J.

This judgment encompasses Misc. Land Appeals No. 128 and 129 of 2021 in which the parties are the same.

The material facts of the matter may, in a nutshell, be summarized as follows;

The appellant, John Mugendi Ng'ombe lodged a complaint in the Ward Tribunal for Busegwe claiming that the respondent had trespassed into his land. It was his evidence that the land in dispute is the property of his late grandfather one Ng'ombe Kenyeka. The appellant stated that the respondent's father one Ng'ongo Mziza was just rented the land for cultivation but it remained the property of Ng'ombe Kenyeka. The appellant

further called Lameck Masindike whose evidence however had nothing to support his claims of ownership.

In rebuttal, the respondent Gwesame Ng'ongo refuted the appellant's claims. He stated that he inherited the disputed land from his late father one Ng'ongo Mziza. Gwesame said that he started using the land with his father since 1974 and after his father's death he continued using the land. He also called Pilly Gwesame who testified that she married to the respondent in 1986 and that she found the respondent and his father using the land. In addition, the respondent brought his second wife Zawadi Mazira Mugendi who told the Tribunal that when she got married to Gwesame in 2005, she found him using the suit premises.

After hearing the evidence and the visit at the locus in quo, members of the Ward Tribunal were opined differently. Dotto Mutubo found the respondent Gwesame Ng'ongo a lawful owner of the suit land whilst Phinias Mapesa and Bernard T. Kisika were of the views that the appellant John Mugendi Ng'ongo was the rightful owner of the suit premises. However, in a very unusual way, the Ward Tribunal Chairman one Bitu Sakara composed a judgment which did not take into account the opinions of other assessors. In his decision, the Chairman decided to apportion the suit land among the parties. Both parties

were aggrieved by the decision hence they separately appealed to the District Land and Housing Tribunal. John Mugendi Ng'ombe appealed to the District Land and Housing Tribunal via Land Appeal No. 195 of 2020 whilst the respondent Gwesame Ng'ongo appealed to the same Tribunal via Land Appeal No. 174 of 2020. Though the Tribunal chairman did not consolidate the two appeals, he prepared a single judgment in Land Appeal No. 174 of 2020 which he said that it caters the Land Appeal No. 195 of 2020.

In his judgment, the Chairman of the District Land and Housing Tribunal held that the appellant John Mugendi Ng'ombe had no locus stand to institute the suit in that he claimed that the land belongs to his late grand-father one Ng'ombe Kenyeka but he had no letter of appointment for administration of the estates of the late Ng'ombe Kenyeka. Consequently, he nullified the proceedings and quashed the decision of the Ward Tribunal for Busegwe. In addition, the DLHT authorized the respondent to continue using the suit land until when it is decided otherwise.

Again, the appellant was not amused with the judgment of the appellate Tribunal hence he appealed to this court. The appellant filed two separate appeals to wit, Misc. Land Appeals No. 128 of 2021 arising from Land Appeal No. 195 of 2020 and Misc. Land Appeal No. 129 of 2021 arising from Land

Appeal No. 174 of 2020. It is against this backdrop, the two appeals were consolidated.

At the hearing of this appeal, the appellant was represented by Emmanuel Gervas, learned advocate whilst the respondent stood on his own.

Mr. Emmanuel Gervas was very brief and focused. He said that the proceedings and judgment of the Ward Tribunal were a nullity in that the Chairman composed a judgment instead of giving his opinion like other members. Further, Mr. Emmanuel Gervas lamented that having found that the appellant John Mugendi Ng'ombe had no locus stand, the District Land and Housing Tribunal had no powers to authorize the respondent to use the land in dispute.

The respondent, being a lay person, had little to comment on the issues raised by the appellant's counsel. He simply concurred with the appellant's counsel that the proceedings in the trial Ward Tribunal were a nullity.

I have keenly scanned the record, grounds of appeal along with the submissions by the parties and it is my considered opinion that the issue of locus stand is sufficient to dispose of this appeal. It is common cause throughout the evidence that the appellant told the trial Tribunal that the

disputed land belonged to his grandfather, the late Ng'ombe Kenyeka. Connotatively, the appellant through his evidence told the trial Tribunal that he is not the owner of the suit premises. Ordinarily, the appellant was expected to establish his direct interest in the suit land by producing a letter of appointment as administrator of the estates of the late Ng'ombe Kenyeka but no such evidence was adduced. Since this was not done, it goes without saying that the appellant had no locus standi and therefore the proceedings instituted by him were incompetent before the Tribunal hence a nullity. See the case of **Omary Yusuph (Legal representative of the late Yusuph Haji) vs Alberto Munuo**, Civil Appeal No. 12 of 2018, CAT at Dar Es Salaam.

Much as the proceedings before the trial Ward Tribunal were a nullity, it necessarily follows that the subsequent proceedings and judgment in the District Land and Housing Tribunal were also nullity for emanating from nullity proceedings.

In the event, I find merits in this appeal. As such, I nullify the proceedings, quash and set aside the decisions of the District Land and Housing Tribunal as well as those in the Ward Tribunal for Busegwe. Any party who is still interested to pursue the matter is at liberty to institute the case afresh before

the competent tribunal subject to the requirement of laws. Each party should bear its own costs.

It is so ordered

The right of appeal is explained.




A. A. Mbagwa

JUDGE

20/09/2022