

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 63 OF 2021

*(Arising from the decision of the District Land and Housing Tribunal for Tarime
at Tarime in Land Appeal No. 108 of 2021)*

BETWEEN

MARWA MTATIRO NYAGACHA APPELLANT

VERSUS

MENG'ANYI MASUBO MANG'ERA RESPONDENT

JUDGMENT

A.A. MBAGWA, J.

This appeal stems from the decision of the District Land and Housing Tribunal for Tarime (the DLHT) sitting as the first appellate tribunal in Land Appeal No. 108 of 2021. The original case (Land Application No. 4 of 2020) was filed by the appellant before the Ward Tribunal for Kiore within Tarime district. The appellant alleged that the respondent encroached on his piece of land. He stated before the trial Tribunal that, he and his family have been living in the disputed land since 1965 while the respondent's family moved in 1975. The appellant's claim was supported by three witnesses namely; Ernest Nyagwisi Nyabohe, Weisiko Nyansoho Maswi and Elius Marwa Mtatiro.

On the contrary, the respondent refuted the appellant's claim. He stated that the disputed land belongs to his late father since 1974. The respondent contended that he came into possession of the land through inheritance after his father passed away in 2016. His evidence was supported by Emilian Gutwa Masubo and Mgesi Masubo Mang'era.

In the final analysis, the trial Ward Tribunal decided in favour of the respondent and declared him the lawful owner of the disputed land.

The appellant was dissatisfied with the decision of the trial Ward Tribunal hence he appealed against it before the DLHT in Land Appeal No. 108 of 2021. As bad luck would have it, the appellant lost again as the DLHT upheld the Ward Tribunal decision and accordingly dismissed the appeal.

Still determined to obtain the results of his desire, the appellant lodged this second appeal with two grounds to challenge the decision of the DLHT. The grounds are;

1. That, the learned Appellate Tribunal Chairman erred in law by holding that the respondent has been in occupation of the suit land since 1974 while at that particular time the respondent was a minor with only six years of age.
2. That, the learned Trial Tribunal and the learned Appellate Tribunal Chairman erred in law by not adhering to the court annexed

mediation as the requirement of the law before conducting any hearing of civil nature.

During the hearing of the appeal, both parties were unrepresented. As both parties are laymen, they did not have much to submit.

The appellant only prayed the court to consider his grounds of appeal and consequently allow the appeal. Conversely, the respondent resisted the appeal and supported the decision of the two lower Tribunals. He added that the appellant raised the dispute after the death of the respondent's father.

Upon hearing of the parties' submissions and having scanned the grounds of appeal and the record, the issue for determination is whether the appeal is meritorious.

Starting with the 2nd ground of appeal, it is the primary function of the Ward Tribunal to secure peace and harmony in the area for which it is established. Mediation is one of the methods insisted by law to be used in assisting parties to the dispute to arrive at a mutually acceptable solution on any matter concerning land. This objective is stipulated under section 13 (1) of the Land Disputes Courts Act (the LDCA). Sections 13 (3) and (4) and 14 of the LDCA provide for procedures for mediation and things to consider in conducting mediation.

It is also the requirement of the law that, upon receiving of the land complaint, before resorting to the hearing of the dispute the respective Ward Tribunal is duty bound to invoke mediation process first. Section 17 (2) of the LCDA provides;

"When a complaint is made to the Secretary under subsection (1), that Secretary shall cause it to be submitted to the Chairman of the Tribunal who shall immediately select three members of the Tribunal to mediate".

Therefore, from the above cited provision, it is undisputed that conducting mediation before hearing of the dispute in the Ward Tribunal is compulsory. The omission to conduct mediation before hearing of the dispute vitiates the whole subsequent proceedings in that mediation is a prerequisite to the hearing.

In the case at hand, the record is clear that mediation was not conducted by Kiore Ward Tribunal before hearing of the disputes between the parties. Thus, the anomaly vitiated all the proceedings before the trial Ward Tribunal and 1st Appellate Tribunal (DLHT).

In the circumstances, the proper remedy was to remit the case file to the Ward Tribunal for the matter to start afresh in accordance with the law, but taking into consideration the new amendments made under Sections

45 and 46 of the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 5 of 2021, the Ward Tribunals do no longer have jurisdiction to adjudicate land matters apart from mediation. Thus, I decline to order a trial de novo. Instead, I direct that a party who still wishes to pursue the matter, he may institute a case afresh before a Tribunal of competent jurisdiction subject to the current legal requirements. Each party should bear its own costs.

Considering that the 2nd ground is sufficient to dispose of the appeal, I shall not dwell into determining other ground of appeal.

The appeal is hereby allowed.

It is so ordered.

Right of appeal is explained.




A.A Mbagwa

JUDGE

18/10/2022