

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MOROGORO DISTRICT REGISTRY)
AT MOROGORO**

LAND APPEAL NO. 37 OF 2022

*(Originating from Land Case No. 69 of 2021, the District Land and Housing Tribunal for
Morogoro)*

CHARLES ELISEI KADUDU APPELLANT

VERSUS

1) GODFREY WAZAEL MSAMBE

2) LIDIA URASSA

3) BENEDICT KWEKA

4) HEMED SUFIAN MGAZA

5) DAMAS MDEMU

..... RESPONDENTS

JUDGEMENT

Hearing date on: 19/08/2022

Judgement date on: 08/09/2022

NGWEMBE, J.

The object of this appeal holding the disputants in serious loggerheads is a plot of land located at Madizini Township, Mtibwa Ward in Mvomero District within Morogoro region. The gist of the dispute clock in the allegations of the respondents who are Hamlet Chairperson, two Ten Cell Leaders, CCM Chairman and a member of the Village Council

respectively that jointly demolished the fence wall built by the appellant. It is alleged that they jointly entered into a suit land of the appellant and with no right, demolished the appellant's fence wall erected therein. On the other side, the respondents alleged the suit land is owned by the Village council and was/is planned for Village market. Thus, the appellant, with no right, sued the respondents in their personal capacities for trespass, before the District Land and Housing Tribunal for Morogoro.

While were at the tribunal, but prior to the hearing, the respondents jointly raised one ground of preliminary objection to the effect that, they were improperly sued in their personal capacities, while they acted for and under instructions of the Village Government, the owner of the suit land. Upon hearing of that objection, the learned chairperson found merit on it, thus upheld the objection and proceeded to struck out the suit. The tribunal insisted that the proper party to the suit is the Village Government/Council not otherwise.

The offending ruling was delivered on 25th January, 2022, which the appellant was aggrieved, hence preferred this appeal on 1st April, 2022. No sooner when the hearing started, the respondents raised preliminary objection on point of law, that the appeal is caught in the web of time limitation. However, at the end the objection was overruled, hence this appeal on merits.

The appellant enticed this court to determine this appeal based on two grounds of appeal after abandoning one ground. Those grounds are quoted hereunder:-



1. That trial tribunal erred in law and fact by reaching erroneous decision of dismissing the matter with the reason that the government was involved, basing on weak evidence adduced by the respondent; and
2. That the trial tribunal erred in law and fact and reached an erroneous decision of dismissing the matter with the reason that the government was involved while disregarding applicant's strong reasons for suing the respondents in their personal capacities.

In arguing the first ground, the learned advocate Upendo Mtebe cited section 48 (1) (2) (c) of the Land Use Planning Act No. 6 of 2007, supported her argument by referring this court to the case of **Pamphil Satori Masashua Vs. Sengerema District Council, a land case No. 04 of 2019**. Also referred to section 110 of the Evidence Act Cap 6 R.E. 2019. Justified her argument by insisting that, the trial tribunal relied on mere allegations that the respondents were village government/leaders. That there were no proper identity of the respondents that they were village leaders. Above all, there were no minutes of village meetings and the resolution so far reached.

Further argued that, there were no instructions from the authorities directing the respondents to demolish the appellant's wall fence. Failure of such evidence, means the respondents were acting under personal capacity, while trying to hide under the umbrella of the Village government in demolishing the appellant's wall fence.

The second ground that the trial tribunal erred to decide that the Government was involved while disregarding the appellant's reasons



that the respondents acted under personal capacity. Justified by raising two grounds that the demolition was done on Sunday which was not a working day and second that they did not issue notice of demolition to the appellant prior to carrying out such activity. Failure to comply with those two requirements, meant breach of regulation 139 (1) (d) and (2) and regulation 18 (3) of the Local Government (Urban Authorities) Development Control) GN. No. 242 of 2008.

Proceeded to argue on the basic rights of being heard and finally asked this court to allow the appeal and set aside the ruling of trial tribunal with costs.

In turn, the respondents insisted on their brief written submission that the whole dispute is related to ownership of piece of land between the appellant and the Village Council as was rightly instituted in the Land application No. 63 of 2021. Stood strong that the respondents are village leaders and they did what they did on capacity of village leaders. That the appellant deliberately sued wrong parties, instead of suing proper parties which is the Village Council. Rested by a prayer to dismiss this appeal with costs.

Considering the essence of this appeal, I find certain issues are inevitable, first is the issue of ownership of the suit land. That is who is the true owner of the suit land? Second, whether the respondents are Village leaders and whether they acted under capacity as village leaders or under individual capacity? Lastly is whether this appeal is viable in this court?

I have noted in the court records that on 6th April, 2021 the appellant rightly instituted a land dispute between himself and the Village Council

of Madizini before the Ward Land Tribunal of Mtibwa. Before the matter came to an end the appellant on 20th May, 2021 instituted another land dispute No. 70 of 2021 before the District Land and Housing Tribunal for Morogoro. The latter suit did not end up on merits, rather was dismissed on preliminary objection that the appellant herein sued improper parties. The final verdict of the District Land Tribunal was as quoted hereunder:-

"kwa kugemea katika maelezo hapo juu, ili amri stahiki (effective Orders) ziweze kutolewa na ili kesi iendeshwe kwa ufasaha, serikali ya Kijiji cha Madizini inatakiwa iwe sehemu ya kesi hii"

Simple interpretation of those words is that to have an effective order capable of being executed, the Village Council of Madizini is inevitable should be joined as party to the dispute. Finally, advised the appellant to institute a fresh case against the Village Council and the Attorney General as a necessary party.

Considering the totality of this appeal, obvious the dispute is not demolition of the wall fence, rather is the ownership of the suit land where that wall fence was erected. The record is clear, like a day light, that the village council alleges to have planed the suit land to build village market, while the appellant alleges to have purchased that piece of land from another person. The question is, who is the owner between the two? Equally the second question is whether the respondents have any claim of right over the suit land? An immediate answer according to the available evidences is that, the respondents have no claim of right over the suit land rather are village leaders in different capacities.



Therefore, whatever the respondents did over the suit land, they did so not for individual interests rather for the interest of the whole village.

In this point, the learned advocate has forcefully argued in line with the Land Use Planning Act. This is purely a misdirection in law, for it is obvious, village land is governed by Village Land Act Cap. 114 R.E. 2019. Land use Planning is concerned with surveyed land under Land Act Cap 113 R.E. 2019. In this appeal, failure to establish ownership of the suit land, the issue of demolition cannot stand and be conclusively decided.

In the case of **Pamphil Satori Masashua Vs. Sengerema District Council** (Supra) was rightly decided because the issue was on demolition done by the District Council over a piece of land which ownership was well established, but the plaintiff failed to comply with other legal requirements to erect that wall. Thus, the District Council succeeded on what they did. In contrast, the issue of ownership in this appeal is yet to be settled, also the appellant was rightly advised by the district tribunal to institute a fresh suit with effect to include whoever, but must include the Village Council and the Attorney General. However, the appellant preferred this appeal instead of following the very advise made by the tribunal.

Considering the two issues as argued by the learned advocate for the appellant, I would summarize as discussed herein above that the issue of demolition of wall fence is a subset of the major set of ownership. Within the village, people know each other with their land ownership. Even if they don't, yet they are well aware on the designated places for collective ownership like market, playing grounds, areas for dispensary, churches, mosque and schools. This is a common knowledge to every



village land. In respect to this appeal, I have so decided that the respondents are not claiming ownership over the suit land, rather are claiming to be village leaders who knew the land use of their village land. Likewise, the appellant as one of the villagers must know or ought to know the land designated for village market. Therefore, failure to determine the true owner of the suit land this appeal cannot stand.

All said and done, this appeal cannot stand, rather I fully subscribe to the wise advice made by the trial tribunal. I find no reason to depart from the trial trial's decision. Accordingly, this appeal lacks merits same is dismissed with costs.

Order accordingly.

Dated at Morogoro this 9th day of September, 2022.



P. J. NGWEMBE

JUDGE


09/09/2022

Court: Judgment delivered at Morogoro in Chambers on this 09th day of September, 2022, **Before Hon. S. J. Kainda, DR** in the presence of Ms. Upendo Mtebe, Advocate for Appellant and in the Absence of 1st, 2nd, 3rd, 4th & 5th Respondents.

SGD. HON. S.J. KAINDA

DEPUTY REGISTRAR

09/09/2022

I Certify that this is a true and correct copy of the original	
	
Deputy Registrar	
Date	12/9/2022 at Morogoro