

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(IN THE DISTRICT REGISTRY OF MUSOMA)
AT MUSOMA

Misc. LAND APPEAL CASE No. 34 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal Case No. 162 of 2021; originating from Etaru Ward Tribunal in
Land Case No. 1 of 2021)*

MANYONYI WESWA APPELLANT

Versus

MALIBHA NJOYA RESPONDENT

JUDGMENT

22.11.2022 & 22.11.2022

Mtulya, J.:

Mr. Manyoni Weswa (the appellant) had preferred the present appeal complaining on nine (9) issues listed in his Petition of Appeal to dispute the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 162 of 2021** (the appeal) originated from **Etaru Ward Tribunal** (the ward tribunal) in **Land Case No. 1 of 2021** (the case).

However, when the appeal was scheduled for hearing today afternoon, this court *suo moto* noted a total of three (3) defects

in the record of appeal which are material to the merit of the case and justice to the parties, namely:

First, size and location of the disputed land is not reflected on the record as per requirement of the law enacted in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 (the Regulations) with regard to the words: *the address of the suit premises or location of the land involved in the dispute* and precedent in **Hassan Rashid Kingazi & Another v. Halmashauri ya Kijiji cha Viti**, Land Appeal Case No. 12 of 2021.

Second, both parties claim that the land in dispute belongs to their families and ancestors without possession of powers of representation of their families or letters of administration of estates on the subject per requirement of the directives of the Court of Appeal (the Court) in the precedent of **Ramadhani Omary Mbuguni v. Ally Ramadhani & Another**, Civil Application No. 173/12 of 2021.

Finally, the district tribunal declined to consider seven (7) reasons of appeal brought before it by the respondent for determination on merit contrary to the directives of the Court in

the precedent of **Swabaha Mohamed Shoshi v. Saburia Mohamed Shoshi**, Civil Appeal No. 98 of 2018 and this court in **Nyamatemo Frugence v. Hekwe Kitang'ita**, Misc. Land Appeal Case No. 117 of 2021.

After noting the defects, this court had invited the parties to enjoy the right to be heard as enshrined under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania [Cap. 2 R.E. 2002]** (the Constitution) and precedent in **Tanelec Limited v. The Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 20 of 2018. In cherishing the cited law and practice of the Court, the appellant submitted that they mentioned land size and location at the ward tribunal during the hearing proceedings, but the secretary of the ward tribunal did not record the same.

Regarding letters of administration, the appellant contended that he had been living in the disputed land for a long time and there is no need of the letters and that the wrongs committed by the lower tribunals cannot be associated or explained by him. Finally, the appellant submitted that the source of the present dispute is traced at *Muhare* species of trees which are located at

the boundaries demarcating the two (2) lands of the parties, which the respondent intends to sale at the higher price to the timber harvesters.

The respondent on his part contended that since the death of his father he had been living in the disputed land and during the hearing of the case at the ward tribunal he mentioned size and location of the disputed land to be 80 x 70 human steps, but the ward tribunal declined to cite the same in the proceedings and judgment. According to the respondent, the ward tribunal decided the matter on its own wishes instead of the record and law regulating land disputes, and the district tribunal escaped to reply the reasons of appeal brought before it to escape the reality of the matter.

This court is a court of law and justice and cannot close its eyes when it sees errors material to the merit of the case which invite injustice to the parties. When it sees series of faults, like in the present appeal, it will invoke section 43 (1) (b) of the **Land Dispute Courts Act [Cap. 216 R.E 2002]** (the Act) to quash the decision of the lower tribunals and set aside the proceedings, as I hereby do so, in favour of the proper record of the court. I do

so without any order to the costs as the cited faults were caused by the parties and blessed by both lower tribunals.

Having decided so, any party, who so wish and interested in the disputed land, is at liberty to initiate land proceedings in appropriate machinery entrusted in resolving land disputes and accordance to the current laws regulating land disputes.

Ordered accordingly.





F. H. Mtulya

Judge

22.11.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Manyonyi Weswa and in the presence of the respondent, Mr. Malibha Njoya.


F. H. Mtulya

Judge

22.11.2022