

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO 25 OF 2022**

(Arising from Land Appeal No 37 of 2021 District Land and Housing Tribunal for  
Tarime at Tarime)

**SANGIRA OKEYO MAKORI ..... APPELLANT**

***VERSUS***

**ERASTO SOGHA ..... RESPONDENT**

**JUDGMENT**

2<sup>nd</sup> November & 13<sup>th</sup> Dec, 2022

**F. H. Mahimbali, J.:**

Originally, the respondent successfully filed the suit against the appellant before the trial tribunal of Goribe Ward. Aggrieved by that decision, the appellant unsuccessfully appealed against it before the District Land and Housing Tribunal of Tarime. This is now the second appeal.

According to the facts of the case, the appellant is alleged to have invaded the respondent's land a total of 5.5 acres. He did so by clearing the sisal plants which were planted into the farm of the respondent and

thereafter used it for cultivation and building. The two lower tribunals ruled in favour of the respondent.

Aggrieved by the concurrent findings of the two lower tribunals, the appellant has preferred this appeal, armed up with a total of four grounds of appeal, namely:

- 1. That both the ward tribunal of Goribe and the District Land and Housing Tribunal for Tarime erred in law and in fact by being bias and entertain the matter in favour of the respondent without evaluating evidence adduced by the appellant herein.*
- 2. That, both the ward Tribunal of Goribe and the District Land and Housing Tribunal for Tarime erred in law and in fact by acting as a witness on the matter in the ward tribunal instead of being neutral party and give a just and non - biased decision.*
- 3. That, both the ward tribunal and district land and housing tribunal for Tarime erred in law and fact by arriving to the decision based on assumptions, without any proof and concluded in the ward tribunal for Goribe on baseless emotions.*
- 4. That, the District Land and Housing Tribunal for Tarime erred in law and in fact blessing the illegal decision of the Ward tribunal for Goribe that was passed by members of the Ward Tribunals who were not eight.*

Arguing in support of the appeal, Mr. Olaf Kabogoye learned advocate submitted that for the first ground of appeal that both the

Ward Tribunal and DLHT erred in law and in fact by being bias to the appellant without evaluating evidence by the appellant. He clarified that at the trial Ward Tribunal, the respondent did not adduce any evidence establishing him as owner of the suit land. When and how he acquired it is not clear. The evidence of DW2 established how Mzee Makori was given the said land in 1971. He described the boundaries of it and the surrounding neighbours. DW3 also testified that in 1976 the appellant was given a total land measuring 200 acres and that himself was his neighbour.

As the appellant is the son of Mzee Makori, the respondent wrongly sued the appellant. In the case of **Sefu Kondo and 3 Others vs Ally Athuman Kiumbo and 7 others**, Misc. Land Appeal NO 72 of 2021, High Court Land Division at Dar es Salaam at page 12 of 13 emphasized on the right party to be sued. In essence he insists that there was no any evidence by the respondent that he owned that land.

With the second and third grounds of appeal, he argued them together that there is an acknowledgment that the appellant has had a long stay yet the trial Tribunal turned him down. How the respondent got the said parcel land, it is astonishing. Relying on the decision in the case of **Frank s/o Mgola and 2 others vs Republic**, Criminal Appeal

No 304 of 2015, CAT at Mbeya where it was emphasised on impartiality of the court of law when dealing with matters before it in winning parties' confidence. With the present case, he emphasized that the trial and as well as the first appellate tribunals erred on reaching that decision without winning the parties' confidence.

With the 4<sup>th</sup> ground of appeal, it has been argued that the coram of Ward Tribunal in the conduct of this matter was not properly in compliance with the law. The whole proceedings were signed by single person.

Further to this, he submitted that since the DLHT sat as first appellate, was duty bound to evaluate the evidence in record and come up with the right decision as per law. On this, he sought reliance to the decision in the case of **Shantilal M. Ruala vs Republic**, (1957) EA 517 which dealt with a similar situation.

He concluded by praying that the appeal be allowed with costs and any other relief as it may deem fit and just to grant.

On his part, Mr. Samo, learned advocate for the respondent, on the first ground of appeal submitted that there was no any element of bias established as argued. As per proceedings of 19/2/2021, before the

DLHT, the respondent stated how he inherited it from his parents. The respondent's father, was owning 6.5 acres. During operation vijiji, 1 acre was portioned to the appellant, thus, leaving the respondent's father with five acres. After the death of his father, he entered into possession. The appellant on the other hand, testified that he was born there in 1980. When the appellant was asked by one member (DORCA), on how he got the said land, he replied that he was given land '70X70'. Whether the said land was portioned to him by Village Council, he replied no. As per proceedings of 1/3/2021, the respondent admitted that the appellant was portioned land '70X70'.

Regarding the weight of evidence between the appellant and the respondent's case, he argued that there was more evidence in favour of the respondent than that of the appellant.

As to the bias, Mr. Samo submitted that he had not seen any. He insisted that, the respondent's weight of evidence is what determined the suit's verdict.

With the last ground of appeal, he submitted that the membership at the trial tribunal was duly constituted as per law. There has been no evidence to the contrary. On this, he prayed that the appeal be dismissed with costs.

In his rejoinder submission, Mr. Kabogoye reiterated his submission in chief and added that there is ample evidence that the appellant's father owned that land. With this, he humbly prayed that the appeal be allowed.

In digest to the grounds of appeal of the case, it appears the main contest between the parties is who is the rightful owner of the suit land? Is it the appellant or the respondent. Whereas the appellant insists it as his, equally the respondent maintains the same that the land is his. In response to this, I will revisit the parties' evidence.

According to the appellant who was the defendant at the trial tribunal stated the following in establishing his ownership of the said land:

*"Mimi katika historia niliyopewa na Baba Mzazi toka nizaliwe 1980 nimeambiwa na baba eneo alipewa na babu yangu Makori Oruka kipindi hicho tunaishi kitongoji cha tatwe senta na eneo lipo katika kitongoji cha kisana alipimiwa kipindi cha bega kwa bega. **Baba mzazi na babu walilima hadi wanafariki. Toka muda huo tunalima hadi leo. Baada ya mama kufariki 2005 nikawa nimeoa na nikaendelea na kilimo hadi kufikia 2020 ndo naanza kusikia malalamiko. 2015 nilitamani kuhamia, Mwenyekiti wa Kitongoji alipata taarifa tukakutana kwenye eneo husika akaniambia kuwa hata kama ni eneo lako, fuata taratibu. Baada ya kusikia ushauri huo, nikaenda kwa Mwenyekiti wa***

*Tatwe senta (Juma Sirus) akanipa barua ya kuhamia Kisana. Baadae mwenyekiti wa kitongoji cha kisana alikuja eneo husika akapima hatua za eneo langu wakaandika vipimo vyote na majirani ninaopakana nao na barua ikaelekezwa ipitie ofisi ya Serikali za Kijiji nikaambiwa niendeleo na kazi zangu hakuna mgogoro. Hivyo nathibitisha kwamba eneo lilililikiwa na babu akamwachia baba na hatimae mimi. Sina zaidi”.*

On the other hand, the respondent who was the claimant/plaintiff at the trial Ward Tribunal, claimed the following:

*"Ndugu Kenedy Okeyo Makori amevamia eneo langu la shamba kwa kulima, kujenga nyumba ya kuishi na vilevile kung'oa katani zilizokuwemo sehemu ya shamba hilo. Alianza ujenzi mwezi wa 09/2020 na ilipofika mwanzoni mwa mwezi wa 11/2020 akahamia. Jumla ya ekari ni 6.5 kati ya hizo ekari moja (70x70) aligawiwa na babu yake marehemu Makori kipindi cha bega kwa bega 1974. Hivyo ekari moja siidai kwasababu serikali ya Kijiji ilimgawia babu yake. Ekari 5.5 ndiyo madai aliyovamia ambapo naomba ridhaa ya baraza hili tukufu linirudishie hili eneo langu. Thamani ya ekari 5.5 ni milioni mbili na laki mbili pesa za kitanzania. Thamani ya katani iliyopandwa katika ekari moja ni laki nane. Jumla milioni tatu.*

*Mwaka 2015 December, ndugu Keneddy Okeyo alianza ujenzi wa mara ya kwanza. Nilipopata taarifa nilimwendea mwenyekiti kitongoji cha kisoma Ochola Ayiela alikuja kushuhudia uvamizi huo. Alimuuliza Kenedy Okeyo, nani amekuruhusu kuja kujenga hapa. Alijibu kuwa ameruhusiwa na Mwenyekiti wa Kijiji Julius Ochwanchi ndipo Mwenyekiti wa*



*Kitongoji akamwambia kuwa Mwenyekiti wa Kijiji hana mamlaka ya kumpa mtu ruhusa ya kujenga na kufanya makazi hususani eneo hili la kilimo isipokuwa kamati ya ardhi ya Kijiji. Pia mwenye eneo anakulalamikai kuwa umevamia eneo lake. Ndipo mwenyekiti wa akamuamuru kungóa miti yake aliyokuwa amesimika ili arudishe kijijini amabapo alifanya hivyo. Baada ya miezi sita, ilipofika tarehe 1/062026 (sic), Mwenyekiti Ayeta Ochola alikwenda kwenye eneo la shamba hilo hilo na kumpimia ndugu Kenedy Okeyo eneo la kuishi.....”*

Following this fact as I noted in the course of composing this judgment, I have found it of legal interest to inquire from the parties themselves who had this to say: The appellant responded that the said land belonged to his deceased grandfather and that himself got it by being granted by his father who inherited it from his grandfather. Respondent on the other hand stated that the said land belonged to his deceased father. As to how the respondent got the said land, he could not state straight in his evidence but only when asked so by one trial tribunal member (Marry Johannes) where he then said that he got it as inheritance from his father. When was it, there is nothing stated. Equally is the averment by the appellant that he got the said land after the death of his parents. According to the tribunal records, none of the parties in this case established that the said land was legally owned by him. As the said land appeared to be owned by each one’s parents then



there ought to have been establishment that they are either legal heirs or administrators of the said estate.

As none established the said inheritance, then the law is no one can legally claim possession of it. In the case of **MALIETHA GABO vs ADAMU MTENGU**, Miscellaneous Land Appeal no. 21 of 2020 my learned brother, I. C. Mugeta, J cited the case of **MGENI SEIF V. MOHAMED YAHAYA KHALFANI** , Civil Application No. 1 / 2009, Court of Appeal – Dar es Salaam (unreported) where at page 14 , it was held :

*"As we have said earlier, where there is a dispute Over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership".*

Additionally, on page 8 of the cited case of the Court of Appeal had this to say;

*"It seems to us that there are competing claims between the applicant and the respondent over deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person's estate passed on to the beneficiary or a bona fide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate".*

Having stated the above this court finds that neither the appellant nor respondent had direct interests to institute and defend the case at the trial tribunal and as a result the proceedings were a nullity.

On the revisionary powers of this Court as per section 43 of the Land Disputes Courts Act, I hereby allow the appeal by nullifying the proceedings, decisions and orders of the two lower tribunals as the respondent had not complied with the Probate and Administration Act before instituting the said case.

As what is the way forward of the matter, I advise the parties if still at contention to refer their dispute at the appropriate probate court first subject to the law of limitation in order to resolve the probate issue involving administration and inheritance of the deceased's' estates as the respondent does not hold good and better title of the said property against the other as per available facts.

In the circumstance of this case, parties shall bear their own costs.

DATED at MUSOMA this 13<sup>th</sup> day of December, 2022.



F. H. Mahimbali

Judge

**Court:** Judgment delivered this 13<sup>th</sup> day of December, 2022 in the presence of the Mr. Kabogoye, advocate for the appellant, Mr. Erasto Sogha (respondent) and Mr. Kelvin, RMA.

Right of appeal is explained.

A handwritten signature in dark ink, appearing to read 'F. H. Mahimbali', with a long horizontal stroke extending to the right.

F. H. Mahimbali

Judge