

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND APPEAL CASE No. 5 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal No. 87 of 2021 & Originating from Kenyamonta Ward Tribunal
in Land Dispute No. 66 of 2021)*

KIRARYO MAKORI APPELLANT

Versus

MKAMI MAKORI RESPONDENT

JUDGMENT

10.05.2022 & 10.05.2022

Mtulya, J.:

On 11th March 2021, Ms. Mkami Makori (the respondent) sued his brother Mr. Kiraryo Makori (the appellant) at **Kenyamonta Ward Tribunal** (the ward tribunal) in **Land Dispute No. 66 of 2021** (the dispute) for a land located at Tahura Hamlet within Kenyamonta Ward of Musoma in Mara Region. After full hearing of the dispute, no record of land size and demarcations or sufficient descriptions of the real property land were displayed. However, the ward tribunal on 28th April 2021 determined the dispute in favour of the appellant and finally stated that:

Wajumbe wa Baraza baada ya Kusikiliza maelezo ya pande zote mbili na ushahidi wamebaini kuwa eneo la mgogoro ni haki ya mdaiwa Kiraryo Makori

At the final page of the decision, the ward tribunal recorded its reasoning in arriving the decision: *kwa kuwa eneo hilli la mgogoro [Kiraryo Makori] alinunua toka kwa Ghati Muhochi.*

The decision and its attached reasoning was disputed by the respondent in the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 87 of 2021** (the appeal). After the appeal hearing, the district tribunal resolved for the respondent and held at page 2 of the judgment that:

Hukumu ya Baraza la Kata inatenguliwa kwa kuwa mrufani na mrufaniwa ni Kaka na Dada yake. Ina amuriwa kuwa kila upande ubebe gharama zake.

The reasoning of the tribunal is found at page 3 of the decision in the following text:

...sijaona ushahidi wowote wenye kushawishi kuthibitisha madai ya mjibu rufaa kwamba alinunua kiwanja hiki kutoka kwa Ghati Mlochihakuna ubishi kwamba mrufani Mkami Makori amelitumia eneo hilo kwa muda wa miaka

*isiyopungua 27 kama ambavyo mjibu rufaa mwenyewe
aliliambia Baraza la kata.*

Following the decision of the district tribunal, the appellant approached this court and filed seven (7) grounds of appeal contended that the district tribunal was in fault. Today morning the appeal was scheduled for hearing and after perusal of the record, it came to the light that the land in dispute was not properly identified or sufficiently described as per requirement of the law 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) and precedents in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti**, Land Case Appeal No. 12 of 2021 and **Hashimu Mohamed Mnyalima v. Mohamed Nzai & Four Others**, Land Case Appeal No. 18 of 2020.

Following the identified fault, the parties were invited to cherish the right to be heard in explaining whether this court can grant any party a piece of unknown land. The appellant on his part stated that the land is sized 80 X 50 human steps and had given the respondent, her sister, 48 X 45 human steps, whereas the respondent on her part stated that: *Sijajua ukubwa wa eneo tunalogombania*. From the record and statement of the parties, it is obvious that the disputed land was not described as per requirements of the cited law and practice of this

court. This court is entrusted in making sure that parties in land disputes abide with the laws regulating land disputes (see: section 42 & 43 of **Land Courts Disputes Act** [Cap. 216 R.E. 2019]).

Having said so, I have quashed the decisions of both land tribunals below and set aside all proceedings in the dispute. Any interested party may initiate fresh and proper dispute in accordance to the law regulating land disputes. I award no costs as the parties are relatives, sister and brother, who may wish to think of traditional method of dispute settlement in resolving their differences by involving clan members.

It is so ordered.



F. H. Mtulya

Judge

10.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of the appellant, Mr. Kikaryo Makori and in the presence of the respondent, Ms. Mkami Makori.

F. H. Mtulya

Judge

10.05.2022