

**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. 18 OF 2022

*(Arising from the District Land and Housing Tribunal for Mara at Tarime in Land Appeal
No. 5 of 2021 and Original from Rabour Ward Tribunal in Land Dispute No. 13 of 2020)*

CHARLES RONDO MAGO APPELLANT

Versus

DANIEL AKUNO OUDU..... RESPONDENT

JUDGMENT

17.05.2022 & 17.05.2022

Mtulya, J.:

This is the second appeal to this court in respect of a dispute over the ownership of land located at Ligerro Hamlet within Rabour Ward in Rorya District of Mara Region, between Mr. Charles Rondo Mago (the appellant) and Mr. Daniel Akuno Oudu (the respondent). The dispute was registered at **Rubour Ward Tribunal** (the ward tribunal) in **Land Dispute No. 13 of 2020** (the dispute) and scheduled for hearing on 14th September 2020.

After full hearing of the case, the parties and their invited witnesses registered materials to show that the respondent was granted and occupied a land sized 70 x 70 human steps since 1974, which is not in dispute. However, the dispute is on the land adjacent to it, which is demarcated by use of **Minyaa** type of trees planted several years back and within the land Mama Alsaba, who had expired

without will or heirs, and was buried on her land. The parties in the present appeal are contesting on this land of the deceased, and each has his own good arguments in favour of ownership on his part. It is unfortunate that this land, where the deceased Mama Alsaba, was laid to rest, was not sufficiently described to distinguish it from the appellant's land, respondent's land, Mr. Alila's land and Mr. Ayoo Ang'asa's land.

Following several complaints, misunderstanding and appreciation of humanity in respect of the grave of the deceased, the ward tribunal invited traditional method of dispute settlement in resolving the matter and recorded the following words in its last page of the decision:

Kwa kuwa eneo hatua 7 kutoka uzio wa bwana Alila na kutoka kwenye uzio alioweka mdaiwa kwenye njia moja kwenda Nyanungu hadi kwenye Kaburi ndio iwe milki ya mdai na sehemu inayobaki yote imilikiwe na mdaiwa.

However, the ward tribunal was silent on the total size of the land in dispute and its associated demarcations and the land declared to appellant's land. The ward tribunal also declined to interpret the words: *sehemu iliyobaki yote imilikiwe na mdaiwa*. Following this uncertainty in granting uncertain or unknown land, which may cause chaos to neighbours during execution of the decision, this court *suo*

moto invited, the parties to explain on the identified fault. The appellant on his part hired the legal services of Mr. Juma David Mwita, learned counsel, to argue on the point and the appeal whereas the respondent appeared in person without any legal representation. This court invited the parties to reply the point as part of cherishing 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] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, and being aware 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) and precedents in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021 and **Hashimu Mohamed Mnyalima v. Mohamed Nzia & Four Others**, Land Appeal Case No. 18 of 2020.

Enjoying the human and constitutional right to be heard, Mr. Mwita on his part, as an officer of this court, had a brief submission contending that the record of appeal is silent on the precise size of the remaining land after extraction of 7 human steps from the disputed land to the respondent. In his opinion, it will be difficult to execute the decision on uncertainty of the remaining land. With the available remedies, Mr. Mwita stated that this court may quash the

decisions of the lower tribunals in favour of the proper application of the law, whereas the respondent submitted that the record shows that the disputed land size is not stated, but the land belongs to Mr. Ayoo Ang'asa hence this court may declare Mr. Ayoo as a rightful owner of the land and the appellant.

I have perused the record of this appeal and found that there is fault with regard to the certainty of the remaining size of the land in dispute which was decided in favour of the appellant. This is a fault which contravenes the law in Regulation 3 (2) (b) of the Regulations and cited precedents in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra) and **Hashimu Mohamed Mnyalima v. Mohamed Nzia & Four Others**, (supra). The fault was caused by the parties and was blessed by both tribunals below.

This court, being the court of record, cannot justifiably close its eyes when it sees vivid breach of the law in Regulation 3 (2) (b) of the Regulations and precedents regulating land disputes (see: section 42 & 43 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] and precedents in **Hassan Rashidi Kingazi & Another v. Serikali ya Kijiji cha Viti** (supra) & **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017). With regard to ownership of the disputed land and respondent's submission on Mr. Ayoo Ang'asa, this court will not labour on determining the issue for

obvious reasons that Mr. Ayoo Ang'asa was not party in the dispute and no materials were registered in the lower tribunals to display that Mr. Ayoo Ang'asa is a rightful owner of the disputed land.

Having said so, I have decided to quash decisions and set aside proceedings of both lower tribunals for want of proper application of the laws regulating land matters. Any party, who wish to prosecute a new dispute on the disputed land, may wish to do so in a competent forum in accordance to the laws regulating land disputes. I award no costs in this appeal as the issue was raised *suo moto* by this court, the wrong was initiated by the parties and blessed by both tribunals below and in any case, Mr. Mwita acted as officer of this court in assisting the court to resolve the appeal.

Ordered accordingly.



F. H. Mtulya

Judge

17.05.2022

This judgment was delivered in chambers under the seal of this court in the presence of Mr. Juma David Mwita, learned Counsel for the appellant and Mr. Daniel Akuno Oudu, the respondent.

F. H. Mtulya

Judge

17.05.2022