

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

Misc. LAND CASE APPEAL No. 56 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal No. 119 of 2020 & Originating from Kasuguti Ward Tribunal in
Land Dispute No. 2 of 2020)*

LUCIA ANSELEMI MKAMA ----- APPELLANT

Versus

ELIAS TIMBILA MATAI ----- RESPONDENT

JUDGMENT

01.03.2022 & 01.03.2022

Mtulya, F.H., J.:

On 24th April 2020, Lucia Anselemi Mkama (the appellant) approached **Kasuguti Ward Tribunal** (the ward tribunal) and filed **Land Dispute No. 2 of 2020** complaining of trespass and house-building caused by Mr. Elias Timbila Matai (the respondent) on her grandfathers' land, Mr. Anselemi Mkama Kahana (the deceased) who had expired in 2010. The appellant stated in the ward tribunal that as a daughter of the deceased and administratrix of the estates of the deceased, she has the duty to collect all assets of the deceased, including the disputed land located at Haruzale Village in Kasuguti Ward of Bunda District in Mara Region. After full hearing of the dispute the ward tribunal decided in favour of both sides. At page 5 of its decision the ward tribunal stated that:

Baraza kwa hekima na busara ikiwa ni kupunguza na kuondoa migogoro ndani ya familia linafanya uamuzi wa kumgawia mdaiwa ekari nne (4) tu kutoka kwenye jumla ya eneo la ekari arobaini na nne (44).

The reasoning of the tribunal is depicted on the same page that: *Mdaiwa anaishi pale kwenye eneo la mgogoro na amemzika marehemu mke wake na pia amejenga nyumba ya kudumu.*

This decision of the tribunal was rendered down on 28th May 2020. However, a month later, specifically on 22nd June 2020, the appellant preferred **Land Appeal No. 114 of 2020** (the first appeal) at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) to protest both the decision and reasoning of the ward tribunal. In the same course, the respondent also cross-appealed to the district tribunal on 29th June 2020 and filed **Land Appeal No. 119 of 2020** (the second appeal). Record shows further that on 19th October 2020, the first appeal was scheduled for hearing before Hon. Kitungulu, E., learned chairman and ordered that: *the respondent has also appealed in Appeal No. 119 of 2020. Both matters to proceed before Hon. Kaare.*

However, when the first appeal was tabled in the second appeal before Hon. Kaare, J. T., learned chairman, for consolidation of the

appeals, on 25th November 2020, the learned chairman declined to proceed with the consolidation and hearing of the matter and returned the first appeal to Hon. Kitungulu E, learned chairman and stated that:
I re-assigned this appeal to Hon. Kitungulu due to my busy schedule as I [have] already fixed cases to May next year.

From this date when Mr. Kaare, J.T ordered the first appeal to proceed in the mandate of Mr. Kitungulu, on 26th January 2021 the second appeal proceeded until when the decision was rendered down on 7th May 2021. The record of this appeal shows that since this order of Hon. Kitungulu to transfer the first appeal to the second appeal on 15th October 2020, the first appeal remained silent on what transpired. It is unfortunate the case file of the second appeal was changing hands between learned chairmen Mr. Kitungulu and Kaare without reasons and finally the judgment was rendered down by Mr. Kitungulu in absence of the respondent, Lucia Anselemi Mkama.

The tribunal after full hearing of the second appeal, it decided in favour of the respondent, Mr. Elias Timbila Matai and declared him as a lawful owner of the suit land. The reasoning of the tribunal is found at page 3 of the judgment that:

*I have found out that there is enough evidence on record to the effect that the appellant, **Elias Timbila Matai** had*

*been in peaceful occupation of the suit land for quite long time that is from 1986 up to 2020, when the respondent **Lucia Anselemi Mkama** mounted the case in the ward tribunal.*

The decision of the ditrict tribunal in the second appeal is what is contested in this appeal today. According to the appellant the district tribunal declined her grounds of appeal and the first appeal was unattended which is a denial of the right to be heard, whereas the respondent thinks that he cannot reply an issue which was decided by the district tribunal. To his opinion, it is the tribunal which is better placed to reply the matter.

I have perused the record of the present appeal and found on record what exactly highlighted in this judgment. It is fortunate that both parties concede that the tribunal failed to entertain the first initiated appeal or consolidated the two (2) appeals together for want of proper record of the dispute. This Court is mandated to ensure proper application of the laws and precedents emanated from our superior court, the Court of Appeal (see: section 41 & 42 of **Land Disputes Courts Act** [Cap. 216 R.E. 2019] and **Diamond Trust Bank Tanzania V. Idrisa Shahe Mohamed**, Civil Appeal No. 262 of 2017).

Having noted of the defect and the need of justice between the parties, I have decided to nullify proceedings of the tribunal in **Land Appeal No. 119 of 2020** from when Hon. Kaare, J.T learned chairman re-assigned **Land Appeal No. 114 of 2020** to Hon. Kitungulu, E., learned chairman, on 25th November 2020. In the same course, the judgment emanated from wrong proceedings is hereby quashed. I further order the ditrict tribunal to hear both appeals in accordance to the laws regulating land disputes in its jurisdiction. With costs, I order no costs as the fault was caused by the district tribunal, and in any case, I have not decided this matter to its finality by declaring any of the parties a rightful owner of the disputed land.

Ordered according.

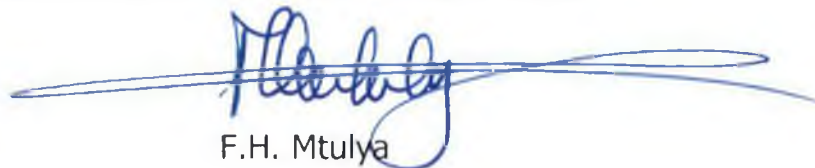


F. H. Mtulya

Judge

01.03.2022

This judgment is delivered in Chambers under the seal of this court in the presence of the appellant, Lucia Anselemi Mkama and in the presence of the respondent, Mr. Elias Timbila Matai.



F.H. Mtulya

Judge

01.03.2022