

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

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND CASE APPEAL No. 101 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in
Land Appeal No. 239 of 2020 & Originating from Masaba Ward Tribunal in Land
Dispute No. 59 of 2020)*

ATHUMAN MATIOKO ----- APPELLANT

Versus

WILLIAM SAMWEL ----- RESPONDENT

JUDGMENT

25.02.2022 & 10.03.2022

Mtulya, F.H., J.:

Mr. Athuman Matioko (the appellant) was dissatisfied with the decision of the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 239 of 2020** (the land appeal) originating from **Masaba Ward Tribunal** (the ward tribunal) in **Land Dispute No. 59 of 2020** (the case). In this court, the appellant filed a total of six (6) grounds of appeal in **Land Case Appeal No. 101 of 2021** (the appeal) and when the appeal was scheduled for hearing in this court on 25th of February 2022, the appellant argued all grounds of appeal.

The appellant who appeared in person without any legal representation was very brief in his submission and argued that: first, the ward tribunal erred in law and fact for failure to admit his

documentary evidence which justifies ownership in the disputed land; second, the trial tribunal failed to visit the disputed land; third, his three witnesses, namely Juma Athumani, Zawadi Joseph and Samson Kisili Sakumi were not recorded in the decision of the ward tribunal hence their evidences were not given any weight; fourth, the appellant submitted that the dispute on the land started in 1975 and there are documentary evidence of sale of the same from the respondent to the appellant and the district tribunal declined to consider the evidence.

On the fifth ground, the appellant submitted that the district tribunal erred in law for failure to notice that the respondent trespassed onto the appellant's land by three (3) terraces and that the sisal boundaries were planted on the 3rd April 2020; and finally the appellant submitted that he has been occupying the disputed land undisturbed since 1974 and that both tribunals below ignored that very important fact.

In order to reply the complaints well, Mr. William Samwel (the respondent) decided to invite the legal services of Mr. Mahemba, learned counsel to protest the appeal. In his long submission Mr. Mahemba replied all six (6) grounds of appeal as follows. In the first ground, Mr. Mahemba submitted that the proceedings in the ward tribunal are silent on whether the appellant prayed for admission of any exhibits and that the appellant had the opportunity to pray at the

district tribunal which is the first appellate court, but declined to do so under the law in section 34 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E.2019] (the Act). To the opinion of Mr. Mahemba, the dispute between the parties is centred in land boundaries emanated from trespass of uprooting the boundary of sisal trees.

In the second reason of appeal, Mr. Mahemba submitted that the ward tribunal visited *locus in quo* and in any case, the district tribunal heard the land appeal and found to lack any merit hence it cannot be tasked to visit the *locus in quo* again. With witnesses and their evidences which were brought at the ward tribunal as reflected in the third reason of the appeal, Mr. Mahemba submitted that the witnesses reflect different names in the proceedings and in any case the ward tribunal did not consider or name each individual person in its decision, but considered the evidences of both parties in the case as a whole.

With regard to the fourth complaint of the appeal, Mr. Mahemba contended that at both the ward and district tribunal there was no such a prayer to tender any evidence hence it was impossible to consider something which is not on the record. With the fifth ground of appeal, Mr. Mahemba submitted that the respondent complained on trespass of uprooting the boundary sisal trees and said in the tribunal who uprooted the sisal trees. According to Mr. Mahemba it was the son

of the appellant who uprooted the sisal trees in the boundary, trespassed into the respondent's land and started cultivation without any good cause. Finally, Mr. Mahemba submitted that all facts and evidences show that the respondent is a rightful owner of the land and the complaint of long stay in the disputed land undisturbed since 1974 is not reflected on the ward tribunal and was raised at this stage as afterthought without any merit.

In his brief rejoinder, the appellant submitted that he had all evidences to display the rightful owner of the land in dispute, but the lower tribunals declined to admit and consider the evidences; he was sick during the *locus in quo* at the ward tribunal; his witnesses were not mentioned in the decision of the ward tribunal; important documents were not admitted; the sisal trees were planted on 3rd April 2020 and before there were *Nyabagole* boundaries; and finally, the appellant stated that he lived in the area undisturbed since *operation vijiji* which is more than fifty (50) years of stay.

On my part, I started with perusal and scrutiny of the record of this appeal to see what transpired in the ward tribunal. The record shows that the ward tribunal was convened on 8th May 2020 at Masaba area and both the appellant and respondent were present. The complaint which was registered by the respondent shows that: *ndugu*

William Samwel anamlalamikia ndugu Athumani Matioko kwa kosa la kuvunja mpaka na kuingilia upande wake.

In producing material details of the complaint, the respondent stated before the ward tribunal that: *lalamiko langu ni kulima na kung'oa mikonge. Kuingia upande wangu. Nilipojaribu kumwambia alisema yeye hajui. Anayejua ni Baba yake Athumani Matioko. Nilimwita kwa Mwenyekiti wa Kitongoji hakuja. Alikuwa anaumwa. Ikabidi nije Baraza la Kata.* During questioning by the members on the size which was encroached by the appellant's son, the respondent was very certain and started that: *aliingia hatua 13 upana, 9 katikati na 2 mwisho...ameng'oa katani 10.*

On 19th May 2020, the ward tribunal was convened again, and this time it was intended to receive a reply of the complaint from the appellant. Before the appellant had produced his reply to the complaint, he was asked by the ward tribunal members as to whether he had any questions to the respondent, but declined to ask any questions. In his submission, the appellant stated that:

Mimi mpaka wangu uliokuwa kwa miaka yote anasogea hata mwaka huu amechimba kwenye eneo langu...toka nimiliki eneo hilo sasa ni miaka 45. Nashangaa tarehe 3.4.2020 walienda kupanda katani...baada ya siku mbili

Mwenyekiti wa Kijiji Kanango alinipitia kwangu akiwa na Mtendaji ili waende kuangalia. Walipofika kwa William wakamkuta Mke wake. Walipoambiwa katani zimepandwa ndani ya mahindi...katani tatu wakazing'oa. Wakasema kama zilikuwa ni mipaka mbona zimepandwa ndani ya shamba...

When the appellant was questioned by the respondent on where was the previous sisal boundary, the appellant replied that: *sijui*. And when the appellant was questioned on location of the boundary by the respondent, he replied that: *mpaka unaonekana*. Mr. Obadia Warioba, Hamlet chairman was called to give evidence on what transpired in his hamlet between the appellant and the respondent on land dispute. His version of the story, in brief is that: *nilipokea lalamiko...kabla ya kuchukua hatua nilifika kwenye eneo husika...nilipowaita ili kupata suluhu ya jirani na jirani, Juma alisema eneo hili yeye alifahamu...hajui mipaka yake.. na anayelifahamu ni baba yake...*

On the other hand the former Village secretary Mr. Samson Kisiri testified before the Tribunal and stated that: *nilikuwa Katibu wa Kitongoji. Tulikuja hapa kwa ajili ya Athumani na waliamua wakauziana nyumba, dume moja, sero na sh. 6,000/= baadae tulifanya maandishi*

hiyo sehemu alipewa asumani..up 32. Kati 77 na urefu 238...tuliweka mipaka ya katani, wameng'oa...

Mzee Nyakyoma Sungura who lived as a villager and ten cells leader at the vicinity of the disputed land was marshalled during the *locus in quo* and his words are that:

...ninavyotambua eneo hili mimi nimekaa hapa...hawa majirani zangu pia nimekuwa Balozi ndani ya miaka ishirini... kwa muda wote huo sikuona kelele ama yeyote kuhusu Athuman au William...tumeishi vizuri.

Following the evidences produced by the parties in the present dispute and materials registered by the leaders, it is vivid that the parties had boundary dispute for a long time. However, it was sisal trees which were separating the parties. It was fortunate that the boundary in dispute was visited by the ward tribunal members and neighbours were invited to give their opinions and all admitted that there was sisal trees boundary demarcating between the two contesting parties.

After full hearing of the case at the ward tribunal, tall members were invited to give their opinions on the matter. I will briefly explain on the findings and reasoning of each member of the ward tribunal:

Member 1: *kulikuwa na mpaka wa katani wa muda mrefu na*

zimeng'olewa....inaonekana eneo ni la mlalamikaji;

Member 2: *tuta la mpaka lilitolewa...eneo hilo linaonekana wazi*

kabisa amevamia. Eneo ni la mdai;

Member 3: *Eneo ni mali ya mlalamikaji sababu hata Balozi wa*

muda huo Ilegi Makang'a amedai wamepanda

mikonge kwenye mpaka; na

Member 4: *Kutokana na ushahidi uliotolewa na Balozi Samson*

Sakumi wa muda huo alisema wamepanda katani

kwenye mipaka, lakini tumekuta mlalamikiwa

ameng'oa na kulima mpaka wa tuta hilo. Katani

hazipo...maoni yangu eneo ni la mdai.

Following the opinions of the members of the ward tribunal, the ward tribunal unanimously decided in favour of the respondent. The decision of the ward tribunal dissatisfied the appellant hence filed the land appeal before the district tribunal and attached six (6) reasons of contest. After full hearing of the reasons, the district tribunal decided in favour of the respondent and at page 3 & 4 of the decision, the district tribunal reasoned that:

Wajumbe wote wawili wa Baraza wameshauri kwamba rufaa

hii itupiliwe mbali... kwamba hukumu ya Baraza la Kata ya

Masaba ibaki kama ilivyo. Nami naungana na maoni yao...ni kweli kabisa kwa kulingana na ushahidi uliotolewa mbele ya Baraza la Kata, Mjibu Rufaa na mashahidi wake walithibitisha katika kiwango cha kuridhisha kwamba mleta rufaa ndiye alikuwa ameruka eneo lake, akaharibu mpaka na kuingia kwenye eneo la mjibu rufaa.

I have had taken this long journey in searching the facts of the present appeal to make the matter well appreciated. From the extracted facts it is very vivid that the son of the appellant, one Juma Athumani Matioko (Juma) went and cultivated the boundary land, between the appellant and the respondent. It is fortunate that Juma conceded during questioning by the respondent and members of the ward tribunal in *locus in quo*, that he is unaware of the land boundaries, save for his father, the appellant. His father, the appellant also admitted during his testimony that: *Juma hajui mipaka.*

During the *locus in quo*, record reveals that neighbours and local leaders were invited to participate in the proceedings and all conceded that there were land boundaries between the appellant and respondent demarcated by sisal trees which were uprooted and set aside by the appellant's son. This crucial fact was not disputed during the hearing of the dispute at the ward tribunal, district tribunal and in this court.

I am aware that the appellant had filed a total of six (6) grounds in this appeal to dispute on various issues. I will briefly determine them, as this is a court of justice and will not be detained long on issues which are straight forward. The first reason relates to prayer of tendering evidence. However, there is no such prayer which is reflected in the proceedings of the ward tribunal from the first day when the dispute was registered at the ward tribunal on 8th May 2020 to the decision date, 6th November 2020. I understand parties and witnesses in some incidents stated on land sale and transaction of *ng'ombe* and Tanzanian Shillings Six Thousand (6,000/=Tshs.). However, no evidence was tendered in the ward tribunal.

I understand that section 34 (1) (b) & (c) of the Act allows the district tribunal in appeals brought to their attention from the ward tribunal to inquiry or call for new evidences. I perused the record of the district tribunal in the land appeal, and found that on 8th June 2021, the application was scheduled for hearing. However, the appellant did not register any prayer with regard to production of new evidences. What transpired, in brief, on that day, is shown in the following text:

Mawasilisho ya Mrufani: *Nimekata rufaa kwa sababu sikutendewa haki na Baraza la Kata. Walikataa eneo langu*

wakamkabidhi mrufaniwa. Baraza la Kata walikataa kupokea vielelezo vyangu.

Mawasilisho ya Wakili wa Mrufaniwa: *Mhe. Kilichofanywa na Baraza la Kata ni kulingana na ushahidi uliotolewa...mrufani alivamia eneo la mrufaniwa na mashahidi walithibitisha hivyo. Kwamba mrufani alivamia eneo lenye mgogoro na kuharibu mipaka...kuhusu madai ya mrufani kuwa Baraza la Kata lilikataa vielelezo, mrufani hajaeleza ni kielelezo gani kilichokataliwa...kumbukumbu za Baraza la Kata hazielezi kama kuna kielelezo kilitolewa na kikakataliwa...vinginevyo mrufani angefuata utaratibu wa kuleta vielelezo hivyo...*

When the appellant was granted leave to reply the submission of the respondent's counsel, did not pray for production of the additional documents to have the ruling of the district tribunal under the law in section 34 (1) (b) & (c) of the Act. Instead, he briefly stated that: *alichosema wakili sio kweli. Mashahidi wangu hawakusikilizwa.* In this court, when the appellant was submitting, he argued that he bought the disputed area from the respondent at the price of Tanzanian Shillings Six Thousand (6,000/= Tshs.) attached with a cow and the land was sized human steps were 2, 8 and 10. However, the submission is not supported by record of both tribunals below. In his evidence at the ward tribunal, the appellant did not submit the cited statement. In any case, the transactions of money and cow alone

cannot resolve the issue on whether the sisal tree boundary was interfered and uprooted in early May 2020.

I also perused the record of this appeal and found out that the ward tribunal visited the scene of the dispute and recorded all persons who were present and questioned on the dispute, including the hamlet chairman, Mr. Obadia M. Waryoba, ten cells leaders, Mr. Myakyoma Sungura, son of the appellant, Mr. Juma Athumani Matioko and other six (6) neighbours, namely: Samson Saakumi, Zawadi Saakumi, Suzana William, Rosoa Lumbasi, Iregi Makang'a and Nyakiriga Juma. I understand the appellant stated that he was sick and did not attend the visitation meeting at the disputed land. However, the record is silent on recording the names of both parties in the dispute, the appellant and respondent.

In any case, the son of the appellant was recorded present and all important persons, including neighbours participated and questioned on the sisal trees boundary. I do not think, failure to record names of the parties in the *locus in quo* paper, prejudiced the parties. This court, since enactment of section 3A in the Civil Procedure Cod [Cap. 33 R. E.E 2019 is in favour of the merit of the matter.

It is from the facts extracted during the hearing of the case and questioning of the local leaders and neighbours, the ward tribunal

decided in favour of the respondent. I have noted two persons were mentioned during drafting of the decision of the ward tribunal, namely: Rusoa Lumbasi and Obadia Warioba. However, I do not think if their mentioning prejudiced the appellant at any rate. This is from the fact that reading the document of the decision, as a whole and considering the opinions of the ward tribunal's members, the decision in favour of the respondent was obvious.

I am aware that the appellant complained in this court on the district tribunal failure to consider his documentary evidence which indicated long stay in the disputed land. However, the dispute since its registration in the ward tribunal, it concerned a boundary on land dispute. The respondent categorically stated in the first day of the hearing and the tribunal recorded that: *ndugu William Samwel anamlalamikia Ndugu Athumani Matioko kwa kosa la kuvunja mpaka na kuingia upande wake*. Again, I have shown in this judgment that it was son of the appellant who is recorded to have uprooted the sisal trees boundary and trespassed unto the respondent's land. The evidence of monies and cow transactions, even if it was to be admitted in this case, cannot override the already established boundaries of sisal trees border.

I am equally aware that there is complaint on land size which is disputed by the parties. However, the record is very clear on what

transpired in the ward tribunal. The respondent mentioned the disputed land with certainty as per requirement of the law 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; **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; **Daniel Dagala Kanunda v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015 and **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019).

The respondent stated in the ward tribunal on the first day of the hearing of the case that: *aliingia hatua 13 upana, 9 katikati na 2 mwisho...ameng'oa katani 10*. The appellant did not reply on this submission. The submission was followed by the visitation of the ward tribunal on the disputed land which revealed the land trespassed is: *upana kaskazini 12-1/2, katikati 8 na kusini 2*. This is almost to what is claimed by the respondent, and considering the human steps which were used to measure the land in dispute, it entirely depended on the steps taken by individual person who is measuring the land. If a person is tall and steps are long, it is obvious that few human steps will be recorded.

Having said so and considering the law in section 3 (2) (b) of the **Evidence Act** [Cap. 6 R.E. 2019], I have decided to dismiss the appeal with costs as I hereby. Accordingly, I declare the respondent as a rightful owner of the disputed land located within Bisarye Village in Masaba Ward of Butiama District in Mara region sized: *upana hatua 13 kaskazini, hatua 9 katikati na hatua 2 mwisho.*

Ordered accordingly.

Right of appeal explained.



A handwritten signature in blue ink, appearing to read "F. H. Mtulya".

F. H. Mtulya

Judge

10.03.2022

This judgment was delivered in Chambers under the seal of this court in the presence of the appellant, Mr. Athumani Matioko and in the presence of the respondent, Mr. William Samwel.

A handwritten signature in blue ink, appearing to read "F. H. Mtulya".

F.H. Mtulya

Judge

10.03.2022