

IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

LAND APPEAL NO 33 OF 2020

[Arising from Land Appeal No. 29 of 2019 of the District Land and Housing Tribunal of Singida and Original Land Case No. 13 Of 2019 of Msisi Ward Tribunal.]

JUMA ISSA APPELLANT

VERSUS

EMMANUEL SIMA RESPONDENT

JUDGMENT

29th July, 2021 & 8th March, 2022

M. M. SIYANI, J.

The respondent, Emmanuel Sima, sued the appellant, one Juma Issa at Msisi Ward Tribunal for encroachment on his land by constructing a fence boundary beyond the appellant's land by 168 paces in length and 9 paces in width. The Trial Tribunal decided in favour of the respondent. The appellant was dissatisfied and appealed to the District Land and Housing Tribunal which upheld the decision of the trial tribunal, hence, this appeal which has two grounds of appeal as follows:

- 1. That the appeal Tribunal erred in law and in fact by reaching a decision without making a proper assessment and evaluation of evidence adduced before it.*

- 2. That the appeal tribunal erred in law and in facts by failure to write a report and a sketch map when it visited the locus in quo so as to make a proper demarcation of the suit land.*

The appeal was heard by written submission. The appellant is unrepresented while the respondent is represented by Jackson Mayeka, learned advocate. In his submissions, the appellant has raised a point of law that the respondent had no locus standi to sue on behalf of his father. However, I shall not attend to this complaint because it is neither among the complaints in the grounds of appeal nor was it raised at the trial or before the first appellate tribunal.

On the first ground of appeal the appellant has submitted on how he engaged in litigation with other people over the dispute land and won the case. To him this is enough evidence that the land belongs to him. However, in relation to evidence, the appellant did not point out the

evidence which the lower tribunals failed to evaluate or did not properly consider as stated in the first ground of appeal. Regarding the second ground of appeal, he submitted that the first appellate tribunal erred by failure to order the trial tribunal to draw a proper sketch map and prepare a report upon visiting the locus in quo. He referred the court to the case on **Nizal Vs Gulamali** [1980] TLR 29.

Counsel for the respondent, responded that the appellant has misconceived the dispute because it is not about ownership of the whole of the appellant's land but the act of the appellant partly trespassing into the respondent's land by putting a fence beyond his farm boundary. He submitted that the lower tribunals properly considered the evidence on record to come to the conclusions they made. On the second ground of appeal the learned counsel submitted that the appellate tribunal did not violate any rule by failure to draw the sketch map. He argued that the appellant has misconceived the holding in **Nizal Vs Gulamali's** case as it does not state that upon visiting a locus in quo, the court ought to draw a sketch map.

I shall be very brief in determining this case. I start with the second complaint that the appellate tribunal did not draw a sketch map upon visiting the locus in quo. While I take notice of the fact that in his submission the appellant was not clear on whether the complaint relates to the trial or first appellate tribunal, the record of the first appellate tribunal at page 11 of the typed proceedings is clear that it visited the locus in quo and the sketch map was drawn. It states:

'The tribunal visited the locus in quo in presence of parties and each was given right to show the land being alleged to be his property and a sketch map was drawn'

Indeed, there is a sketch plan in the first appellate tribunal's file. If the complaint relates to the trial tribunal, there is no evidence in the proceedings that that tribunal visited the locus in quo despite the order in the file that it would visit the locus in quo on 20/12/2019. The visit, if any, is not reflected in the proceedings. Therefore, the second ground of appeal has no merits.

On evaluation of evidence, the first appellate tribunal did not discuss the evidence from witnesses who testified at the trial tribunal. It relied heavily on record of its visiting the locus in quo. However, the record does not reflect the witnesses' evidence at the locus in quo other than the statement that the tribunal visited the dispute place in the presence of the parties. The first appellate tribunal ought to have recorded the evidence of witnesses thereat. Failure to do so and relying on its observations to make a decision makes it a witness instead of an umpire which is unacceptable. Therefore, as the tribunal did not discuss the evidence of witnesses at the trial tribunal, the complaint that it did not evaluate the evidence is justified.

The above said, the first complaint has merits. The decision of the first appellate court is not based on evidence but its observation at the locus in quo which is unprocedural. The remedy is to quash that decision and remit the file back for it to prepare a judgment based on evidence adduced at the trial tribunal. If necessary to visit the locus in quo, evidence must come from witnesses which evidence ought to be reflected on record.

In the event the appeal is allowed. However, I give no orders as to costs because the error pointed out cannot be blamed on any party but the first appellate tribunal itself.

DATED at **DODOMA** this 8th day of March, 2022.




M.M. SIYANI
JUDGE