

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 61 of 2020

(Arising from Bukoba District Land and Housing Tribunal in Application No. 77/2019)

CHRISTIAN AUGUSTINE.....APPELLANT

VERSUS

GORDIAN BATRIMAYO.....RESPONDENT

JUDGMENT

Date of last order: 21/02/2022

Date of judgment:28/02/2022

Kilekamajenga J.

Before the District Land and Housing Tribunal of Bukoba (DLHT), Gordian Batrimayo (the Respondent) filed a land case against the appellant alleging that, the appellant encroached into his land and destroyed some crops. The respondent prayed the DLHT to order the appellant stop the encroachment and pay the compensation for the destroyed crops. The appellant denied the allegations but at the end, the trial tribunal decided in favour of the respondent, hence this appeal.

In this case, the respondent claimed that he inherited the land from his father and he has been living in the land since his first birth day. The appellant started to encroach in the land in 2012, uprooted the boundaries and

destroyed the crops like cassava, beans and maize. In 2013, the respondent filed a civil case at Kaagya Ward tribunal which ordered the valuation to be made. The valuation report showed that the destroyed crops were valued at Tshs. 217,392/=. While the matter was still pending, the tribunal chairman died and the matter ended there. The parties were advised to refer the matter to the clan where they were reconciled and the boundaries were fixed. Later, the appellant encroached into the land and the respondent filed the case at the DLHT to get an order restraining the appellant from encroachment and pay the compensation for the destroyed crops. As stated earlier, the DLHT decided in favour of the respondent.

Being aggrieved with the decision, the appellant approached this court faulting the findings of the DLHT. I take the discretion not to reproduce the grounds of appeal in this brief judgment due to the reasons stated herebelow. When the matter was called for hearing, the appellant appeared in person and unrepresented whereas the learned advocate, Mr. Mathias Rweyemamu, appeared for the respondent. In his submission, the appellant informed the court that he is not responsible for the land in dispute as the same land belongs to his son. He (the appellant) is only a care taker of the land in dispute. Therefore, the appellant's son was supposed to be sued in this case and not him (the appellant).

In reply, Mr. Rweyemamu for the respondent stated that the appellant failed to argue the raised grounds of appeal and that the respondent was supposed to respect the boundaries. He urged the court to dismiss the appeal and restrained the appellant from encroaching into the land.

When rejoining, the appellant denied uprooting the boundaries as alleged by the respondent.

Having heard the submissions from both sides, the issue that crops-up is whether this appeal has merit. According to the oral submission made by the appellant, the land in dispute belongs to his son. The appellant is only taking care of it while his son is away. However, the respondent sued the appellant after encroaching into the land leading to destruction of crops. It is therefore evident that the respondent had the right to sue the appellant due to the encroachment. However, the appellant has nothing to prove in respect of the ownership of the land because it belongs to his son. The only remedy to this case is to restrain the appellant from encroaching into the respondent's land. The appellant has no right to encroachment because he does not own land next to the respondent. Furthermore, there is sufficient evidence showing that the matter was referred to the clan; the parties were reconciled and boundaries were set. However, the appellant, who does not own any land near the respondent's land, keeps on uprooting and encroaching into the

respondent's land. In my view, the appellant has decided to engage himself in criminal acts for no good reasons. If he continues to encroach into the land, he deserves a charge for criminally trespassing into the respondent's land.

In the upshot, I find no merit in the appeal because the appellant has no ownership on the disputed land. I hereby dismiss the appeal. I further order the respondent to be the owner of the land in dispute. The appellant is further ordered not to encroach into the respondent's land. The boundaries set by the clan should be re-fixed and respected. The parties should bear their own costs because they are members of one family. Order accordingly.

DATED at **BUKOPA** this 28th February, 2022.

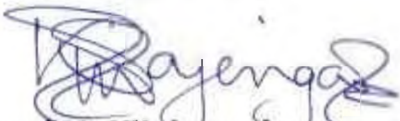



Ntemi N. Kilekamajenga
JUDGE
28th February 2022

Court:

Judgment delivered this 28th February 2022 in the presence of the appellant and the respondent. Right of appeal explained.




Ntemi N. Kilekamajenga
JUDGE
28th February 2022