

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND APPEAL NO. 10 OF 2021**

*(Arising from judgment of District Land House Tribunal for Korogwe, Hon. Makombe, Chairman in Land Appeal No. 23 of 2020 originating from Land case No 004/2020 of Hale Ward Tribunal)*

**STEPHINE VASONGA.....APPELLANT**

**-VERSUS-**

**FREDRICK MESHACK.....RESPONDENT**

**JUDGMENT**

*Date of last order: 25/10/2021*

*Date of judgment: 16/02/2022*

**AGATHO, J.:**

The Appellant being dissatisfied by the decision of the District Land and House Tribunal of Korogwe at Korogwe preferred an appeal to this Court on the following grounds:

1. That the Hon. Chairman erred in law and on facts in delivering judgment which is at variance with the evidence adduced by the parties
2. That the Hon. Chairman erred in law and on fact when misconceived that the land in dispute is a public way or road as opposed to the evidence on record.

3. That the Honourable Chairman erred in law and on facts in failing to evaluate the evidence of each witness, assess their credibility so as to make its own findings on the contested facts in issues, hence leaving the contested material facts and law unresolved.

The Appellant prayed for:

- (a) That the Honourable Court to allow the appeal
- (b) The Honourable Court to declare the proceedings and judgment of the District Land and Housing Tribunal of Korogwe null and void.
- (c) The judgment and decree of the District Land and Housing Tribunal be set aside and come to its own finding of the facts and grant appropriate orders.

On 31/09/2021 the Appellant prayed for the hearing be conducted by way of written submissions, which was granted, and the schedule was set. The Appellant filed his written submissions timely, and the Respondent has not been served with the Appellant's written submissions on time. Hence, he filed his reply to the Appellant's written submissions on 06/11/2021.

But before turning to the grounds of appeal, it is worth to briefly state that, the Ward Tribunal entered its judgment in favour of the Appellant

that the right of way claimed by Respondent was not a way. Rather it was a footpath. It ruled that the Appellant to proceed to with erection of the wall/fence. It reasoned that none of the Respondent's witnesses confirmed the boundary is the trees or the iron bars (rail bar) placed nearby the footpath. The Appellant witness (Fredrick Enorck Magombia) at the trial tribunal testified that the boundary marks were the trees and not the rail bars (iron bars). This was supported by another witness Rabisifa Ndial Mushi, who testified that she is the one who sold the plot to the Appellant, and the boundary was the trees. She added that she left a footpath for individuals to pass not a road for the cars. That is seen on the Ward Tribunal's record of proceedings.

Moreover, the trial tribunal reasoned that if the Respondent is granted right of a way, then the wall should be demolished, and the way will be to nowhere as the next plot where the way leads to is a house of Mr. Gallah, which will have to be demolished too. The Ward Tribunal further held that there is an alternative road which was recognized by the village government (the Makinyumbi Miembeni village).

From the judgment of the Ward Tribunal, it is clear that the right of way was there. But it was a footpath. The trial tribunal also added that there an alternative road set by the village authority. What the Ward Tribunal did not determine is whether the Appellant blocked the easement. Again

the trial tribunal did not reason how Mr. Gallah will be reaching his home, in other words whether Mr. Gallah has access to any road if the purported road is blocked by the Appellant.

I have checked the sketch map of the portion of land in dispute. It is visible on that sketch map though not clear if it was received as exhibit at the trial tribunal and not clear who drew it. Nevertheless, the trial tribunal visited locus in quo. There is somewhat compatibility as to what the trial tribunal members saw and the content of the sketch map. Honestly, the District Land and Housing Tribunal did little or no analysis of evidence on record. I thus decided as second appellate Court to reevaluate the evidence on record. The defect complained by the Appellant on his 3<sup>rd</sup> ground of appeal that the appellate tribunal did not evaluate evidence is now cured.

I have looked at the sketch map drawn at the Ward Tribunal upon visiting the locus in quo. The land in dispute being not surveyed, it is appropriate to consider such sketch map. The road/way claimed indeed crosses the Appellant's plot. And if it is confirmed that it is a road then it will certainly lead to demolition of Mr. Gallah's house. Moreover, Mr. Galla's plot has access to another road on the other side. There is a difference between a footpath and a road. The former is simply for pedestrians, those individuals walking on foot because the way is not

designated for cars. A road is open to sidewalk for pedestrians and there is a space for cars to be driven through.

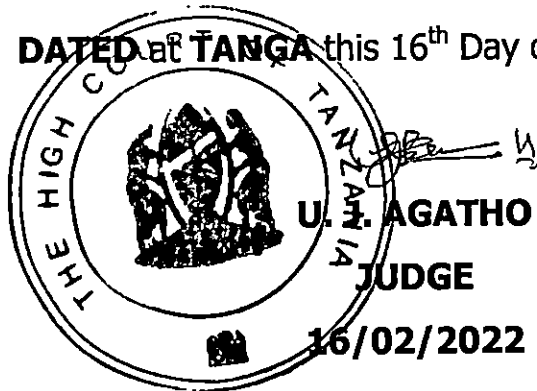
What the Appellant did is quite fair and wise. He left a space/footpath. Even if people have been using the way for many years if that road is informal and there is the alternative road it is my view that Section 146 of the Land Act [Cap. 113 R.E. 2019] cannot be used to deny the Appellant his right/interest on his plot. He may construct a wall/fence or a house as it pleases him. Again, he has been considerate of users of the footpath, that is why has not blocked it. However, the road for the cars to pass over there will be tantamount to depriving him his right to his own property.

I would emphasize that there is an alternative road recognized by the village authority. Since the use of the road crossing on the Appellant's plot was seen to be informal even by the village authority and because there is the alternative road as stated in the Ward Tribunal's judgment, I am of the view that the District Land and Housing Tribunal erred. There is evidence that there is alternative road, and for that reason section 146 of the Land Act [Cap. 113 R.E. 2019] is in applicable. Consequently, I find all three grounds of appeal have merits. The appeal is thus allowed, and the decision of the District Land and Housing Tribunal

(DLHT) is reversed instead the decision of the Ward Tribunal is restored.

Each party to bear its own costs.

**DATED at TANGA** this 16<sup>th</sup> Day of February 2022.



**Date: 16/02/2022**

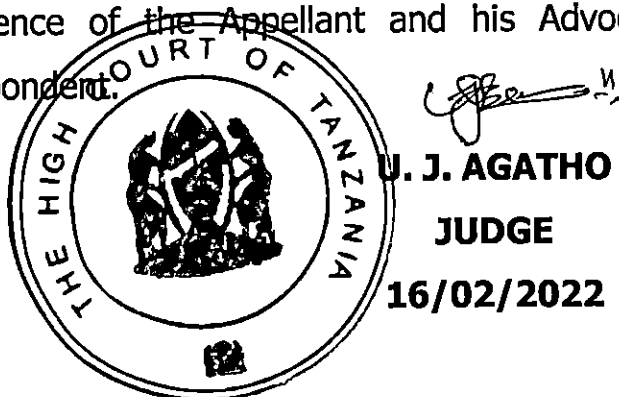
Coram: Hon. Agatho, J

Appellant: Present with his Advocate Mr. Abdallah Burhan

Respondent: Present

B/C: Zayumba

**Court:** Judgment delivered on this 16<sup>th</sup> day of February, 2022 in the presence of the Appellant and his Advocate Mr. Burhan, and the Respondent.



**Court:** Right of Appeal fully explained.

