

**THE UNITED REPUBLIC OF TANZANIA**  
**(JUDICIARY)**  
**THE HIGH COURT- LAND DIVISION**  
**(MUSOMA SUB REGISTRY)**  
**AT MUSOMA**

**Misc. LAND APPEAL No. 25 OF 2022**

*(Arising from the District Land and Housing Tribunal for Mara at  
Musoma in Land Appeal No. 99 of 2021 & originating from Bukabwa  
Ward Tribunal in Land Case No. 81 of 2021)*

**SAIMON SORI ..... APPELLANT**

***Versus***

**FEDRICK MATENGO ..... RESPONDENT**

**JUDGMENT**

**21.03.2023 & 21.03.2023**

**Mtulya, J.:**

On 29<sup>th</sup> March 2021, **Mr. Fedrick Matengo** (the respondent) had approached the **Bukabwa Ward Tribunal** (the ward tribunal) and lodged **Land Case No. 81 of 2021** (the case) complaining that **Mr. Saimon Sori** (the appellant) had encroached into his land and prayed before the ward tribunal to be declared as a rightful owner of the disputed land. The case was scheduled for hearing on 6<sup>th</sup> April 2021, and the respondent was recorded at page 1 of the typed proceeding of the ward tribunal to have testified that:

*Mimi nakumbuka Mwaka 1974 tunahamia  
vijijini. Sasa walivyokuwa wanakata viwanja  
kwenye mstari, kiwanja cha kwetu kilikuwa*

*cha mwisho. Mwaka 1975, Mzee Sori Mwita alikuja akajenga pembeni na kwetu. Kufikia Mwaka 1977 akahama. Kipindi watu tunahamia vijijini, ilikuwa ni vichaka tu.*

In replying the complaint leveled against him, the appellant on 19<sup>th</sup> April 2021, was recorded at page 16 of the typed proceedings to have testified that:

*Mimi ni kijana wa familia ya Sori. Kijana wa mwisho. Eneo ambalo ninaishi ni eneo la urithi. Tuko vijana watatu. Hilo eneo linalolalamikiwa na Mdai nilipewa Mimi mtoto wa mwisho. Kulingana na familia yetu kuwa hali duni masikini. Ndugu Mdai alitumia hiyo nafasi kupora lile eneo.*

After registration of all necessary materials in the case, the ward tribunal resolved at the final page of the decision, page 42 of the typed proceedings, that:

*Mdai ameshindwa katika shauri hili. [Baraza] linampa ushindi Ndugu Fredrick Matengo na Ndugu Saimon Sori ameshindwa.*

However, the record of the ward tribunal in the case was silent on size, location and boundaries surrounding the disputed

land as per requirement of the law in 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 precedent in **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021, which held that disputed lands must be sufficiently described with certainty in terms of size, location, and demarcations surrounding the land.

It was unfortunate that when decision of the ward tribunal was protested at the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 99 of 2021** (the appeal), the district tribunal blessed the decision of the ward tribunal and resolved at page 4 of the typed judgment that:

*Hukumu ya Baraza la Kata ni thabiti. Hivyo,  
ibaki kama ilivyo.*

Today afternoon the appeal was schedule in this court for hearing. However, before hearing proceedings could take its course, this court under the powers enacted in section 43 (1) (b) of the **Land Disputes Courts Act [Cap 216 R.E 2019]** had revised the proceedings and found the indicated fault and invited the parties to enjoy the right to be heard on the subject.

In enjoying the right to be heard, the appellant had invited the legal services of **Mr. Emmanuel Gervas**, who briefly submitted

that the record is silent in terms of size, location and demarcations of the disputed land. In his opinion, the respondent had filed a land dispute at the ward tribunal without sufficient descriptions of the land, and had declined even to mention hamlet, village or district where the land is located.

According to Mr. Gervas that is a breach of the law and it is a fatal irregularity that cannot be cured at this stage and in any case this court cannot pronounce a rightful owner of uncertain disputed land, and if it does so, the execution of the matter will be at chaos. Finally, Mr. Gervas prayed the proceedings of both tribunals below to be quashed for want of proper record of the court and each party to bear its costs as the fault was caused by the tribunals below.

The Respondent on his part stated that he has been using the land for a long period of time and that he identified size, location and boundaries demarcating the disputed land with other lands, but the ward tribunal had declined to record the materials.

I have perused the record of present appeal and it is vivid that both parties at the ward tribunal had remained silent regarding land size, location and neighbours surrounding the land. It is unfortunate that all lower tribunals awarded unknown land. It

is unlucky that even the decree of the tribunal awarded unknown land which may bring more chaos than cure during execution stage. As the fault is fatal, this court is unable to declare either party as a rightful owner of the disputed land.

Having said so and for the need of certainty of decisions from this court, I will follow the directives of this court in the precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti** (supra) by setting aside all proceedings and decisions of the lower tribunals for want of application of the law in Regulation 3 (2) (b) of the Regulations.

Regarding the way forward, I let it to the parties to decide. If any of them is still interested in the disputed land may wish to initiate fresh and proper land dispute in appropriate forum entrusted with powers of resolving land disputes, in accordance to the current laws regulating land disputes.

Ordered accordingly.



  
F. H. Mtulya  
**Judge**  
21.03.2023

This Judgment was delivered in Chambers under the Seal of this court in the presence of the appellant, **Mr. Saimon Sori** and his learned counsel, **Mr. Emmanuel Gervas**, and in the presence of the respondent, **Mr. Fedrick Matengo**.



F. H. Mtulya

**Judge**

21.03.2023