

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF KIGOMA)

AT KIGOMA

MISC. LAND APPEAL NO. 58 OF 2022

(Arising from the District Land and Housing Tribunal in Land Appeal No. 5/2021
originating from Businde Ward Tribunal)

ADAM SHABANI LBAKE.....APPELLANT

VERSUS

ALIMAS BODI GELELANYA.....RESPONDENT

Date of Last order: 23 .03. 2023

Date of judgement: 28 .04. 2023

JUDGEMENT

MAGOIGA, J.

This is an appeal against the judgment of the District Land and Housing Tribunal in Land Appeal No. 114 of 2021 arising from Businde Ward Tribunal in Land case No. 5 of 2021.

In a nutshell, at Businde Ward Tribunal, the respondent Alimas Bodi Gelelanya sued the appellant Adam Shabani in Land case No. 5 of 2021 for trespass to the plot located at Msufini street Businde Ward. The trial Tribunal decided in favour of the appellant. Aggrieved, the respondent appealed to District Land and Housing Tribunal vide Land Appeal No. 114



of 2021 where after hearing parties, the DLHT allowed the appeal and quashed the trial tribunal's decision.


The appellant bemused with the said decision has appealed to this court armed with four grounds of appeal as listed hereunder:

- 1. That the chairman erred in law when she nullified the judgment of Businde Ward Tribunal which gave judgment in favour on flimsy ground that the respondent had acquired the suit land in 2006 earlier than me who acquired it in 2007.*
- 2. That the trial chairperson erred in law and facts when she failed to ascertain the fact that the boundary separating my land and the respondent's land is the road that was established by the government. The respondent intends to own the land beyond the road.*
- 3. That the trial chairperson erred in law and facts when she failed to order that KILENZA who appeared as a witness for the appellant was supposed to be joined as a necessary party to the suit land who sold it to the appellant.*
- 4. That the chairperson erred in law when she gave the judgment in favour of the respondent while the said respondent did not prove the claims to the required standard that he owns the land beyond the road which is the boundary between the parties.*



On the above grounds, the appellant prayed that this court to allow the appeal with costs by nullifying the judgement of Kigoma District Land and Housing Tribunal and uphold the judgment of Businde Ward Tribunal.

When this appeal was called on for hearing, the appellant was enjoying the legal services of Mr. Daniel Rumenyela, learned advocate, while the respondent appeared in person and unrepresented.

Mr. Rumenyela started by telling this court that he drops grounds number 1 and 4, which same were so noted and marked. Submitting on the third ground told the court that, the trial DLHT erred in law for failure to order the necessary party be joined in this suit. Those necessary parties, he named them as Kilenza and Pius Michael. He said, these two persons are the ones who sold the disputed land to parties herein. He pointed out that they were very much important in determination of this matter. To buttress his argument, he cited to this court the case of **Juma B. Kadala vs Lawrent Nkande [1983] TLR 42** at page 103 underscore the point of necessity to join necessary parties. It was his prayer that the proceedings in both lower Tribunals and judgment be quashed and order the suit to start afresh to enable the court effectively determine the real issues. 

On the 2nd ground, the learned advocate for the appellant submitted that both parties agreed that a road pass through their plots and be their permanent boundaries. But unfortunately, the respondent has gone beyond the road and took the plot of the appellant. He faulted the first appellate court for not making any finding in this point by nullifying the trial Tribunal findings.

He further blamed the 1st Appellate chairman that she left the dispute hanging without further orders what is to be done. He prayed this court to give further direction for the interest of justice. Consequently, he prayed that this appeal be allowed with costs.

On the other hand, the respondent had nothing to submit other than asking this court to consider his reply to memorandum of appeal and invited this court to disallow the appeal.

For the purpose of proper understanding of this appeal, I will also reproduce the reply which is to be taken as the submission on the part of the respondent as hereunder stated;

- 1. That the Honourable chairman of the District Land and Housing Tribunal for Kigoma was proper in her decision after scrutinising and thereby to find out that the disputed land was brought by the*

- respondent since 2016 from the original owner late Pius Maiko BUGEGENE by written contract in presence of the assessors of the Appellant's allegations that KILENZA who allegedly to have sold the same to him not true since KILENZA had never owned the suit land.
2. That, the allegation in the 2nd ground of petition of appeal are strongly disputed by the respondent. The respondent avers that the trial Hon Chairman of the District Land and Housing Tribunal was proper in his decision in that land owned by KILENZA who is alleged to have sold the disputed land to the appellant the said land was measured by the assessors of the Ward Tribunal for Businde since 2018 of which the disputed land was discovered to have never been owned by the said KILENZA.
3. That the Hon. Trial Chairman of the District Land and Housing Tribunal was proper in his decision to declare the respondent to be the legal owner of the disputed land in that the alleged KILENZA had never been a neighbour and neither never owned the same as aforesaid in paragraph 1 and 2 herein above. Hence the allegations of the appellant to join the said KILENZA as party in the case is not legally grounded.
4. That the Hon. Trial Chairman of the District Land and Housing Tribunal was proper in law and in fact in his decision after properly

scrutinizing the heavier evidence of the respondent and his witness one SADI AHMADI who was then an accountant of the Ward Tribunal for Businde and other tendered exhibits before the same which proved that the respondent legally owned the suit land since 2016.

Having carefully gone through the grounds and reply of appeal and also the short submission for and against the appeal, and after going through the evidence on record in the trial proceedings, I find the central issue for determination in this appeal is whether the appeal has merit or not.

Coming now to the merits of this appeal, in particular, on the second and third grounds of appeal, having carefully followed the rivalling arguments of the parties, and considered all argued and the record of appeal, in my own considered opinion, I find the arguments by Mr. Rumenyela in this ground that the trial DLHT erred in law for failure to order the necessary party to be joined in this suit has merits for the reasons which I'm going to give hereunder.


As to non joinder of parties, I think, much as the appellant started asking for joining of a necessary party from the first appellate court but unfortunately the Chairman did not labour on the same, it is the right time to allow those parties to be joined in order to see whether they had better title to pass to the buyers. I mean, while the appellant alleges that the

suit land was sold to him by one KILENZA, on the other hand the respondent opposed by saying that the same suit land was sold to him by one PIUS. In the circumstances of this case, those sellers were necessary parties to be joined in determination of this matter at hand. In the case of **Abdulatif Mohamed Hamis vs Mehboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017 (unreported) that:

".... on the other hand, under Rule 3 of-Order 1, all persons may be joined as a defendant against whom any right to relief which is alleged to exist against them arises out of the same act of transaction; and the case is of such a character that; if separate suits were brought against such a person, any common question of law or fact would arise."

Basing on that principle, while considering the arguments by the counsel for the appellant that these two persons are the ones who sold the disputed land to parties herein, are necessary and indispensable in the circumstances of this appeal.

On the foregoing, this Court is constrained to interfere and order the name of parties' alleged to sell the land in dispute be joined because are necessary parties to enable the Tribunal to effectually and completely adjudicate upon and settle all the questions involved in the suit in terms of Order 1 Rule 10(2) of the CPC [CAP 33 R.E 2019].




Additionally, in similar situation the Court of Appeal observed further in the case of **Tang Gas Distributors Limited vs Mohamed Salim Said and 2 Others**, Civil Application for Revision No. 68 of 2011 (unreported) that,

"... it is now an accepted principle of law that, it is a material irregularity for a court to decide a case in the absence of a necessary party. Failure to join a necessary party therefore is fatal (MULLA at p 1020).

From the above reasons, I find that, in the circumstances of this case the non-joinder of these two persons (sellers of the suit land) rendered the suit subject to the instant appeal unmaintainable and any granted decree ineffective and thus fatal.

In the circumstances, I find this appeal to have been brought with sufficient cause and on this ground alone, I allow the appeal without necessarily determining the other grounds because the first and fourth grounds were early dropped by the appellant's counsel hence no need to discuss them.

Consequently, I quash and set aside the proceedings and judgements of the two lower Tribunals and order that this case file be remitted back to the Ward Tribunal for inclusion of the sellers and the matter be heard afresh.



In the upshot, I find merit in this appeal and allow it. Consequently, I make no orders as to costs because parties have another journey to go in litigation.

It is so ordered.

Dated at Kigoma this 28th day of April, 2023.




S. M. MAGOIGA

JUDGE,
28/04/2023