

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

**AT MUSOMA**

**Misc. LAND APPEAL CASE No. 118 OF 2021**

*(Arising from the District Land and Housing Tribunal for Mara at  
Musoma in Land Appeal No. 52 of 2021; and Originating from Bugwema  
Ward Tribunal in Land Case No. 3 of 2021)*

**NG'WEINA MATARE ..... APPELLANT**

***Versus***

**MASYAGA MARWA ..... RESPONDENT**

**JUDGMENT**

17.01.2023 & 17.01.2023

Mtulya, J.:

On 25<sup>th</sup> February 2021, **Bugwema Ward Tribunal** (the ward tribunal) was convened by **Mr. Ng'weina Matare** (the appellant) to determine a land dispute in **Land Case No. 3 of 2021** (the case) between the appellant and **Mr. Masyaga Marwa** (the respondent). After full hearing of the case, the ward tribunal resolved that:

*Mdaiwa Masiaga Marwa ndiye mwenye haki ya  
kumiliki eneo hilo la mgogoro kuliko mdai. Ng'weina  
Matare haruhusiwi tena kuingia kwenye eneo hilo.*

This decision was blessed by the **District Land and Housing Tribunal for Mara at Musoma** (the district tribunal) in **Land Appeal No. 52 of 2021** (the land appeal). The following holding

is found at page 3 of the judgment: *Mrufaniwa Masyaga Marwa ndiye mmiliki halali wa eneo bishaniwa*. The two tribunals had distinct reasoning in resolving the dispute. The ward tribunal reasoned that circumstantial evidence shows that the land in disputes belongs to the respondent, whereas the district tribunal reasoned that the land in dispute belonged to the respondent since 1987 and the appellant trespassed in the disputed land in 1999 without any justifiable cause.

The appellant was not satisfied by both decisions and reasoning of the lower tribunals hence approached this court and lodged **Misc. Land Appeal Case No. 118 of 2021** (the appeal) complaining that he had produced strong evidence than the respondent during the hearing of the matter at the ward tribunal, but the ward tribunal disregarded the evidence and its decision was upheld by the district tribunal. Finally, the appellant prayed this court to allow the appeal and decide in his favour and declare him as a rightful owner of the land.

However, today when the appeal was scheduled for hearing, this court **suo moto**, noted discrepancies on evidence with regard to land size and demarcations surrounding the land in dispute. The record shows that the appellant had claimed a total of eight (8) acres, but during his testimony

remained silent on size and demarcations surrounded the disputed land. When the appellant was probed on the size and demarcations of the disputed land by one of the ward tribunal's members, he testified that the land in dispute is sized 600 steps in length and 65 steps in width. He again remained silent on the demarcations which distinguish his land and other lands.

The respondent on the other hand testified that he was granted unmeasured land by **Balozi Matiko Surusi**. Mr Matiko Surusi was summoned in the ward tribunal as a key witness to testify on the dispute, but remained silent on the land size and demarcations, save for stories on amicable settlement of the matter. It was unfortunate in the present dispute that the **locus in quo** had revealed two lands in dispute with different sizes of fifteen (15) and six (6) acres.

Yet again, the two lands were not distinguished in terms of demarcations as per requirement of the law in Regulation 3(2) (b) of **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) and interpretation of this court in the precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji cha Viti, Land Appeal Case No. 12 of 2021**. This court in the cited

precedent had decided that address of any land in dispute must be sufficiently described with certainty in terms of size, location and demarcations. In the present appeal, the disputed land was uncertain and both tribunals decided the matter without granting specific land size and demarcations to the respondent. Noting the law and its interpretation, this court had invited the parties to explain on the matter, and the parties had decided to invite learned minds in Mr. Thomas Manyama Makongo and Mr. John Manyama to argue the raised point of law.

As part of cherishing the right to be heard under article 13 (6) (a) of the **Constitution of the United Republic of Tanzania** [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, Mr. Makongo, for the appellant, raised up and submitted that the record shows that the land in dispute is not expressly stated hence there is uncertainty on land size and demarcations. In his opinion, the uncertainty of the land marks the judgment and decree emanated from the dispute to be un-executable. With remedies available in such circumstances, Mr. Makongo thinks that the proper course is to nullify proceedings and decisions of both lower tribunals.

On the other hand, Mr. Manyama, for the respondent, supported the move on uncertainty of the land on record, but had different opinion on proper course to follow under such circumstances. According to him, this court is mandated to decide whatever it thinks fit when there is material error in the root of the matter and order what is best to the parties. In his opinion, this court may order the district tribunal to call for additional evidence from the ward tribunal and resolve the matter according to the law, instead of nullifying the proceedings and decisions of the lower tribunals.

I have had an opportunity to scan the record of the present appeal and considered the submissions of the learned minds, and I think, in my opinion that there is obvious breach of the law in Regulation 3(2) (b) of the Regulations and directives of this court in the cited precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji cha Viti** (supra). The undisputed position of the law is that failure to precisely cite lands in dispute in terms of size, location and demarcations is an error material to the merit of disputes. The error, according to our laws, causes injustice to the parties in land disputes and may invite more disputes during execution stages.

Having noted so, and being aware of the position stated in the cited precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji cha Viti** (supra), which I cannot depart without any compelling reasons, I hereby invoke section 43(1)(b) of the **Land Disputes Courts Act** [Cap. 216 R.E 2019], and quash decisions and set aside proceedings of both ward and district tribunals for want of proper application of Regulation 3(2)(b) of the Regulations and directive of this court in the precedent of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji cha Viti** (supra), which has already received a bunch of precedents in support of the course (see: **Hashimu Mohamed Mnyalima v. Mohamed Nzia & Four Others**, Land Appeal Case No. 18 of 2020; **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018; **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019; and **Burendire Isakwe v. Itaso Ally**, Misc. Land Appeal Case No. 116 of 2021).

In the end and following this determination, this court declines to declare any party in the present appeal as a rightful owner of the disputed land. The parties have multiple options

to follow, including but not limited to: first, prefer an appeal to the Court of Appeal to dispute this decision; second, initiate fresh and proper suit in a competent forum entrusted in resolving land disputes in accordance to the current laws regulating land matters; and finally, may wish to have amicable settlement of their differences, which is currently encouraged by the Judiciary of this State.

I award no costs in the present appeal as the fault was caused by the parties and blessed by the lower tribunals.

It is accordingly ordered.



  
F.H. Mtulya

**Judge**

17.01.2023

This judgement was pronounced in the chambers under the seal of this court in the presence of the appellant, **Mr. Ng'weina Matare** and in the presence of **Mr. John Manyama**, learned counsel for the respondent.

  
F.H. Mtulya

**Judge**

17.01.2023