

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT IJC MOROGORO

LAND APPEAL NO. 68 OF 2023

BETWEEN

DUNIA RAMADHANI MWENDI.....APPELLANT

VERSUS

TETEA SHANGALIMA.....RESPONDENT

JUDGMENT

10th Oct, & 30th Nov, 2023

CHABA, J.

This second appeal originates from Mkindo Ward Tribunal in Land Case No. 0080 of 2020. Tetea Shangalima, the respondent herein, filed a case against Dunia Ramadhani Mwendi "Dunia" at Mkindo Ward Tribunal claiming that, Dunia has trespassed into his land measuring 12 acres. Tetea Shangalima said, he was allocated the parcel of land by Kambala Village Council and farmed the land for a continuous period of three years, then he fell ill and left the farm un-attended until it became a bush, and in 2019, he went to the farm and found the workers of Dunia farming the land. Dunia said, he was leased the land by Wami-Dakawa Village Council in 2018. In support of his case, Dunia exhibited the Minutes of the Dakawa Village Assembly dated 15th February, 2018 in which it was clearly stated



that, the land situates at Dakawa Village be leased to citizens for farming at a price of TZS. 50,000/= per two acres. The Ward Tribunal gave a judgement in favour of Tetea Shangalima for the reasons that his evidence was heavier than that of the respondent.

When the matter went for appeal at the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT) via Land Appeal No. 52 of 2021, the DLHT was confronted with the issue of where exactly the land in dispute is located. While Tetea Shangalima said, he was allocated the land by Kambala Village, Dunia said he was leased the land by Wami Dakawa Village. The DLHT commissioned the District Executive Director (DED) of Mvomero District to visit the *locus in quo* in order to find out the demarcations and location of the land in dispute. On 8th December, 2022, the report from the District Executive Director (DED) of Mvomero was transmitted to the DLHT for Morogoro stating that the Land Officers, and representatives of Dakawa Village and a representative of Kambala Village visited the *locus in quo*, and they made a finding that out of 12 acres allocated to Tetea Shangalima by the Kambala Village Council, 2.1 acres are / were located at Dakawa Village. Thus, Tetea Shangalima has 7.53 acres located at Kambala Village, but 2.1 acres of which he claims to have been allocated to him by Kambala Village Council is not located at Kambala Village but Dakawa Village. Dunia has 6.61 acres which is located at Dakawa Village.

Following this report, the DLHT ruled that since the trial Ward Tribunal did not have territorial jurisdiction, the proceedings, judgement and decree of Mkindo Ward Tribunal were all quashed and set aside, and parties were advised to institute fresh case at the Tribunal with competent jurisdiction.

The appellant, Dunia was aggrieved by the decision of the DLHT and therefore he appealed to the High Court via Land Appeal No. 68 of 2023 raising two grounds of appeal:

1. The first Appellate District Tribunal erred both in law and fact when it ignored the second ground of appeal in the amended memorandum of appeal; and
2. The first Appellate District Tribunal erred in law and fact when it failed to order the respondent herein to pay for the rice paddy of three acres of the appellant, which the respondent unjustly harvested.

The appeal was argued by way of written submissions. The appellant was represented by Ms. Kabula Barnabas, learned advocate while the respondent enjoyed the services of Mr. Mandela Nuhu Kisawani, also learned advocate.

I have read and considered the submissions filed by the learned counsels and it is true that, before the trial Ward Tribunal, the respondent herein won the case, and the land in dispute was declared the property of the respondent, and as stated

in the case of **Princess Nadia (1998) Limited Vs. Remency Shikusiry Tarimo**, Civil Appeal No. 242 of 2018, at page 11 that:

"Since it was proved that the respondent was a trespasser, she had no right to benefit from her own wrongs, at worst, the appellant assumed the risk arising from her unlawful occupation in the premises."

Again, the grounds of appeal are out of context as neither the trial Ward Tribunal nor the first Appellate DLHT had considered the issue of rice paddy and harvest of the rice by the respondent. What was adjudicated by the trial Ward Tribunal was the issue of ownership of land, and the respondent herein was declared the owner of the land in dispute. What had followed after the Judgement of the trial Ward Tribunal was passed, and what happened during the execution of the decree passed by the trial Ward Tribunal, is not, and cannot be raised as the ground of appeal, as that issue was never at issue before either the trial Ward Tribunal or the first Appellate District Tribunal.

Moreover, as argued by the counsel for the respondent that, it is the position of the law that, the ground of appeal not raised in the first Appellate Court will not be entertained in the 2nd Appellate Court, the position is correct and I hold that since the grounds of appeal are raised for the first time in the 2nd Appellate Court, the 2nd Appellate Court lacks jurisdiction to entertain them. This position was

clearly stated in the case of **Raphael Enea Mngazija (Administrator of the Estate of the Late Enea Mngazija) Vs. Abdallah Kalonjo Juma**, Civil Appeal No. 240 of 2018, Court of Appeal of Tanzania, at page 8, held that:

"We think that this ground being a new ground for having not been raised and decided by the first appellate court, we cannot look at it and determine the same, in other words, we have no jurisdiction to entertain it, we would have entertained it if it was appointing of law.

Similarly, this Court being the 2nd Appellate Court, cannot entertain grounds of appeal which were not raised and entertained by the first Appellate Court, and which were not the subject before the Trial Ward Tribunal.

In the upshot, and considering what I have endeavoured to demonstrate herein above, the appeal is devoid of merit and it is hereby dismissed with costs. The decision of the first Appellate Court in Land Appeal No. 52 of 2021 is hereby confirmed. It is so ordered.

DATED AND DELIVERED AT MOROGORO this 30th day of November, 2023.




M. J. Chaba


Judge

30/11/2023

Court:

Judgment delivered this 30th day of November, 2023 in the presence of Ms. Kabula Barnabas, Learned Advocate for the Appellant and in the absence of Respondent.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023

Court:

Rights of the parties to appeal to the CAT fully explained.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023