

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

LAND APPEAL CASE NO. 56 OF 2022

(Originating from Land Case No. 20 of 2018 of District Land and Housing Tribunal of Geita)

NYABATONDWA BUNDU 1ST APPELLANT
BUSWELU MIGIHA 2ND APPELLANT
HONDU MUHUNGATE 3RD APPELLANT

VERSUS

MAKARANGA JORAMRESPONDENT

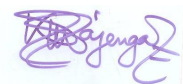
JUDGMENT

20th February & 20th February 2023

Kilekamajenga, J.

The parties knocked the doors of this court for the second time. Initially, the parties brought an Appeal No. 58 of 2015 challenging the decision of the District Land and Housing Tribunal at Geita in Land Appeal No. 44 of 2014. Having scrutinized the records and evidence, the court while giving decision in Land Appeal No. 58 of 2015, had the following observation.

"I have also observed that no where it is indicated in the proceedings of the trial Tribunal that the locus in Quo was visited by it nor was rough sketch drawn to that effect as rightly admitted by the parties. I think visiting of locus in Quo in this particular case was vitally important to ascertain what parcel of land was inherited by the 1st respondent and which part of the estate of the late Bundu Mkanga was bequeathed



to the appellant's father bearing in mind that there is no dispute that the 1st respondent has her piece of land by virtue of inheritance".

The court went further stating that:-

"In our case, the trial tribunal ought to ensure that the locus in Quo is visited accordingly in order to be in a better position to justify and fairly determine the dispute between the parties".

At the end, this court ordered the case to be heard de-novo. The respondent went back and filed Civil Land Application No. 20 of 2018 against the appellants. He managed to prove his case and the case was decided in his favour. However, the trial tribunal, never complied with the orders of the court of visiting the locus in Quo and hearing the matter de-novo. The appellants knocked the doors of appeal as follows;-

- 1. Kwamba, Baraza lililosikiliza shauri lilijipotosha kwa kutozingatia amri ya kutembelea eneo la mgogoro kama ilivyoamriwa na Mahakama Kuu kwenye Rufaa ya Ardhi No. 58 ya 2015 mbele ya Mhe. Jaji Gwae.*
- 2. Kwamba, Baraza lililosikiliza shauri lilijielekeza vibaya kwa kutochambua kwa makini ushahidi wa maandishi na wa kinywa wa utetezi ikiwemo serikali za mitaa.*
- 3. Kwamba, baraza lililosikiliza shauri lilijiongoza vibaya kwa kushindwa kuchunguza umri wa mrufaniwa mnamo mwaka 1988 anapodai aligawiwa eneo na baba yake mzazi wakati akiwa na umri mdogo sana.*

4. *Kwamba, Baraza lililosikiliza shauri lilijiongoza vibaya kisheria kwa kumpa ushindi mrufaniwa anayedai mali ya marehemu bila yeye kuwa msimamizi wa mirathi.*
5. *Kwamba, Baraza lililosikiliza shauri lilijiongoza vibaya kwa kushindwa kuzingatia kuwa mauziano ya eneo la mgogoro baina ya mrufani wa kwanza na mrufani wa pili na wa tatu yalishuhudiwa na mrufaniwa na mrufaniwa ndiye aliyewatafuta wanunuzi hao.*

In challenging the trial tribunal's decision, the learned advocate, Mr. Beatus Emmanuel who appeared for the appellants reminded on the trial tribunal's failure to comply with the orders of this court. The trial tribunal was supposed to determine the case and visit the locus in Quo. Instead, the respondent initiated a separate suit and the order to visit the locus in Quo was not complied.

On the second ground the counsel invited the court to evaluate the evidence of DW2 and DW3 which could lead to different finding. On the third ground, the respondent alleged to have been allocated the land back in 1983, in the counsel's view, the respondent was young and unable to own land. On the fourth ground, the counsel assailed the respondent for filing the instant case without being appointed an administrator of the estate of his late father. In his view, the respondent lacked locus standi to sue the appellants. On the fifth ground, the counsel blamed the respondent who witnessed the sale of pieces of land to the 2nd and 3rd appellants.

On his side, the respondent confirmed that the trial tribunal never visited the locus in Quo after the appellants admitted that, the land in dispute had permanent fixtures owned by the respondent. He further argued that, the evidence was carefully evaluated and he won the case against the weak evidence from the appellants. On whether, he had the right to own the land, the respondent's submission revealed that, he was allocated the land in 1988 by his father and further, the allocation was approved by the clan after the land was divided by the clan in 2003. As he was given the land by his father before his death in 2007, he did not require to be appointed the administrator of the estate to sue for the land. On the last ground, the respondent vehemently refuted the allegation that he witnessed the sale of the land to the 2nd and 3rd appellant.

The rejoinder submission from the counsel for the appellant insisted on the submission in chief and especially on the failure to visit the locus in quo. Also the respondent was 13 years old when he was allocated the land. He further argued that, the evidence of DW2 and DW2 ought to be considered for the judicious decision of the trial tribunal.

There are two pertinent issues for determination first, both sides are in agreement on the fact that the District Land and Housing Tribunal never visited the locus in

Quo as ordered by the court in land Appeal No. 58 of 2015. The court is always jealous of its own orders and non-compliance with the order of this court was an error. In fact, the visiting of the locus in Quo could have resolved a lot of issues Including, whether the land sold to the 2nd and 3rd appellant was within the boundaries allocated by the clan to the first appellant. I still find the dire need, for the interest of justice, and fairly determining the rights of the parties, to visit and ascertain the boundaries of the land allocated to the first appellant. The record shows a clear sketch map on how the first appellant was allocated 38 acres from the clan land in 2003. The rest of the land was allocate to the respondent's father and one Martha. It was further agreed, during the allocation of the land that, the children of the respondent's father could inherit the pieces of that they had already occupied and developed. As a result, the 1st appellant was given an uncleared land which she sold it to some other people including the 2nd and 3rd respondent.

The sketch map attached to the application filed before the District Land and Housing Tribunal was not challenged by either of the parties. The visiting of the locus in Quo with the said sketch map can provide a sound conclusion to this dispute.

Furthermore, I have already indicated that, the respondent was allocated the land by his father before his death in 2007 and therefore did not need the appointment

as an administrator as to sue the appellants. This clear reasoning also answers the fourth ground.

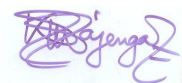
In conclusion, I find merit in the first ground and further order the trial tribunal to comply with the previous order of this court by visiting the locus in Quo and ascertain whether the 1st appellant sold her own portion of the land or extended the boundaries and encroached into the land of the respondent. In ascertaining the boundaries, the trial court may use the sketch map attached to the application. After complying with the order of this court, the tribunal chairman should compose another judgment based on the existing evidence and findings observed from the locus in Quo. The parties should bear their own costs of this case.

It is so ordered.

DATED at **Mwanza** this 20th day of February, 2023.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2023



Court:

Judgment delivered this 20th February 2023 in the presence of the counsel for the appellants Mr. Beatus Emmanuel (Adv) and the respondent present in person. The appellants were absent.



Ntemi N. Kilekamajenga.
JUDGE
20/02/2023

