

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB-REGISTRY OF MANYARA**

**AT BABATI**

**LAND APPEAL NO 278 OF 2023**

*(Originating From Land Application No 50 of 2022 of the District Land and Housing Tribunal of  
Kiteto at Kibaya)*

**ZAINABU ATHUMANI .....APPELLANT**

*VERSUS*

**MANDALO ABDILAH.....RESPONDENT**

**JUDGMENT**

*27<sup>th</sup> March and 10<sup>th</sup> May, 2024*

**MIRINDO, J.:**

The appellant, Zainabu Athumani sued the respondent, Mandalo Abdilah for recovery of three acres of land situated at Madukani, Kijungu Village in Kiteto District. Before Kiteto District Land and Housing Tribunal, the appellant pleaded that the respondent sold the disputed land to unknown person who had built a godown on it. She claimed that she inherited fifteen acres of land, which includes the disputed land, from her father in 1970s. Before the respondent's invasion in the disputed land in August, 2022, she had been using the disputed land for

farming activities. She prayed to be declared the lawful owner of the disputed land; stop order to prevent the respondent from trespassing into the disputed land and costs. In the alternative, she prayed for compensation for unexhausted improvements should the Tribunal rule that she was not the lawful owner. Finally, she prayed for any other relief that the Tribunal may deem fit to grant.

In her testimony, the appellant stated that she inherited fifteen acres of land in 1978 when her father moved to Arusha. Her two witnesses described the suit land to be 3 ½ and 2 ½ acres respectively.

In her defence, the respondent pleaded that she was the lawful owner of the disputed land which measures 1 ½ acres and not three acres as claimed by the appellant. At the trial she stated that she was given the disputed land by her father in 2008 because she had no plot to cultivate. She testified further that she is the lawful owner of thirteen acres of land which includes the disputed land. She explained that she built the godown in 2022 with the assistance of her family members. The respondent's acquisition of thirteen acres of land was confirmed by her mother, her father's cousin, and her younger sister who testified as second, third and fourth respondent's witnesses.

Having heard both parties, the Tribunal held that the appellant's case was not proved on the preponderance of probabilities and declared the respondent the lawful owner of 1 ½ acres of land. It issued an order in the nature of a permanent injunction preventing the appellant from entering or doing anything on the disputed land and ordered any building in the disputed land be demolished. Despite the slight confusion in the concluding paragraph that "the application has no merit scintilla of merit and accordingly hereby allowed," the Tribunal dismissed the application.

From this decision, Zainabu Athumani appealed to this Court. In her three grounds of appeal, the appellant complains that the tribunal misapprehended the evidence. In particular, the appellant complains that the respondent did not prove her case and the appellant's evidence was not properly evaluated. The third ground of appeal is unclear but seems to suggest that the tribunal overlooked the fact that the appellant is staying on the disputed land.

Both parties appeared in person at the hearing of the appeal.

As a lay woman, the appellant introduced new issues of fact which cannot be determined at this appellate stage but prayed the disputed land to be returned to her. She, however, pointed out that the Tribunal should have visited

the locus in quo. In view of the evidence adduced, it was not necessary to visit the locus in quo.

The respondent argued that her case was proved to the required standard and the disputed land belonged to her.

It is clear that the appellant's claim for three acres of land was not proved on the preponderance of probabilities. To begin with, there is inconsistency about the size of the disputed land. As stated above, the appellant's evidence is inconsistent on the size of the disputed land. While she claimed the disputed land to be three acres, her second witness described it to be 3 ½ acres and the third witness stated that it was 2 ½. There are no sufficient details how her father acquired the disputed land and how the appellant was given the disputed land. Apart from her pleading that she had been using the disputed land for farming activities, the fact of farming was not proved at the trial. There was no evidence of the agricultural products from the farm.

Although the respondent consistently proved to be the owner of 1 ½ acres of the disputed land, there was no counter claim for the appellant to defend herself.

In the final analysis, I hold that the appellant's case was not proved to the legal standard. Since there was no counter claim, I set aside three reliefs granted by the tribunal namely:

- i. That the respondent is hereby declared as the lawful owner of the suit land measuring 1 ½ acres located at Kijungu Village Kiteto District and Manyara Region.
- ii. That the applicant is by restrained from entering or doing anything over the suit land.
- iii. That if there is any building be demolished."

In lieu of these reliefs, it is hereby ordered that parties maintain status quo over the ownership or possession of the disputed land prevailing at the date when the land dispute was filed before Kiteto District Land and Housing Tribunal. Neither party is allowed to expand her area of occupation than she has done at the time when the disputed was taken before the District Land and Housing Tribunal. No further development should be in excess of the area possessed by the parties at the time the land dispute was taken before the District Land and Housing Tribunal. This appeal is partly allowed with variation of the reliefs granted by the trial tribunal. Each party to bear its own costs.

DATED at BABATI this 9<sup>th</sup> day of May, 2024.



**F.M. MIRINDO**

**JUDGE**

**Court:** Judgment delivered this 10<sup>th</sup> day of May, 2024 in the presence of both parties. B/C: William Makori present.

Right of appeal explained



**F.M. MIRINDO**

**JUDGE**

**10/5/2024**