

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS LAND APPEAL NO. 113 OF 2008

*(From the Decision of the District Land and Housing Tribunal of **ILALA** District at **ILALA** in Land case Appeal No. 147 of 2007 and Original Ward Tribunal of **SEGEREA** Ward in Application No. 41 of 2006)*

JOSEPH MWINGIRA1ST APPELLANT

WILSON MWINGIRA2ND APPELLANT

VERSUS

ABDULMALIK ISSA MNUBIRESPONDENT

JUDGMENT

FIKIRINI, J:

Joseph Mwingira and Wilson Mwingira being aggrieved by the Ilala District Land and Housing Tribunal decision appealed to this court. Their only ground of appeal was: That the learned Chairman in upholding the decision and

orders of the Ward Tribunal for Segerea in Shauri No. AR 041 of 2006 it extended suo motto and without evidence the area in dispute to “53 x 52” from of “38 x 45” in size. The chairman misdirected himself for holding so as there was no basis for holding as he did.

The appeal was argued orally and the following were the submissions from the counsels. It was Mr. Massaka counsel for the appellant’s submission that the Segerea Ward Tribunal increased the measurements of the disputed land from “38 x 45” to “53 x 52”. The Ward Tribunal in doing so erred in acting on an issue not presented before it and without evidence supporting the decision. According to Mr. Massaka the tribunal was only required to attend to evidence before it and not otherwise. And not visiting the locus in quo and reassigning the boundaries as it did. Based on the above he therefore prayed for the appeal to be allowed.

Reacting to the above submission, Mr. Mmanda counsel for the respondent submitted that, the matter which emanated from Segerea Ward Tribunal was in relation to boundaries dispute. The appellants trespassed, demolished the fence and a wall erected by the respondent. This was done on the pretext that the appellants sold the respondent a piece of land measuring “38 x 45” only. The Ward Tribunal had therefore to satisfy itself of the evidence received. Among the witnesses there were two witnesses who testified that the area was not measured when sold to the respondent. A visit of locus in quo was therefore the only way to clear that doubt. At the scene both parties pointed out the boundaries landmarks. The Ward Tribunal then decided to physically measure the area and came up with “53 x 52” measurement.

It was further, Mr. Mmanda's submission that the Tribunal did not add or alter anything. What it did was just to confirm the actual measurement based on the landmarks pointed out by the parties. It was thus his position that both lower Tribunals decisions were correctly arrived at and therefore prayed for the dismissal of the appeal with costs.

In a brief rejoinder, besides reiterating his earlier submission Mr. Massaka emphasized that visit of locus in quo did not mean reassigning of the measurements from those agreed during the sale. With that in mind he prayed for the appeal to be allowed with costs.

I have carefully perused both lower tribunals' records and gone through the two members' opinions and I am convinced that this appeal has no merits. The following are the reasons for my position, first, as rightly submitted by Mr. Massaka that the sale which was reduced into writing by the parties did not indicate the measurements. However, the trespassing into the suit land after the fence and wall erected had been demolished, compelled the respondent to complaint with the Segerea Ward Tribunal. It is therefore my considered opinion that boundaries were an issue before the Ward Tribunal. It was actually the only issue which the respondent complained of and which called for hearing and later a visit of the locus in quo. Mr. Massaka was therefore not correct when he said boundaries were not an issue before the Ward Tribunal.

Second, from the evidence on record no any boundaries were pointed out by the parties except those ones in place. The tribunal's move to measure the area based on the

pointed out boundaries was in my considered opinion nothing more but just to confirm the size of the area involved. This did not therefore read as reassigning of boundaries nor considering issue without proper evidence being brought forward. The appellants raised their objection that the sale involved only “38 x 45” area, but they did not dispute the landmarks pointed out. And based on those landmarks the Ward Tribunal got the now disputed measurements of “53 x 52”. In my considered view such move by the Ward Tribunal was not reassignment of boundaries as alleged by Mr. Massaka counsel for the appellants. This to me is more of confirming the already in place position but with much more clarity.

Third, I have not seen any reason of doubting the evidence of Aidan Bujiku – SM3 and Mussa Mikidadi – SM2 that the area was not measured when sold to the respondent. The size was just a guess work as the parties relied on the own eyes in measuring the sold land. I can see that possibility as had there been measurement the sale agreement would definitely have reflected so.

As stated above I concur to the two assessors/members that this appeal has no merits and therefore proceed to dismiss it with costs.

It is so ordered.

Judgment Delivered this 20th day of September 2012, in the presence of parties.

P.S. FIKIRINI

JUDGE

20TH SEPTEMBER 2012

Right of Appeal Explained.

P.S. FIKIRINI

JUDGE

20TH SEPTEMBER 2012