

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND APPEAL NO. 53 OF 2013

*(From the Decision of the District Land and Housing Tribunal of Ilala District at
Ilala in Land Case Appeal No. 51 of 2012 and Original Ward Tribunal of Kipawa
Ward Application No. 26 of 2012)*

GEOFREY NYAMBO.....APPELLANT

VERSUS

EDGAR JOSEPH.....RESPONDENT

Date of the Last Order: 16/4/2014

Date of the Judgment: 5/6/2014

JUDGMENT

B.R. MUTUNGI, J.

The Appellant Geoffrey Nyambo raised three grounds of appeal mainly:-

1. That, the District Land and Housing Tribunal erred in fact and in law for upholding the decision of the ward tribunal while it had no jurisdiction to determine all matters of disputes concerning land;
2. That, the District Land and Housing Tribunal erred in law and fact in not considering the evidence of the

Appellant herein properly in order to reach to a fair and just decision.

3. That, the trial District Land and Housing Tribunal erred in law and fact where it failed properly to consider facts surrounding the case and ended up considering irrelevant matters by disregarding the boundaries of the Appellant.

Wherefore, the Appellant prays that;

- i. The decision and order of the lower tribunal be quashed and set aside
- ii. Costs be provided

At the hearing of the appeal the Appellant did not have anything to add and likewise the Respondent had nothing to say but pray for the dismissal of the appeal.

I will thus guide myself within the filed grounds of appeal but before this I will state down the history of the dispute itself.

In the Kipawa Ward Tribunal the Respondent had filed a complaint on allegation that the Appellant had trespassed on his land about one and a half metres from the wall of his house. After the trial tribunal having heard the parties, witness and visiting the locus in quo came to a decision that, indeed the Appellant had trespassed on the Respondents Land. This decision did, aggrieve the Appellant and he went before the District Land and Housing Tribunal of Itala (Mwalimu house). On appeal, once again the Appellant lost the case and has now come to appeal before this court.

Starting with the first ground, I could not properly underscore the same as it is coached in a way I could not comprehend. The Appellant seems to be challenging the jurisdiction of the ward tribunal in determining land matters. I would straight away state that the same is the fact. The law is very clear in relation to land matters that in accordance with the hierarchy of the legal bodies to try the land matter the ward tribunal is the lowest body that is vested with this function. So, it was proper for the trial ward tribunal to have tried the dispute which was involving two neighbours

quarreling over the boundary. Where each was supposed to leave at least a metre apart. I thus find the first ground having no merits.

Coming to the second ground of appeal, I find this too lacking merits. It is on record that the most crucial witness one Mzee Salum Rajabu who was the vendor of the disputed area to both parties had testified that the area in controversy belonged to the Respondent and the Appellant had no colour of right over the same. There was also the evidence of one Jonathan Ng'ara who was a witness to the sale agreements of both of the parties who stated that the disputed area belonged to the Respondent as he was to leave at least a metre between the two plots. The appellate tribunal had this to say; (page 3 of the Judgment)

“The said vendor and other witness including refired “wajumbe” all gave evidence in favour of the herein Respondent”

The tribunal further stated,

***“There was no other valuable evidence
on the boundary of the herein parties
than that of Mzee Salum Shabani”***

I find that indeed the appellate tribunal did evaluate and deeply consider the evidence of the witnesses. In this regard this ground too fails.

As to the last ground, I find this is a repetition. As I have already observed the evidence that was evaluated by the appellate tribunal was properly looked into and this is why the tribunal came to a right decision of which I too uphold and find the appeal before me lacking merits. I thus proceed to dismiss the same with costs.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

5/6/2014

Read this day of 5/6/2014 in presence of Appellant and Respondent in person. .

B.R. MUTUNGI

JUDGE

5/6/2014