

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

**MISC. LAND APPEAL NO. 82 OF 2008**

*(From Land Appeal No. 53/2007 of Kibaha District Land and  
Housing Tribunal and Original land dispute of Kerege ward tribunal,  
Bagamoyo District)*

**BAWENI MBEGU.....APPELLANT**

**VERSUS**

**TWALIBU SHOMARI.....RESPONDENT**

*Date of the Last Order: 1/4/2014*

*Date of the Judgment: 5/9/2014*

**JUDGMENT**

**B.R. MUTUNGI, J.**

The appellant Baweni Mbegu has preferred an appeal which originates from Kerege Ward Tribunal, Bagamoyo District and had gone on appeal before the Kibaha District Land and Housing Tribunal as against Twalibu Shomari the respondent. The appellant has raised two grounds of appeal as follows:-

1. That, the first appellate tribunal erred in law in not properly considering the records relevant to the decision of the trial tribunal .
2. That, the first appellate tribunal erred in law and fact in reaching the decision on appeal, without having any additional evidence and or any inquiries at the locus in quo visit on record.

At the hearing the appellant submitted that first and foremost he was not given an opportunity to be heard. Secondly, that he was not called to attend when the appellate tribunal visited the locus in quo.

On the other hand the respondent submitted that the truth is that the appellant was present at the locus in quo and went around showing the boundaries.

Having gone through the evidence on record I find indeed the dispute started from the Kerege Ward Tribunal whereby the respondent was claiming for land which he claimed to have been his father's property and the appellant had trespassed on the said land. Having gone

through the evidence adduced the trial ward tribunal entered judgment in favour of the appellant.

The respondent being aggrieved by the decision of the trial tribunal appealed before the District tribunal and the appellate tribunal reversed the decision entering judgment in favour of the respondent. It is now that we see the appellant coming before this court on appeal.

I have gone through the evidence in the trial tribunal, I find the appellant's witness were contradicting themselves this is why I find the appellate tribunal had to go to the locus in quo. In the appellate tribunal's judgment it is clearly shown of how the respondent and witnesses were able to show clearly the area in dispute which showed that it belonged to the respondent. Incidentally it is on record that the appellant was satisfied with the visit. The tribunal was also able to see the cemetery which was on the respondent's side.

The alledged owner one Mwanaisha Kibwana whom the appellant represented did not have anything to show. Even those from the appellant's side still contradicted

themselves. All the evidence pointed at the respondent being the owner of the land which formally was his father's property and no one had ever claimed ownership over the same.

I will further make an observation that I had the assistance of the wise assessors Mr. Kimatare and Mr. Philip Kimaro who opined unanimously that the land belonged to the respondent and the appellate tribunal was right to hold so.

In view of the foregoing I have no reason to find that the appellate tribunal was right in reversing the trial tribunal's decision and I proceed to uphold the appellate tribunal's decision. It follows therefore that the appeal is dismissed for lack of merits with costs.

Right of Appeal Explained.

**B.R. MUTUNGI**

**JUDGE**

**5/9/2014**

Read this day of 5/9/2014 in presence of the appellant and respondent in person.

**B.R. MUTUNGI**

**JUDGE**

**5/9/2014**