

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MBEYA

MISCELLANEOUS LAND APPEAL NO.36a OF 2008

*(From the Decision of the District Land and Housing Tribunal of Mbeya
District Mbeya in Land Case Appeal No. 07 of 2008. Originating from Ward
Tribunal of Ruanda Ward Tribunal Application No. 03 of 2008)*

IKUPA NALUPASA APPELLANT

VERSUS

ELLY KASISI RESPONDENT

JUDGMENT

02/03/2015 & 12/03/2015

A.F. NGWALA, J.

The issues which arise in this appeal as complained by the appellant in her Petition of Appeal are:-

- “1. Whether the District Land and Housing Tribunal erred in law and fact when if ordered the parties both of them to remove the walls from the open space?.
2. Whether the District Land and Housing Tribunal erred in deciding that each party should put their wall in straight line from other neighbours who had a line.
3. Whether it is the appellant or respondent who had covered the open space (*uchochoro*) in that area”.

At the hearing of this Appeal the Appellant insisted that the respondent should demolish the “*banda la Nguruwe*” because the rain water from the roof of the “*banda la Nguruwe*” was destroying her house. She submitted that the open space belongs to her and that it was the Respondent who defaulted to cover the space by building a hut of pigs in the space which belongs to the appellant. She therefore prayed, that the respondent be ordered to remove the walls from the open space, demolish the hut of the pigs and control the dirty water by making a “*karo*”.

The respondent submitted in reply that the appellant who bought the small house in 2007 found him occupying his area which he had bought in 1973. This was a surveyed area. It had local beacons showing the boundaries of the area. The Respondent submitted further that it was the who built her house which closed the “*kichochoro*” which was used as a pathway (*uchochoro*). The respondent argued that when the appellant roofed her house the rains water was falling into his “*banda la nguruwe*”; whence the waters from both the two houses from the “*banda la nguruwe*” and the appellant’s roof were falling down destroying her house. The respondent therefore instituted a claim before the ward tribunal complaining that her house was going to fall because of the appellant’s “*banda la nguruwe*”.

The ward tribunal made the following decision.

“Mlalamikaji na mlalamikiwa uchochoro huo au upenu huo unatakiwa wazi ili kila mtu aweze kupita pindi

anapofanya usafi. Vinginevyo uchochoro huo hauna mwenye nacho. Kisheria ni mali ya serikali kwani hata janga lolote napotokea iwe rahisi kutoa msaada. Kama unaweza weka mifugo yako ndani kwa ndani (uani) pia ni uchafuzi wa mazingira katika eneo hilo kwani maji machafu na kinyesi vinakwenda kwenye ukuta wa mlalamikaji”.

Hivyo kuanzia leo tarehe 25/1/2008 mpaka tarehe 10/2/2008 uwe umekwisha ondoa kibanda hicho. Kama sababu za msingi zilivyotolewa, kwani kwa kutofanya hivyo sheria itachukua mkondo wake”.

The respondent was dissatisfied with that decision. He appealed to the District Land and Housing Tribunal of Mbeya. That appellate tribunal ordered both of them to remove the walls from the open space. The respondent who was then the appellant was ordered to develop his wall which is straight from other neighbours.

The Appellant now who was the respondent was also ordered to remove her wall and put to the line from the line of the other neighbours on the same line and leave the space between them. The Respondent (Elly Kasisi) was ordered to control the dirty water from the hut of pigs to remain in his house, and further that he should make a “karo” for dirty water. The order was to the effect “*achimbe shimo ndani mwake kwa ajili ya maji*”. The tribunal advised the respondent that “for the health of the people, that place was not good for the hut of pigs”.

The above quoted, Order of the District Land and Housing Tribunal is the subject of this appeal.

To return, however to this appeal, there is ample evidence to support that decision of the appellate tribunal was correct, particularly the evidence of the appellant herself in the lowest tribunal.' It is in record that in her testimony in support of her Boundary dispute that was stated a "MGOGORO WA MPAKA KATI YA NYUMBA NA NYUMBA" She said:

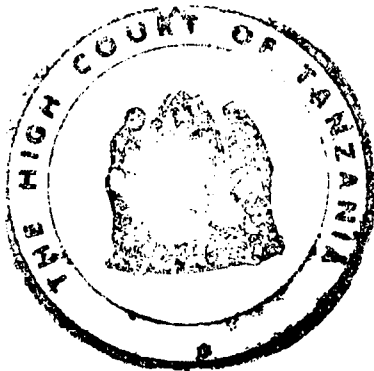
"Nilinunua nyumba ikiwa na wapangaji, na nyuma ya nyumba hiyo, nyumba ya mzee ambaye ndiye ninayepakana naye nilikuta amefuga mifugo katika eneo hilo" Hata hivyo niliibomoa na kuanza upya. Wakati nimekwisha bomoa nikisubiri kuanza ujenzi, mzee alitanua banda la mifugo yake na kuzidi kusogea katika eneo langu. Basi tulienda kwa mzee Jimm kumueleza kuwa tunaomba apunguze Banda hilo kupisha ujenzi tulimkuta mama, akasema yeye hahusiki. Niliporudi tena nikakuta mzee amekwisha ezeka maji ya mvua yanadondokea kwenye ukuta wangu uwe unabomoka. Nilipoonana na mzee akasema kwanini usinione kabla ya kununua hiyo sehemu, basi nikaenda kwa Mwenyekiti wa mtaa . . ndipo nikaona suala hili nililete kwenye kata kwa sheria zaidi".

As to the said issues it is clear that the appellate tribunal after visiting the "locus in quo", and much consideration made those findings. Those findings which in the circumstances of this dispute as stated by the appellant herself and opined by honourable

gentleman and lady assessors of that tribunal that “*sehemu ya uchochoro iachwe wazi wakati wote na iwe wazi, na kila upande ubebe gharama yake ya uendesaji kesi hii*”.

I cannot disapprove their findings and holding of the appellate tribunal. I hold so because it seems the appellant too had encroached into the respondent’s area as admittedly stated in her testimony. This is so due to the facts on the decision that were made for the welfare of the general public and the parties themselves. Thus I consider that, there is no bearing on the questions in issues in this Appeal.

For the reasons I have given, the Appeal fails. It is dismissed with costs.



A. F. Ngwala
A.F.NGWALA
JUDGE
12/03/2015.