

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

**MISC. LAND CASE APPEAL NO. 84 OF 2016**

*(From the decision of the District Land and Housing Tribunal of Kinondoni in  
Land Case Appeal No. 86 of 2015 and Original Ward Tribunal of  
Kimanga Ward in Application NO. 19 of 2015)*

**ANTHONY KINGAZI.....APPELLANT**  
**VERSUS**  
**MILKA MAIGA ..... RESPONDENT**

*Date of Last Order: 24/10/2017*

*Date of Judgment: 20/02/2018*

**JUDGMENT**

**Makuru, J.**

The dispute between the parties is in respect of a boundary whereby the Respondent herein above instituted a complaint against the Appellant in the Ward Tribunal of Kimanga in Application No. 19 of 2015 for trespass. The trial Ward Tribunal held infavour of the Appellant. Aggrieved by the said decision the Respondent successfully appealed to the District Land and Housing Tribunal of Kinondoni in Land Case Appeal No. 86 of 2015. The Appellant was dissatisfied with the decision of the first Appellate Tribunal. He has preferred this appeal on the following grounds:-

1. That, the Honourable Chairman erred in law and fact for reaching into the decision in favour of the Respondent without considering the

fact that, the Respondent failed to produce strong evidence to support his claim on the suit land.

2. That, the Honourable Chairman erred in law and fact for reaching a decision in favour of the Respondent without considering the fact that, the trial Tribunal had the chance to visit the disputed land (locus quo) before the decision was issued.

When the appeal was called for hearing both parties appeared in person, unrepresented. As lay persons, they prayed their grounds of appeal and reply thereto be adopted as their submissions

Basically this appeal is based on the weight of evidence, I will thus determine it using the evidence available on record. The Respondent was the complainant during trial. She contended that, she purchased the piece of land in dispute on 06/12/2002. According to her, the Appellant, who was then the Respondent, encroached into her land and placed sacks and planted trees therein. During trial the Respondent testified that she purchased the said piece of land from one Hemed M. Milaba who was given the same by his brother named Juma Milaba.

The Appellant's evidence on the other hand was that he purchased a piece of land from one Juma Milaba in the year 2002. He testified further that he planted the trees and place sacks to prevent soil erosion in his area.

Both parties tendered sale agreements in respect of their plots. The Respondent's agreement indicates that she purchased her piece of land from one Emedi M. Milaba. Further to that the agreement also indicates

the measurements and size of the land. The Appellants' sale agreement on the other hand indicates that he purchased the land from Mustafa Mraba while in his testimony he stated that the vendor of his piece of land was Juma Milaba, this is contradictory. Further to that, the sale agreement does not indicated the size of the disputed land. Also after perusing the proceedings of the trial Tribunal it is nowhere indicated that the Appellant testified in court. I wonder as to where the Appellant's evidence narrated in the judgment of the lower Tribunal came from.

Given the nature of this case and in order to identify the boundaries demarcating the parties' pieces of land, I think it was necessary for both parties to state the size of their respective pieces of land and the Trial Tribunal ought to have visited the *locus in quo* in order to clearly identify the boundaries and the same be reflected in its decision.

Having said all that, I quash the decisions of both the lower Tribunals and hereby order that the matter be remitted to the Ward to be expeditiously tried *de novo*, taking into account this is the second time the case is remitted to the trial Ward Tribunal. The trial Tribunal to visit the *locus in quo* in order to identify the boundaries to reach a fair decision and solve the problem once and for all. Each party to bear its own costs.



**C.W. Makuru**  
**JUDGE**  
**20/02/2018**

**Court:** Judgment delivered in court this 20<sup>th</sup> day of February, 2018 in the presence of both the Appellant and Respondent in person. Right of appeal explained.

A handwritten signature in black ink, appearing to be 'C.W. Makuru', written in a cursive style.

**C.W. Makuru**  
**JUDGE**  
**20/02/2018**