

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 31 OF 2020

(C/O Land Appeal No. 94/2019 District Land and Housing Tribunal for
Rukwa, originating from Civil Case No. 22 of 2019 of Kasense Ward
Tribunal)

GAUDES MBALAZI APPELLANT

VERSUS

AZIZI OMARY RESPONDENT

Date: 05 & 19/08/2021

JUDGMENT

Nkwabi, J.:

Displeased with the decision of the District Land and Housing Tribunal, the appellant lodged a petition of appeal to this court which has three grounds of appeal as hereunder:

- 1. That the trial tribunal erred in law and facts for being considered the appeal which had no the second respondent of the original case which is unjust in the eyes of law.*



- 2. That the honourable trial tribunal erred in law and facts for being decided the matter by basing on documentary evidence adduced by the respondent which is vague and baseless for not ever signed by the respondent chairperson erred in law*
- 3. That the honourable trial tribunal erred in law and facts for being entertaining the disputed land which its pecuniary jurisdiction is above 3,000,000/= (three million) which is unjust in the eyes of law.*

The appellant prayed the appeal to be sustained with costs, proceeding, judgment and decree to be quashed and set aside by this court and any other reliefs the court deems fit. The respondent vehemently resisted the appeal he filed a reply to the petition of appeal.

When the appeal was called up for hearing both parties appeared in person. In his submission the appellant confronts the decision of the District Land and Housing Tribunal as he was not satisfied with it. In the ward tribunal, they were two defendants, he argues. He adopted his grounds of appeal as his submissions.



In his submissions, the respondent kept his stance as per his reply to the petition of appeal.

The learned appellate tribunal chairman decided as follows after hearing both parties in the appeal before him:

The wise assessors are of the opinion that the appellant is entitled to ownership of the parcel of land and the trees grown thereon and I join hands with the opinion of the wise assessors.

In the premises, the decision of the ward tribunal is reversed and the appellant is declared the lawful owner of the parcel of land and trees grown thereon. The respondent to compensate the appellant for the trees he cut down from the appellant's parcel of land.

I will consider one ground of appeal after the other. I start with the 1st one which is couched as *that the trial tribunal erred in law and facts for being*


3 

considered the appeal which had no the second respondent of the original case which is unjust in the eyes of law.

It would appear that the mother of the appellant was called as a witness as on the claim she does not appear as a party. Even in its decision only one defendant appears.

The trial tribunal decided as follows after hearing the parties:

- 1. Baraza limeridhika na maelozo ya Ushahidi wa upande wa wadaiwa unaothibitishia baraza kuwa mdai alikabidhiwa uwanja wa kujenga wenye thamani ya madai yaliyokuwepo kati ya mdai na Nemesi Mbalazi ambaye ni mtoto wake na mdaiwa no. 2*
- 2. Baraza limeshindwa kupata ukweli wamanunuzi ya miti kwani Ushahidi na kielelezo cha maandishi upande wa mdai unaonesha kuwa maandikiano ya uwanja ni madai yaliyokuwepo awali kwani mauziano ya miti hayaonekani kama mdai aliyoeleza kwaalinunua shilingi hamsini elfu.*
- 3. Baraza limeridhika na Ushahidi No. 1 na 2 upande wa wadaiwa kwani mashahidi hao wote wawili walikuwa ni viongozi waliohusika na madai na hadi sasa bado viongozi wote wamerithibitishia baraza kuwa mdai*


4 

alikatat kununua miti iliyomo ndani ya uwanja huo na kulithibitishia baraza kuwa mdai akitaka kujenga watoe miti.

If one looks at the document of the claim (the claim), one will see that the claim was against one defendant. The mother of the respondent was only a witness. The trial tribunal cannot be bound by strict rules of procedure. I cannot, therefore, fault the trial tribunal or the appellate tribunal on this. This ground of appeal is found to be lacking in merits and it is dismissed.

I turn next to discuss the 2nd ground of appeal which is to the effect that *the honourable trial tribunal erred in law and facts for being decided the matter by basing on documentary evidence adduced by the respondent which is vague and baseless for not ever signed by the respondent.*

I had a generous time for going through the record of the trial tribunal. There is reliable oral evidence from the chairman of Mtimbwa village namely Wilbrodi Kapufi which I find cogent. The oral evidence is sufficient to prove that the appellant did not buy the trees that were cut by the respondent.

5 

In the trial tribunal, Azizi Omary had sued Gaudesi Malazi for destruction of forest (trees) his property. When the claim was read over to him, the appellant readily admitted the claim adding that he had been sent to do so by his mother.

Actually, in his evidence the chairman of the village said and I quote, *"Kiwanja hicho kilikuwa na nyanya na mikaratusi ... tulivyopima ... kabla hatujatoka saiti mzee Mbalazi aliuliza habari ya miti kuwa na miti tuifanyeje bwana Aziz akajibu kuwa hana shida na miti na kusema kuwa kama muna shida nayo muiondoe eneo nakabidhiwa ni mali yangu."*

This ground too is lacking in merits and is dismissed.

Finally, I determine the 3rd ground of appeal which is *that the honourable trial tribunal erred in law and facts for being entertaining the disputed land which its pecuniary jurisdiction is above 3,000,000/= (three million) which is unjust in the eyes of law.*

This ground too is wanting in merits. There is no any evidence adduced by the appellant which shows that the subject matter was over and above


6

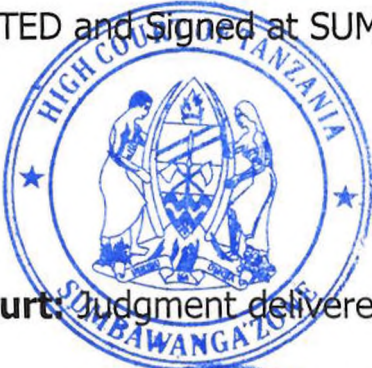
3,000,000/= . The court cannot decide in favour of a party without foundation. The appellant ought to have tendered a valuation report. In the circumstance of this case the claim was not over T.shs 3,000,000/= in value. This ground too lacks justification and it is dismissed.

While, I agree that the respondent in this appeal is the owner of the piece of land after it was "sold" in a settlement transaction to him which was actually, not in issue and was not disputed in the trial tribunal, it was wrong for the District Land and Housing Tribunal to hold that the trees were the property of the Respondent. This is because he did not want to cover any costs or further negotiate the matter and said the trees be taken by the respondent's side during the sale transaction. I hold that the trees are the property of the respondent and was entitled to cut them and could take them. The judgment of the District Land and Housing Tribunal is reversed to that extent. The culmination of the above discussion, the appeal is dismissed. In the circumstances of this case, each party to bear their own costs.

It is so ordered.

7 

DATED and Signed at SUMBAWANGA this 19th day of August, 2021



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J. F. Nkwabi
JUDGE

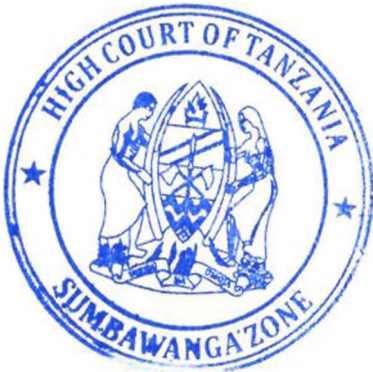
Court: Judgment delivered in chambers this 19th day of August 2021 in the presence of the appellant and the Respondent both in person.



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J.F. Nkwabi
JUDGE

Court: Right of appeal is explained.



Handwritten signature of J. F. Nkwabi in blue ink.

J.F. Nkwabi
JUDGE
19/08/2021