

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

MISC. LAND APPEAL NO.66 OF 2021

(Arising from the District Land and Housing Tribunal for Mkuranga at Mkuranga in Land Appeal No.40 of 2020, Originating from Mwandege Ward Tribunal in Land Case No.10 of 2020)

MARIAM ABDALLAH CHAFWEHA APPELLANT

VERSUS

ALBERT GOSSOMA KAPINGU RESPONDENT

JUDGMENT

Date of Last order: 18.08.2021

Date of Judgment: 24.08.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Mwandege in Land Case No.10 of 2020 and arising from the District Land and Housing Tribunal for Mkuranga in Land Appeal No. 40 of 2020. The material background facts to the dispute are briefly as follows; Albert Gossoma, the respondent lodged a Land Case No.10 of 2020 at the Ward Tribunal for Mwandege claiming for land ownership which he bought from

the appellant. The Ward Tribunal for Mwandege determined the matter and in its findings, the trial tribunal found that the appellant sold the suit land to the respondent, however, the appellant continued to disturb the respondent. The trial tribunal decided the matter in favour of the respondent, the disputed area was placed to the respondent and the appellant was ordered to obey the demarcation. The trial tribunal also ordered the appellant to pay court fee to the tune of Tshs. 300,000/=.

Dissatisfied, the appellant lodged an appeal at the District land and Housing Tribunal for Mkuranga in Land Appeal No. 40 of 2020 complaining that the trial tribunal did not consider the sale agreement. She claimed that the area which was sold to the respondent measured 28 meters x 25 meters and she denied to have sold three plots to the respondent.

On his side, the respondent claimed that he. However, the parties did not sign any sale agreement. The District Land and Housing Tribunal upheld the decision of the trial tribunal and ordered the parties to obey the court demarcations. The first appeal irritated the appellant. She thus appealed to this court through Land Appeal No. 66 of 2021 on two grounds of grievance, namely:-

- 1. That, both Tribunals erred in law and fact by delivering decision in favour of the Respondent without considering the strong evidence*

produced by the Appellant instead based on the mere words produced by the Respondent.

2. That, both Tribunals erred the law and the fact by entering the judgment in favour of the Respondent without considering the strong evidence produced by the Appellant instead based on the mere words produced by the Respondent.

When the appeal was called for hearing on 18th August, 2021 the appellant and the respondent appeared in person, unrepresented.

In her submission, the appellant had not much to say, she complained that the appellate tribunal did not consider the sale agreement. She claimed that parties were bound by the sale agreement. The appellant also claimed that the respondent exceeded and installed beacons on her plot. She strongly argued that the respondent had no any cogent document to prove his ownership the appellate tribunal relied on his mere words. Insisting she claimed that she is the lawful owner of the suit plot.

Opposing the appeal, the respondent valiantly argued that the appellant sold him the disputed Plot in 2009. He added that after a while the appellant invaded the respondent's area. He stated that the Village Council conducted a survey and demarcated the plots and the passage was made reserved for him. The respondent lamented that the appellant

is restricting the respondent to use their own area. He claimed that there is no any existing sale agreement. The respondent stated that both tribunals decided the matter in his favour thus, he is the lawful owner of the suit plot.

In conclusion, the respondent urged this court to consider his submission and order the appellant to obey the demarcations.

In her short rejoinder, the appellant reiterated her submission in chief. She insisted that they did not agree to reserve a pathway. She lamented that the respondent invaded her plot and installed beacons without her permission. She added that the Village Council measured the suit plot and found that the respondent exceeded 5 meters. She urged this court to order the respondent to leave aside 10 feet.

I have considered the rival arguments by the parties to this appeal. I shall from the outset determine the issue *whether the appeal is meritorious*.

I have perused the trial tribunal records and realized that the centre for controversy between the parties is the suit plot measured 10 feet. The appellant is claiming that there is a sale agreement whereby parties agreed to set aside 10 feet that belongs to her. She claimed that the respondent has invaded her plot. On his side, the respondent claims that

the appellant sold him three plots include the suit plot. The respondent also lamented that the parties did not sign any sale agreement. Records reveal that the appellant in 1999 sold the respondent plots with a value of Tshs. 4,800,000/=. The appellant did not call any witnesses to support her claims while the respondent's witnesses testified to the effect that they witnessed the respondent buying three plots from the appellant including the pathway of 10 feet.

I have read a letter wrote by the respondent to the Ward Tribunal at and found that the respondent insisted that the suit plot was measuring 50 meter x 60 meters and a passage of 10 feet and the bacon were installed. Both parties signed the said sale agreement on 6th July, 2020 and the respondent claimed before the Village Council that the appellant invaded his plot. Additionally, the said sale agreement states that the appellant sold a plot measuring 28 meter x 25 meters to the respondent, and the appellant admitted to leave aside 10 feet as a pathway for the respondent. Therefore, the appellant committed herself to set aside the 10 feet which are the disputed area before the appellate tribunal and this court. Thus, she cannot come before the court of the law and claim that the 10 feet belong to her.

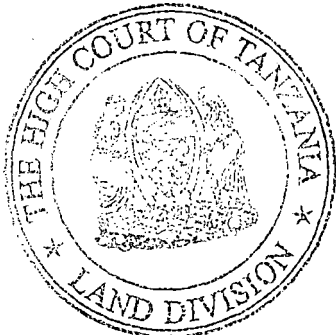
To clear doubts, the trial tribunal visited *locus in quo* to clear doubts or ambiguity and assess the situation on the ground. Thus, it conducted a

visit at the *locus in quo* to verify the evidence adduced by the parties during the trial. Finally, it decided that the suit land belongs to the respondent. Thus, the appellate tribunal referred to the trial tribunal records and nothing was left unattended in the determination of the appeal by the District Land and Housing Tribunal. Therefore I find that the appellant's grounds of appeal are demerit.

For that reason, I do not find any reason to differ from the decision of both tribunals. Therefore I uphold the tribunal decisions and proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam on this 24th August, 2021.




A.Z.MGEYEKWA
JUDGE
24.08.2021

Judgment delivered on 24th August, 2021 via audio teleconference whereby both parties were remotely present:




A.Z.MGEYEKWA
JUDGE
24.08.2021

Right of Appeal fully explained.