

**IN THE HIGH COURT OF TANZANIA**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 29 OF 2020**

(Arising from Land Appeal No. 36 of 2019 in the District Land and Housing Tribunal of Katavi at Mpanda originating from the decision of Shanwe Ward Tribunal in Madai Na. 8 of 2019)

**ROMWARD FUNGAMEZA.....APPELLANT**

**VERSUS**

**SAID SHAGILOMO.....RESPONDENT**

Date of Last Order : 14/04/2021

Date of Judgment : 10/08/2021

**JUDGMENT**

**C.P. MKEHA, J;**

This is an appeal from the decision of the District Land and Housing Tribunal of Katavi at Mpanda (the appellate Tribunal) delivered on 28<sup>th</sup> July, 2020 dismissing the appellant's appeal on merits. The applicant lodged, to this Court, a three-ground memorandum of appeal. The grounds are as reproduced below, that: -

1. The appellate tribunal erred in law by holding that it was right for Hamisi Ramadhani and Agnesi Kanoni who were not present throughout the proceedings of the Ward Tribunal to sign the decision of that tribunal.
2. The appellate tribunal erred in law and fact by holding that the respondent is the owner of the suit land and disregarding the fact that the appellant has been on the suit land for more than 12 years hence the principle of adverse possession applies automatically.
3. The appellate tribunal erred in law and fact by deciding in respondent's favour who had no proof on his ownership of the suit property.

The respondent contested the appeal by filing his reply. The reply, however, was tiled a reply to the memorandum of appeal. Be it as it may, the present appeal is

contentious as between the parties herein.

At the hearing of the appeal, both parties appeared in their personal capacities, unrepresented. The appellant had decided to adopt the three grounds of appeal contained in the petition of appeal as they are. The respondent on the other hand told the Court that, appellant's parents have been allowed to use the suit land. The appellant has never been a titled holder of the suit land.

I have vigilantly gone through the grounds of appeal and the brief responses by both sides in this appeal and the evidence on record. This is the second appeal. There are plenty of authorities that, where there are concurrent findings of facts by two courts, an appellate court in such circumstances should not disturb the concurrent findings of facts unless it is clearly shown that there has been a misapprehension of the evidence, a miscarriage of justice or violation of some principle of law or procedure. See the case of **Amiratial Damodar's Maltase and Another t/a as Zanzibar Silk Stores v. A.H. Jariwalla T/a Zanzibar Hotel [1980]** TLR 31.

The two courts below were alive, on the basis of the evidence submitted during trial, that the suit land belongs to the respondent. The suit land was found to be the rightful property of the respondent. My thorough perusal on the evidence on record reveals that, it was the appellant who sued the respondent before the trial tribunal. The essence of the said claim was the trespass that was committed by the respondent over the appellant's land. Certainly, the evidence adduced by the respondent in this appeal was heavier than that of the appellant. The respondent's evidence that the suit land belongs to him was corroborated/supported by his witnesses. On the other hand, the appellant's evidence was weaker. This proves that, the appellant has no title over the suit land. Besides that, that shows how the respondent's case is heavier than that of the

appellant. This is due to the fact that the appellant's evidence, especially after the tribunal's visit of the locus in quo and proper evaluation and analysis of evidence, was seen to be weaker than that of the respondent

On the concern about the competency or jurisdiction of the trial tribunal in entertaining this case specifically on the quorum/composition of the tribunal. Apart from the correct position of sections 11 and 14 of the Land Disputes Courts Act, Cap 216 R.E. 2002 the amendment brought by Written Laws (Miscellaneous Amendments) Act No. 3 of 2018 requires the Courts to deal with cases justly, and to have regard to substantive justice. The said law introduce the concept of substantial justice and overriding objective in Tanzania which seeks to ensure justice is done when deciding on a matter. In the case of Yakobo Magoiga Gichere v Peninah Yusuph, Civil Appeal No. 55 of 2017, CAT at Mwanza (unreported) it was stated that: -

"Section 13 of the Land Disputes Courts Act underscores the spirit of simplicity and accessibility of Ward Tribunals, by

reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements. That harmonious spirit cannot be attained if this Court accedes to the prayer of the appellant's learned counsel... in the upshot, failure to identify the member who presided over the proceedings of the Ward Tribunal when the Chairman was absent, did not occasion any failure of justice to the appellant."

Consequently, I cannot interfere with the concurrent decisions of the lower tribunals on facts. In fine, I find that this appeal has no merit. I accordingly dismiss it with costs.

Dated at Sumbawanga this 10<sup>th</sup> day of August, 2021.



*C.P. Mkeha*  
C.P. Mkeha

JUDGE

10/08/2021

*[Signature]*  
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OF THE ORIGINAL

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 29 OF 2020**

*(Originating from the District Land and Housing Tribunal of Katavi  
District at Mpanda in land Appeal No. 36 of 2019 from  
Madal No. 8 of 2019 of Shanwe Ward Tribunal)*

**ROMWALD FUNGAMEZA ..... APPELLANT**

**VERSUS**

**SAID SHAGILOMO ..... RESPONDENT**

Date - 10/08/2021

Coram - Hon. W.M. Mutaki - DR.

Appellant - Present

Respondent - Absent - Represented by Mrisho Kassim Kanyuka

B/C - Mr. A. Chitimbwa

**COURT:** Judgment delivered in the presence of Appellant in person in the  
absence of Respondent represented by Mr. Mrisho Kassim Kanyuka.

Right of Appeal is explained.



  
**W.M. MUTAKI**  
**DEPUTY REGISTRAR**  
**10/08/2021**

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