

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

**LAND APPEAL NO. 94 OF 2020**

*(From the Decision of the District Land and Housing Tribunal of Mkuranga District in  
Land Appeal No. 66 of 2019 delivered by Hon R.Mwakibuja, Chairperson on  
20/8.2020)*

**JUMA ALLY KILIMBIKE.....APPELLANT**

**VERSUS**

**HUSSEIN MOHAMED KINGU.....RESPONDENT**

**JUDGMENT**

Date of Last Order: 31/08/2021  
Date of Judgment: 29/09/2021

**T.N. MWENEGOHA, J**

This appeal emanate from the District Land and Housing Tribunal for Mkuranga at Mkuranga (herein District Tribunal), where the appellant appealed against the decision of the Ward Tribunal at Kisegese in Land Case No. 46 of 2019. The Ward Tribunal ordered the appellant to compensate the respondent Tshs. 2,000,000/= within 45 days from date of delivering the judgment, being compensation for developing the farm and planting permanent trees/crops by the respondent and failure to pay the said amount the suit property will be property of the respondent. Being aggrieved by that decision the appellant sought assistance from the

District Tribunal which to his surprise declared appellant to have no right over the suit land which is measuring six acres for reasons of failure to produce evidence to prove ownership after the suit land has been abandoned by his father in 1950's. Appeal was dismissed.

Being aggrieved with the said decision, the appellant appealed to this

Court with the following grounds of appeal:

1. That the Hon Chairperson erred in law and fact by failure to consider the ground No. 1 of the appeal and proceeds to consider the evidence of the respondent despite of its discrepancy and being contradicting itself on vital facts.
2. The Hon. Chairperson erred in law and facts by basing its decision on the reason that, the appellant did not take any steps to stop the respondent from trespassing on his land, without considering the submission of the respondent who admitted before the Tribunal that, in 2011 he was ordered to stop from further development by the village leader, there is also a proof of the judgment of the village land tribunal which shows the appellant filled the dispute before the Village Land Tribunal in Land Case no. B/Ardhi/1/6/2019.
3. The Hon. Chairperson erred in law and fact by ordering the disputed land to be the property of the respondent, without setting aside the

judgement of the Ward tribunal things which causes to be with a two judgment with contradicting decision which make it un-executable decision.

The appeal was heard by way of written submissions. While the appellant's submissions were drawn and filed by Mr Hashim Mziray, learned advocate, the respondent was unrepresented.

In his submission in chief, Mr Mziray argued on the 1<sup>st</sup> ground that the issue of ownership of land was not in question in appeal since at the Ward Tribunal (herein the trial tribunal) the decision of ownership was solved and that what the appellant was required was to compensate the respondent for Tshs. 2,000,000/- who was a trespasser to his land. He submitted that, what was to be resolved at the appellate Tribunal was whether the appellant was duty bound to compensate the respondent and not discuss on issue of ownership.

Submitting on the 2<sup>nd</sup> ground in connection with submissions in the 1<sup>st</sup> ground, he stated that the District Tribunal was supposed to consider the grounds of appeal and not as a fresh dispute.

For the 3<sup>rd</sup> ground he submitted that the respondent did not resist the decision of the Ward Tribunal on ownership and the issue of compensation as was shown on 6<sup>th</sup> page of the typed judgment of the appellate tribunal.

By dismissing the appeal it entailed that the decision of the Ward Tribunal was valid on ownership and it was not right for the appellate Tribunal to open this issue without affording parties opportunity to be heard on ownership.

In reply, the respondent submitted while basing on the principle of whoever alleges a fact must prove, that the appellant is claiming to be the rightful owner of disputed land without giving any proof. He contended that, there is no legal evidence on how the disputed land was left unattended for more than 50 years and that the appellant failed to indicate the boundaries of the dispute land.

He further submitted that, in 2011 a dispute arose between the appellant and some other parties who claimed to be owners of piece of land in dispute, in this the appellant was a witness to prove ownership of the other party which led the respondent to be stopped from using the land by village leader. Respondent reported to the Ward Executive and Ward Councillor and meeting was convened which allowed the respondent to use the land. To his surprise in 2018 is when the appellant appeared claiming to be the owner of the land.

He added that as per **Section 35 of the Land Disputes Courts Act, Cap 216**, the District Land and Housing Tribunal can decide anything as long as the law as stated in that provision is observed.

In his brief rejoinder Mr Mziray submitted that, what was proved by the appellant in the Ward Tribunal was that the appellant is the owner of the disputed land, and that the respondent did not object the decision of the trial tribunal. He further contended that is it true the District Tribunal may alter the decision of the Ward Tribunal, but this cannot be done arbitrarily. That the respondent did not challenge about ownership of disputed land in the trial tribunal and that the same was not an issue in the appellate tribunal. He finalised by submitting that the District Land and Housing Tribunal over used its power to decide ownership of land without affording parties opportunity to argue on the same.

Having gone through submissions by both parties and all the records, I have noted that there is one major issue for determination. The issue is whether the Hon. Chairman erred in law and fact when he determined the appeal based on the new issue of ownership which was raised Suo motto by the District Tribunal and without hearing the parties.

The origin of the dispute is the claim filed by the respondent at the Ward Tribunal, to which he claimed to have moved to Kisege Ward and was

allowed by Mr Sultani Shaambulu, the village leader, to cultivate and do agricultural activities at the area. However, he started cutting trees for charcoal and the village leader stopped him. He had filed complaints at different levels of the village council and at the end he was allowed to continue with agriculture activities. His witness at hearing of the Ward Tribunal, who was Mr Sultan agreed to allow the respondent to cultivate at the disputed farm measuring 6 acres, but the land is of Juma Kilimbike, the appellant.

What has moved the appellant to file the appeal at the District Tribunal at Mkuranga is the order to compensate the respondent for the cultivated crops.

I have perused the proceedings of the District Tribunal and noted that the appellant, during hearing of the appeal, briefly submitted that he was dissatisfied with the decision of the Ward Tribunal ordering him to compensate the respondent. The record reads as follows;

**"APPELLANT'S SUBMISSION:**

I was dissatisfied with the decision of trial Tribunal. I'm not ready to compensate the respondent because the suit land is mine.

That is all."

"REPLY BY RESPONDENT:

In 2010 I went to live at Kisege Village. I reported to Kitongoji leader namely Mr. Mbulu. He showed me the suit land for cultivation. In 2011 the Village Council asked me to stop from destructing trees for charcoal. I reported to the level of Ward. In the meeting it was concluded that I have to proceed with my agricultural activities. In 2018 the appellant came to claim ownership.

That is all."

Reading from the submissions of both parties at the District Tribunal, it is obvious that the issue of ownership was not contested by the respondent. In the delivered judgement of the District Tribunal, after dismissing all the five grounds of appeal as filed by the appellant, the Hon. Chairperson at page 6 of the judgement at paragraph 2 states;

***"Finally, this Tribunal find that the appellant has no right over the suit land measuring six acres. He has no evidence to prove that the suit land was part of the land which was abandoned by his father in 1950's. The***

***appellant visit(sic) the area for the first time in 2010.  
He did not state who show(sic) him boundary of the  
land of his grandfather which he never saw or attend  
during lifetime of his father."***

I agree with Mr Mziray on this matter that the appellant, or rather both parties, were not given opportunity to submit on the issue of ownership. The composed judgement entails that the appellant did not prove that suit land was part of land that his father abandoned.

The record at the trial tribunal at page 1 of "Maamuzi ya Baraza la Ardhi Kata ya Kisege" reads as follows:

***"Kwa kuwa Hoseni Mohamedi Kingu alivamia eneo la Juma Ally Kilimbike alikuwa anakata mkaa kwenye eneo hilo lakini pia alikatazwa asiendelee....kwa upande mwingine Juma Kilimbike hakuwa na vielezo vya maandishi vinavyomkataza Hoseni Mohamedi Kingu asiendelee.....Juma Kilimbike anatakiwa amlipe Husein Mohamedi Kingu fidia ya shilingi Milioni Mbili tu kwa sababu amepanda mazao ya kudumu.....". Emphasis provided.***

That judgment was delivered on 19/9/2019 and both parties were present and thereafter the respondent did not appeal to that decision.



From the Ward Tribunal's decision, it is clearly stated that the appellant is the owner of the suit land. The appellant was the one aggrieved by the order of compensation and he filed the appeal to the District Tribunal. Whether the issue of ownership was crucial in reaching the decision, the Tribunal ought to have given the parties the right to argue on the same and accordingly right to be heard.

Right to be heard is a fundamental right which needs to be protected in dispensing justice. This is provided under Article 13(6) (a) of the Constitution of United Republic of Tanzania. Numerous cases have also supported this contention, to name a few is the case of **John Morris Mpaki v. The NBC Ltd and Ngalagila Ngonyani, Civil Appeal No. 95 of 2013 (Unreported)** the Court of Appeal aptly stated:

*"The law that no person shall be condemned unheard is now legendary. It is trite law that any decision affecting the rights or interests of any person arrived at without hearing the affected party is a nullity, even if the same decision would have been arrived at had the affected party been heard."*

The issue of ownership touches the interests of parties and the Tribunal should have dealt with caution when determining it by affording

the appellant the right to prove ownership and for the respondent to contest if need be.

Also, in the case of **Patrobet D. Ishengoma vs Kahama Mining Corporation & 2 others Civil Application No. 172 of 2016 Court of Appeal of Tanzania at Mwanza (unreported)** and **John Morris Mpaki vs The NBC Ltd and Ngaiagiia Ngonyani Civil Appeal No. 95 of 2013 Court of Appeal of Tanzania (unreported)** the position underlined is that a decision likely to affect the rights of parties shall not be made without affording the parties a right to be heard.

In the instant appeal as stated earlier, there is no dispute that the appellate tribunal decided on the issue of ownership raised Suo motto, the tribunal's record reveals that the parties were not accorded with right to be heard and it therefore renders the decision of the District Tribunal a nullity. Further the said issue was not even raised as the ground of appeal.

From the record the appellate tribunal dismissed the appeal filed by the appellant herein. The decision of the Ward Tribunal was to the effect that the appellant herein is indeed the owner of the suit land. Since the decision of the Ward Tribunal was not set aside by the judgement of the District Tribunal, the appellant is still the legal owner of the disputed land

measuring 6 acres. The appellant should compensate the respondent as ordered by the Ward Tribunal accordingly.

This appeal is therefore allowed to the extent stated above and District Tribunal's decision is hereby quashed and set aside. Each party to bear own costs.

**Dated at Dar es Salaam this 30<sup>th</sup> day of September, 2021.**



  
**T. N. MWENEGOHA**  
**JUDGE**