

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

MISC. LAND APPEAL NO. 64 OF 2021

(Arising from the District Land and Housing Tribunal for Kilombero/Ulanga
in Land Appeal No.264 of 2016, originating from Ward Tribunal of Malinyi in
Land Case No.03 of 2016)

HAMISI DANGALI APPELLANT

VERSUS

PETER MTITU 1ST RESPONDENT

RASHID SAMA 2ND RESPONDENT

MOHAMED LYANDEMBO 3RD RESPONDENT

JUDGMENT

Date of Last order: 06.12.2021

Date of Judgment: 10.12.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Malinyi in Land Case No.03 of 2016 and arising from the District Land and Housing Tribunal for Kilombero/Ulanga in Land Appeal No. 264 of 2016. The material background facts to the dispute are briefly

as follows; Hamisi Dangali, the appellant instituted a case at the Ward Tribunal of Malinyi complaining that the respondent trespassed his land measuring 18 x 30 meters. The appellant complained that in 2000, at Kipingo village expansion of settlement whereas the appellant was given two plots and developed the suit land. In 2015, the respondents invaded the suit land and he build a house within the suit land. The appellant alleged that the 2nd respondent uprooted his cassavas.

On his side, the 1st respondent claimed that he is the lawful owner of the disputed land. He claimed that he applied for a plot and the Kipingo village Government allocated him a plot measuring 17 x 35 meters and in 2007, he developed the suit land by building a residential house. the 2nd respondent denied the allegations of the appellant. He claimed that he did not trespass the appellant's suit land. The trial tribunal analysed the evidence, and decided the matter in favour of the respondents

Aggrieved, the appellant appealed to the District Land and Housing Tribunal for Kilombero/Ulanga vide Land Appeal No.264 of 2016 complaining among other things that the trial tribunal did not consider the appellant's complaints that the respondents trespassed his land. The appellant faulted the trial tribunal's decision of ordering the appellant's

ownership of a piece of land measuring 30 x 60 meters. To mention a few.

The District Land and Housing Tribunal upheld the decision of the trial Tribunal and maintained that the respondents are the lawful owner of the suit land. The first appeal irritated the appellant. He thus appealed to this court through Misc. Land Appeal No. 64 of 2021 on seven grounds of grievance, namely:-

- 1. That, the Honourable Chairman and his wise prudent Assessors in dismissing the Appel at the order for rewriting the Judgment from this High Court of Tanzania erred in law and upon facts in observation to dismiss the appeal with costs in holding that the Appellant this matter only is entitled to claim his own plot and not plus that of his wife without considering that the wife elected his husband to stand for her as per annexure marked A₁ YAHUSU KUTOA KIBARI CHA KUSIMAMA KWENYE KESI YANGU NDUGU HAMISI MOSTAFA DANGALI NAMBA 22 YA MWAKA, 2015. As from the Ward Tribunal the Kibari was not lawfully revoked by any lawful institution. Annexed hereto is the annexure A1 to be part of the petition of appeal.*

2. *That, to prove the names of the one to stand on behalf annexure A₂ the Kitambulisho cha Taifa No. 196806 11-67806-00001-28 annexed to prove the names.*
3. *That, the HONOURABLE Chairman and the prudent Assessors erred in law in not considering the stakabadhi za Vijiji No. 252257 for Hamis M. Dangali and No. 59481 for LITHA MDUDA which are in the proceeding of the Malinyi Ward Tribunal. However, annexed again to prove the allocation for the interest of justice.*
4. *That, the Honourable Chairman and wise Assessors erred in the law and upon fact for being convinced that, the plot at which the 2nd Respondent is residing was allocated by the Kipongo village council to one safari Mlumange having 17 x 35 materials also without showing the stakabadhi za Vijiji (if any).*
5. *That, the Honourable Chairman erred in law in being convinced that there was a plot sold to the 3rd Respondent by one Hassan Mhala who in one time identified as village executive officer and being secretary of land allocating committee. Further no land sales contract agreement was adduced to prove the sale (If any) and which proves the statement is fictitious in law.*
6. *That, the Honourable Chairman erred in law and upon fact in insisted that the Judgment was one basic reason that, the evidence adduced*

before them was so clear while the statement lacked allocating documentation to prove the same.

7. That, the appeal for the rewritten Judgment is in time as the matter was paid on 20th November, 2020.

When the appeal was called for hearing on 28th September, 2021, the appellant was absent and the respondents appeared in person, unrepresented. By the parties' request, the appeal was argued by way of written submissions whereas, the appellant filed his submission in chief on 10th September, 2021 and the respondents filed a joint reply on 12th October, 2021 and the appellant's Advocate filed a rejoinder on 03rd December, 2021.

In his submission, the appellant opted to combine and argue the second and third grounds of appeal together and the first ground separately. The appellant started with a long background of the facts which led to the instant appeal which I am not going to reproduce in this appeal.

On the first ground, that the Chairman erred in law in holding that Hamisi Dangali ought to claim his plot only and not claim the plot registered in the name of his wife. The appellant claimed that the

Chairman disregarded the document issued by his wife to represent her in the said case. He referred this court to the evidence on record and contended that it is not disputed that Hamisi Dangali applied for two plots and the same was granted. One in tin his name and the other in the name of his wife. He referred this court to the evidence of one Gelevas Nigosile a member of the village committee. The appellant went on to submit that the procedure of a member of the family having the right to appear and prosecute a case on behalf of another member of the family is enshrined in the law. Thus, it was his view that the Chairman faulted to disallow him to represent his wife. The appellant further claimed that the issue in question is the size of the plots not the issue of ownership.

Submitting on the third, fourth, and seventh grounds related to weight of evidence, the appellant contended that he claimed that it is proved that the first three plots are owned by the appellant. He valiantly contended that the Chairman missed a point by declaring that his wife and Rashdi Sama had a plot measuring 17 x 30 meters and the 1st and 3rd respondents had a plot measuring 20 x 30 meters. The appellant added that the evidence proves that Rashid Sama purchased a developed land from Safari Mlumange in August, 2015 while Safari Mlumange did not say if he planted anything in the suit land.

The appellant went on to submit that the testimony of all witnesses reveals that the appellant is the one who occupied the suit land first. He lamented that it was not just for the tribunals to decide in favour of the respondents for the reason that they have been in the disputed land for a long time and developed the said suit land. He claimed that suit land had permanent trees which were planted by the appellant therefore it was his view that the said development should be in favour of the appellant.

In conclusion, the appellant urged this court to allow the appeal, quash and set aside the decisions of both tribunals.

Opposing the appeal, the respondents in their joint written submission on the first ground contended that the issue that the appellant ought to claim the ownership of his plot in exclusion of his wife is the central issue of dispute between the parties from the beginning. They contended that the appellant is claiming two plots that borders the respondents while in fact he was allotted only one plot by the village council. They claimed that his wife never complained nor was she called by the appellant to testify during the trial.

They blamed the appellant for failure to call a material witness. Fortifying their position they cited the case of **Hemedi Saidi v Mohamed**

Mbilu [1984] TLR 113. They claimed that the appellant claimed that his wife authorized him through a letter to appear on her behalf is misplaced since the appellant lacks *locus standi* to sue on behalf of his wife. They claimed that one person cannot sue on behalf of someone without obtaining a power of attorney. Supporting their position they cited the case of **Parin A.A. Jeffer and Another v Abdurasul Ahmed Jeffer & two others** [1996] TLR 110. The submitted that the appellant is entitled to 17 x 30 meters of the plot but he is claiming ownership of the other plot. They claimed that there is no evidence that he allotted two plots.

Submitting on the remaining grounds of appeal related to evidence on record. The respondents claimed that the appellant alleges that he has three plots one for his wife, himself, and Rashid Sama who had a plot measuring 17 x 30 meters. And the 1st respondent and 3rd respondent have a plot measuring 20 x 30 meters. They contended that this ground of appeal is misplaced since the appellant was allocated only one ground measuring 17 x 30 meters. They claimed that the Ward Tribunal visited locus in quo and managed to see the location of the disputed land, the boundaries, and physical features. They added that the tribunal wanted to clear the doubts arising from conflicting evidence on a physical object on the land.

They further stated that the tribunal members had similar reasoning and concurred that the appellant only had one plot and the tribunal arrived at such a decision after hearing evidence of the members of the village council who allotted the plots to the disputants. To bolster his submission, he cited the case of **Rajab S. Mkangala v Rajab Kibiga**, PC, Civil Appeal No. 30 of 2015.

On the strength of the above submission, the respondent beckoned upon this court to uphold the decisions of both tribunals and dismiss the appeal with costs.

In a short rejoinder, the appellant reiterated his submission in chief. Stressing that the decisions of both tribunals did not answer the claims of the appellant and the respondents. He claimed that the evidence on record proved that all disputed plots measured 30 meters length and member of the village allocation committee proved that Dangali was allocated two plots measuring 17 x 30 meters and the appellant testified the same. He lamented that the Hassan Mhala's evidence was unreasonable since his evidence was not supported by any document. He blamed the trial tribunal for considering the evidence of Hassan Mhala who sold the suit land without determining the size of the suit plot and

without considering the physical boundaries of the plot. It was his view that it was unsafe for the tribunal to rely upon such evidence.

The appellant went on to complain that Peter Mtitu and Mohamed Lyandembo did not produce cogent evidence to show the size of their land. He blamed the tribunal to decide that he has no *locus standi* while the village committee member testified that Dangali was allocated two plots.

On the strength of the above submission, he urged this court to consider his appeal.

Having summarized the submissions and arguments by all parties. I am now in the position to determine the grounds of appeal before me. In my determination, I will consolidate the third, fourth, sixth, and seventh grounds because they are intertwined. Except for the first ground. The second and fifth grounds will be disregarded because the appellant has abandoned them.

I will commence with the first ground of appeal, the appellant complained that the Chairman erred in law in holding that Hamis Dangali ought to claim his plot only instead of claiming the plot registered by his wife's name. The records reveal that the appellant at the tribunal tried to

justify that the second plot belonged to his wife and she allowed him to represent her in the said case. In my view, the appellant was trying to prove the size of both plots by including his wife's plot. However, since the appellant knew that his wife had an interest in the subject matter, the proper procedure was for the appellant to obtain the power of attorney to represent his wife. Therefore, I find no reason to fault the decisions of both tribunals on this ground.

On the third, fourth, fifth, and seventh grounds, the appellant claims are related to the suit land which includes the second plot which he alleges that the same belongs to his wife. One member of the village council testified to the effect that the appellant was given one plot and his wife was also given one plot but the map of the suit land does not separate the two plots.

It was my view that at the hearing the Ward Tribunal was required to determine the appellant's claim of trespass based on his plot in exclusion of the appellant's wife's plot. I am saying so because the records show that on 5th November, 2016 when the trial tribunal visited locus in quo it made the following findings:-

" Madu anadai eneo lake lenye ukubwa 35/35. Mdai anadai eneo lake lenye alama AB. Mdaiwa namba 1 anadai eneo lake lenye ukubwa wa 1/8 (17 1/2 x 35) Mdaiwa namba 2 anadai eneo lake lenye ukubwa wa (17 1/2 x 35) na Mdaiwa namba 3 anadai eneo lake lenye ukubwa wa (17 1/2 x 35)."

Reading the above findings, the tribunal was required to show the measuring of the appellant's plot in exclusion of his wife's plot. Instead of concluding that the disputed area is marked 'A' without stating its measurement. Again, the trial Chairman in its judgement stated that the appellant's plot measured 30 x 60 without deciding the issue of alleged trespass of 18 x 30 meters by the respondents. Additionally, the claims of destroying the appellant's crops was not determined by the trial tribunal. The District Land and Housing Tribunal also did not determine the issue of alleged trespass of 18 x 30 meters by the respondents which is still unresolved.

Additionally, the he Ward Tribunal in its decision was supposed to determine all claims raised by the appellant. Therefore, for the interest of justice, I find it is prudent to nullify the Ward Tribunal findings and order retrial whereas the trial tribunal will be in a position to determine the case properly.

On the way forward, I invoke the power vested on me under section 43 (1), (b) of the Land Dispute Courts Act, Cap.216 [R.R 2019] ,and hereby quash the judgments, proceedings, and subsequent orders of both tribunal. I, therefore, remit the file to the Ward Tribunal for Malinyi for a retrial. The appeal is partly allowed to the extent explained above without costs.

Order accordingly.

Dated at Dar es Salaam this date 10th December, 2021.



A.Z.MGEYEKWA

JUDGE

10.12.2021

Judgment delivered on 10th December, 2021 in the presence of the appellant.



A.Z.MGEYEKWA

JUDGE

10.12.2021

Right of Appeal fully explained.