

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**MISC. LAND APPEAL NO. 18 OF 2021**

(C/O Land Appeal No. 1/2021 District Land and Housing Tribunal for Katavi, originating from Land Dispute No. 38 of 2020 of Misunkumilo Ward Tribunal)

(Gregory K. Rugalema, Chairperson)

**EMILY MGEJU ..... APPELLANT**

**VERSUS**

**ISONDA JUMA ..... RESPONDENT**

Date: 14/12/2021 & 01/02/2022

**JUDGMENT**

**Nkwabi, J.:**

To avert further confrontation with the appellant, the respondent instituted a Land dispute in Misunkumilo ward tribunal. After a full trial, the ward tribunal decided that the respondent who was the claimant in the trial tribunal remain with his piece of land. The appellant who was the defendant in the trial tribunal was ordered to keep the land he used to own. The appellant was piqued by the decision of the trial tribunal, thus appealed to the District Land and Housing Tribunal for Katavi region whereby he lost his appeal. Therefore, this is a second appeal. The appellant lodged a petition



of appeal to this court. The petition of appeal is comprised of four grounds of appeal:

1. *That the appellate tribunal erred both at law by deciding in favour of the Respondent who had failed to prove ownership of the disputed land on the pretext that the Appellant who was the Respondent in original case failed to prove ownership over the same.*
2. *That the appellate tribunal erred at law and fact to declare that the appellant had no authority to occupy and use his late father's property the suit land simply because he was not the administrator of his late father's estate.*
3. *That the appellate tribunal erred at law by disregarding the fact that the appellant was wrongly sued as he is not the Administrator of the estate of this father the late John s/o Mgeju.*
4. *That the appellate tribunal erred at law by declaring the respondent as the rightful owner of the land without specifying the area of land granted hence the decision has compounded and intensified the conflict.*

The appellant prayed the decision of district land and housing tribunal be reversed. The case be referred back to the ward tribunal for want of proper parties and costs of the appeal. When the appeal was called up for hearing both parties appeared in person.

The Appellant argued that both decisions of both lower tribunals are wrong. The respondent did not prove his claim. The decision too did not show/prove the size of his piece of land. The respondent has no oral or documentary evidence to prove that he bought the piece of land, he stressed, while praying the appeal be allowed.

In rebuttal submission, the Respondent ventured that the arguments of the appellant are baseless. The trial tribunal and the first appellate tribunal correctly decided. He has been cultivating the shamba he bought. The person who sold the shamba to him is their (appellant's) relative/mother. He bought the land with the observation of the ten-cell leader. He admitted he was negligent for failure to put into writing the transaction. He argued his witnesses on his side died. They are the ten – cell leader and the woman who sold the land to him. He paid for it in three instalments. The appeal is

meritless, he maintained. He implored this court to dismiss the appeal. He had even sold a part of the piece of land to another person but that person waits for the decision.

In rejoinder the Appellant argued that he occupied that land in the year 1978. Why the respondent failed to bring witnesses. The local leaders testified evidence in their favour. The land is their property. He added that the respondent claims he bought it in the year 2007 but no evidence to prove it. He prayed his appeal be allowed.

I start my deliberation with the complaint found on the 3<sup>rd</sup> ground of appeal which is that the appellate tribunal erred at law by disregarding the fact that the appellant was wrongly sued as he is not the Administrator of the estate of this father the late John s/o Mgeju.

This ground of appeal is wanting in merits. How could he be the belligerent and when he is sued pretends to defend himself, he was not the administrator of the estate of his late parents. If he knew that he ought not

to have been belligerent. He ought to have sought first being appointed administrator and then sue the respondent. It is the family of Mgeju to blame for their failure to lodge a probate cause for the appointment of administrator of the estate of their late parents, the respondent is not to blame. To make myself clear is that the appellant was sued in his personal capacity as being belligerent he acted in such capacity. That complaint is mere a misconception on the part of the appellant and it is dismissed.

Next, I consider the 1<sup>st</sup> ground of appeal which is that the appellate tribunal erred both at law by deciding in favour of the Respondent who had failed to prove ownership of the disputed land on the pretext that the Appellant who was the Respondent in original case failed to prove ownership over the same.

This ground of appeal cannot detain me much. The appellant himself declared that he is not the owner of the piece of land that he was sued for. How could then such person even would dream of winning the case. He categorically stated that the piece of land in question belongs to his late parents. As he is not administrator of the estate, if I understood well the trial

tribunal and the 1<sup>st</sup> appellate tribunal, he has no locus to protect the same leave alone to pretend be belligerent over the piece of land. How could he then challenge the respondent for not having evidence? This ground of appeal is wanting in substance as such it crushes to the ground.

That is not all, the appellant too challenges the decision of the District Land and Housing Tribunal for erring at law and fact to declare that the appellant had no authority to occupy and use his (appellant's) late father's property the suit land simply because he was not the administrator of his late father's estate. This ground of appeal is lacking in merits as there is nowhere in the decision of the District Land and Housing Tribunal where it is held as such. The ground of appeal is a misconception on the part of the appellant. This court cannot be dragged into such misconception. I dismiss the ground of appeal since it is lame.

There is yet another lame ground of appeal drawn by the appellant. This is that the appellate tribunal erred at law by declaring the respondent as the rightful owner of the land without specifying the area of land granted hence


the decision has compounded and intensified the conflict. The claim that District Land and Housing Tribunal intensified the conflict is misconceived. What I gather from the decision of the District Land and Housing Tribunal is that the whole piece of land the basis of this case should be in the hand of the respondent. This is not only because the respondent proved his case but also the appellant's claim that the piece of land belongs to his late parents where he has no letters of administration of the alleged estate. I too join hands with the decision of the District Land and Housing Tribunal. The appellant has to leave the respondent in peaceful occupation of the land. He should stop from being belligerent else consequences as criminal trespasser could follow him.

That said, the appeal is dismissed with costs.

It is so ordered.

**DATED at SUMBAWANGA** this 1<sup>st</sup> day of February, 2022



  
**J. F. Nkwabi**  
**JUDGE**