

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 14 OF 2021

(C/O Land Appeal No. 21/2020 District Land and Housing Tribunal for Rukwa,
originating from Land Dispute No. 1 of 2019 of Kilesha Ward Tribunal)

(J. Lwezaura, Chairperson)

LEONARD NTAPULA APPELLANT

VERSUS

VICENT KASIWE RESPONDENT

Date: 09/11/2021 & 06/01/2022

JUDGMENT

Nkwabi, J.:

This, to me, seems to be an interesting appeal. It is such since the respondent who was complainant (applicant) in the ward tribunal was satisfied by the decision of the trial tribunal when it decided on the boundary between the parties. The appellant is pained by such decision though he was not the complainant.

A counter-claim procedure might not be applicable in the ward tribunals, or that procedure might be unknown to the members of such tribunals. The appellant nevertheless could have raised it. Throughout, the respondent



complained about boundary infringement by the appellant. If the dispute were not in respect of the boundary only, then, the appellant ought to have raised it in the trial tribunal.

In the first appellate tribunal, and in this 2nd appellate court, the appellant raised the issue of ownership of the piece of land in dispute and not encroachment into his piece of land in his 2nd ground of appeal (*they/he are/is the owner of the suit land since 1976*). The 1st appellate tribunal reached at that decision after considering the oral evidence and the evidence on the visit on locus in quo by the trial tribunal. It further found that the trial tribunal was in a better position to decide the matter, they were in a position to assess the suit land and its boundaries and physically reached a decision of ordering the parties to abide by the boundaries.

Do I have compelling reason(s) to interfere with the concurrent decisions of both lower tribunals? The appellant cites three reasons of which he calls upon this court to interfere with the concurrent decisions of lower tribunals.

The reasons are:

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1. The appellant proved on balance of probabilities that the disputed land is his property but justice was not done.
2. They were owners of the suit land since 1976.
3. It was wrong for the first appellate tribunal to confirm the decision of the trial tribunal which is wrong.

In submission, the appellant reiterated his claim to ownership of the suit land while the respondent reiterated his satisfaction with the decisions of lower tribunals. That was during the hearing of the appeal in this court where the parties appeared in person.

The appellant, was unsuccessful in his bid to defend his alleged piece of land in the ward tribunal for Kileshe ward. The respondent in this appeal succeeded in bid to protect the boundary that was encroached by the appellant. The ward tribunal had an opportunity to visit the locus in quo and set the boundary which it found to be just to the litigating parties. The appellant who was the respondent in the trial tribunal unsuccessfully appealed to the District Land and Housing Tribunal for Mpanda whereby his

appeal was dismissed. As the appellant would not back down, he lodged this second appeal to this court.

It is trite law that in a second appeal over concurrent findings of lower tribunals, courts will be reluctant in interfering with such concurrent findings. One could have reference to **Ahmed Said v Republic, Criminal Appeal No. 291/2015** CAT (unreported) and **Neli Manase Foya v. Damian Mlinga [2005] T.L.R 167.**

I have had generous time to go through the evidence that is in the record of the trial tribunal and come to the conclusion that both lower tribunals were entitled to reach at the decision they reached at. The evidence is clear from both litigating parties that the dispute is over boundary and not over piece of land. The appellant encroached the piece of land of the respondent. The respondent proved his case. The decision was delivered and the respondent was satisfied by the decision.

The ground of appeal by the appellant that he proved his case/claim on balance of probabilities is demerited. He proved nothing as such. This ground of appeal and that it was wrong for the first appellate tribunal to confirm the decision of the trial tribunal which is wrong, which is set on the third ground of appeal both have to crumble to the ground as I am unmoved by them.

Reverting to the 2nd ground of appeal, as to the claim that the Appellant had been in occupation of the piece of land since 1976. Adverse possession would have come to his assistance if he had proved that he was in undisturbed occupation of the whole piece of land for a period of more than 12 years. He failed to prove adverse possession in the trial tribunal. This justification of appeal unaffected me. Consequently, I expel it.

In fine, I have no reason to fault the lower tribunals in their concurrent decisions. The appeal is dismissed with costs.

It is so ordered.

DATED at **SUMBAWANGA** this 6th day of January, 2022

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J. F. Nkwabi

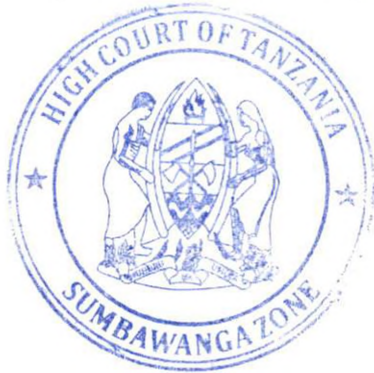
**J. F. Nkwabi
JUDGE**

Court: Judgment delivered in chambers this 6th day of January 2022 in the presence of both parties in person.



**J.F. Nkwabi
JUDGE**

Court: Right of appeal is explained.



J. F. Nkwabi

**J.F. Nkwabi
JUDGE
06/01/2022**