

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.13 OF 2023**

(Arising from land Application No. 86 of 2018 at Kibaha District Land and Housing Tribunal Arising, originating from Ward Tribunal of in Land Case No.04 of 2014)

AHMAD ALLY NG'OMBE APPELLANT

VERSUS

JANUARIUS SEBASTIAN MAGANGA RESPONDENT

JUDGMENT

Date of Last order: 28.02.2023

Date of Judgment: 03.03.2023

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal for Masaki Land Dispute No.04 of 2014 and arising from the District Land and Housing Tribunal for Kibaha in Land Appeal No. 86 of 2018. The material background facts to the dispute are briefly as follows; Ahmad Ally Ng'ombe, the appellant instituted a case at Kibaha District Land and Housing Tribunal. The matter was decided in favour of the respondent. The District Land and Housing

Tribunal decision did not amuse the appellant. He decided to challenge it by way of appeal before this court on three grounds of appeal as follows:-

1. *That, the trial Chairman erred in law and fact to hold that the respondent is a lawful owner of the matter in dispute without considering documentary evidence of the Appellant.*
2. *That, the trial Chairman erred in law and fact to decide the matter in favour of the respondent without analysing and evaluating evidence of the Appellant against the Respondent.*

When the appeal was called for hearing on 27th October, 2022 before me, the appellant urged this Court to argue the appeal by way of written submissions. Pursuant thereto, a schedule for filing the submissions was duly confirmed by the appellant.

The appellant argued the grounds of appeal generally, he stated that he filed the instant appeal after being dissatisfied with the tribunal's decision. He claimed that the tribunal did not comply with the proper procedure since at the trial tribunal he tendered a document to prove that the respondent's mother on 23rd July, 1992 gave him a Farm and the respondent prepared the document. he stated that there was no any dispute until 19th January, 2005, when the respondent's mother one Erica Joseph asked him to hand over the Farm to her

as she wanted to give the said Farm to her children. The appellant went on to submit that he called the Village Chairman and they handled the exercise smoothly.

The appellant continued to submit that the Chairman did not consider his exhibits while he stated the measurement of the suit land was 34 foot x7 foot. He blamed the Chairman for failure to consider his documents and complained that the Chairman did not visit *locus in quo* instead he decided the matter against him. I valiantly argued that the respondent won the case while the owner of the suit land was his mother. He spiritedly contended that he won the case at the trial tribunal and he was in possession of the suit land for a long time. He went on to submit that all parties agreed on the terms and conditions of their agreement but the respondent decided to come to court.

In conclusion, he urged this Court to find that the DLHT decision is demerit and prayed this court to analyse his exhibits and quash the decision of the DLHT.

In his reply, the respondent was brief and focused. He submitted that the Chairman and his assessors considered the appellant's documents and the Chairman involved the Police Officers to determine whether the signature was his or otherwise and the report stated that the signature was forged. He lamented that the appellant has forged the date of his mother's death. He stated

that his mother passed away on 23rd January, 2021 and not on 23rd July, 2021 as stated by the appellant. He valiantly argued that the appellant invaded the suit land while he was in UK and he insisted that he is the lawful owner of the suit plot and has filed a criminal case of forgery against the respondent. The respondent went on to argue that the appellant is relying on his alleged document and wants to show that he stayed in the suit land for a long time since 1995 and claim for adverse possession.

In conclusion, the respondent stated that the appellant's documents are not genuine. He urged this Court to dismiss the appeal.

In his rejoinder, the appellant reiterated his submission in chief. He stressed that the Village leadership knows that he is the lawful owner and he has not forged the documents. He urged this Court to order the DLHT to visit the *locus in quo* to certify itself.

I have subjected the rival arguments by parties to the serious scrutiny they deserve. Having so done, I think, the bone of contention between them hinges on the question *whether the appellant had good reasons to warrant this court to allow his appeal*. In my determination, I will combine the 1 and 2 grounds because they are intertwined. I have perused the records and found that Ahamed Ally Ng'ombe testified to the effect that on 19th January, 2005, the

respondent's mother gave him a piece of land measuring 17 foot x 34 foot. In 2017, the respondent claimed that the suit land belongs to him. To substantiate his testimony he tendered a certificate of handing over a piece of land to the appellant dated 19.01.2005 (Exh.K1) measuring 17 foot x length and 34 foot width being a wage of taking care of her Farm. The appellant also tendered an agreement of taking care of the suit Farm (Exh.K3). A copy of the letter from the Street Chairman of Kiluvya dated 24.10.2005 (Exh.K5).

When the plaintiff was cross-examined she stated that the respondent invaded his suit land measuring 37 x 27 foot and he did not mark any demarcation, but he then claimed that the respondent invaded the suit land which is measuring 34 x 17 foot. He claimed that he bought the said suit land from John's wife.

I have gone through the documentary evidence tendered at the trial tribunal and noted that there was a Minute of the Meeting (Exh.K2) of Mama Maganga with her children and relatives. Mama Maganga gave her children; Januarius Maganga a piece of land measuring 2 ½ acres located at Kiluvia 'B' Kisarawe District Pwani Region. The respondent in his testimony testified to the effect that the suit land belonged to his mother, she bought it in 1973. He testified that the appellant had a nearby Farm near his mother and sister (he bought his sister's

Farm). The respondent's sister (SU4) testified to the effect that she was the owner of the suit land and later she sold the said land to the respondent.

Having gone through the evidence on record, it is my view that the measurement stated by the appellant and as shown in the document needs to be verified by the tribunal. There is no dispute that the whole dispute is centered in the size of the suit land, the appellant and the respondents are neighbours and they are bounded which means the means of resolving the dispute involved visitation of the suit land before reaching a final decision.

I have scrutinized the record and noted that the predecessor Chairman before he proceeded with hearing the matter stated that he will hear the witnesses' testimony and visit *locus in quo*, however, reading the evidence on record, I noted that the Chairman did not visit locus in quo. The question to ask is whether it was necessary for the DLHT to visit the locus in quo. To answer this question, I had to go through the evidence and documentary evidence and noted that the issue of size or measuring the suit land was not well determined. The tribunal could have visited the suit land to check on the evidence given by the witnesses. In the case of **Yeseri Waibi v Edisa Lusi Byandala** [1982] HCD, it was held that the practice of **visiting the locus in quo** is to check on the evidence given by

witnesses and not to fill the gap for them or [the] court may run the risk of making itself a witness in the **case**.

For the aforesaid findings and considering the circumstances at hand, I fully subscribe to the submission made by the appellant that it was important for the District Land and Housing Tribunal to visit the *locus in quo* to clear the ambiguity of measurement of the suit land. I understand a visit to a locus in quo is necessary or appropriate in exceptional cases and this case is among the exceptional cases. During the visit to a locus in quo, the Tribunal will attend with parties and advocate (if any) and the witnesses will testify on the issue of the size of the suit land, they will be in a position to show their boundaries and the suit land will be measured in the presence of the parties. Therefore, in my considered view, the visit to the locus in quo will assist the tribunal to clarify the contradictions and reach a fair decision. In the case ***Nizar M. H. Ladak v Gulamali Fazal Janmohamed (1980)*** TLR 29, the Court of Appeal of Tanzania held that:-

"When a visit to a locus in quo is necessary or appropriate, and as we have said this should only be necessary in exceptional cases, the court should attend with the parties and their advocates, if any, and with such witnesses, as may have to testify in that particular matter, and for instance, if the size

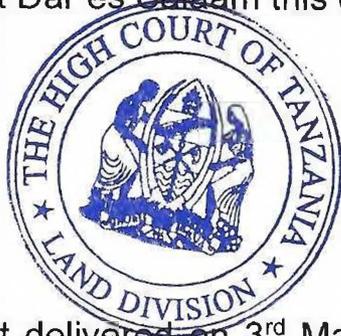
of a room or width of the road is a matter in issue, have the room or road in measured the presence of the parties, and a note made thereof..."

In view of the aforesaid, I find that it is necessary for the trial tribunal to visit locus in quo before composing judgment.

Following the above findings and analysis, I invoke the provision of section 43 (1), (b) of the Land Dispute Courts Act, Cap. 216 which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing Tribunal for Kibaha at Kibaha in Land Application No.86 of 2018 in the following manner:-

- (i) The Judgment, Decree, and the proceedings of the District Land and Housing Tribunal in Land Application No. 86 of 2018 starting from 13th December, 2022 are quashed and set aside.
- (ii) I remit the case file to the District Land and Housing Tribunal for Kibaha at Kibaha and order the tribunal to visit *locus in quo* to ascertain the measurement of the suit land, and the Chairperson to compose a new Judgment.
- (iii) Mindful of the long time the matter has taken in court, I direct, the case scheduling is expedited within one year from the date of this Ruling.
- (iv) No order as to costs.

Dated at Dar es Salaam this date 3rd March, 2023.




A.Z.MGEYEKWA
JUDGE
03.03.2023

Judgment delivered on 3rd March, 2023 in the presence of the appellant and respondent.




A.Z.MGEYEKWA
JUDGE
03.03.2023

Right of Appeal fully explained.