

THE UNITED REPUBLIC OF TANZANIA
(JUDICIARY)
THE HIGH COURT- LAND DIVISION
(MUSOMA SUB REGISTRY)
AT MUSOMA

Misc. LAND APPEAL No. 63 OF 2022
*(Arising from the District Land and Housing Tribunal for Mara at
Tarime in Land Appeal No. 44 of 2021 & originating from Kemambo
Ward Tribunal in Land Dispute No. 96 of 2020)*

NYANGI MARWA **APPELLANT**

Versus

KUBYO MBUSIRO **RESPONDENT**

JUDGMENT

16.03.2023 & 16.03.2023

Mtulya, J.:

Mr. Kubyo Mbusiro (the respondent) on 13th October 2020 had approached the **Kemambo Ward Tribunal** (the ward tribunal) and filed **Land Dispute No. 69 of 2020** (the dispute) praying for declaration of ownership of the disputed land. On 8th December 2020, he was summoned by the ward tribunal to explain his grievances and prove his case at the balance of probability required in civil cases. However, instead of proving its case at the required standard, including producing descriptions of the disputed land in terms of size location and boundaries, the respondent narrated previous stories surrounding the disputed

land. After full narrations of the matter, the ward tribunal decided in favour of the respondent and reasoned that:

Kutokana na maelezo ya Mlalamikaji jinsi alivyoyatoa mbele ya Baraza, pamoja na shahidi wake, Baraza limeona eneo ni la mdai.

The decision of the ward tribunal aggrieved the appellant hence preferred **Land Appeal No. 44 of 2021** (the appeal) before the **District Land and Housing Tribunal for Mara at Tarime** (the district tribunal) and complained that:

The evidence explains chronological sequence of the dispute in courts than proof of how the land was acquired and possessed...the respondent did not prove the case at the required standards of the law.

The district tribunal heard the parties and finally resolved in favour of the respondent and at page 2 of the judgment, the district tribunal stated that:

Baada ya kupitia mawasilisho ya pande zote mbili na nilipopitia kumbukumbu za jalada la kesi hii nimejiridhisha ya kuwa Mwaka 1998 Mrufani aliazimwa eneo lenye mgogoro. Nimeyathibitisha maamuzi ya Baraza la Kata.

However, the district tribunal was silent on the land size and location granted to the respondent as per requirement of the law enacted in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 (the Regulations). The appellant was not satisfied with decision and reasoning of the district tribunal hence preferred **Misc. Land Appeal No. 63 of 2022** (misc. appeal) in this court protesting the decision on the reason that:

...the first appellate tribunal failed to evaluate and analyze evidence adduced at the trial tribunal leading to failure of justice on part of the appellant.

Today morning the appeal was scheduled for hearing and the appellant had decided to hire legal services **Mr. Baraka Makowe**, learned counsel, to argue the appeal. However, before the appeal proceedings could take its course, Mr. Makowe stood up and submitted that there is a point of law which leads to the proceedings of the ward tribunal to a nullity.

In explaining the wrong committed by the ward tribunal. Mr. Makowe submitted that the respondent at the ward tribunal was silent on the size and location of the disputed land and further he was mute on neighbors surrounding the land, name of hamlet and village where the land is based. In his opinion, the fault

goes to the merit of the matter and had caused injustice to both parties, and in any case it may cause chaos during the execution stage. Finally, M. Makowe prayed both proceedings and decisions of the lower tribunals be quashed for want of proper application of the law. The respondent, who appeared in person without any legal representation, had conceded the fault and submitted that it was a bad luck, but his land is sized ten (10) acres.

I have had opportunity to peruse the record of the present appeal and found that on the first day of the hearing of the dispute at the ward tribunal, on 8th December 2020, as displayed at page 1 of the proceedings, the respondent is quoted to have said that:

...shauri hili lilifika Tarime likarudishwa hapa kwenye Kata. Baada ya kukatiwa Rufaa mdaiwa yeye amevamia eneo langu tangu mwaka 9/10/2015. Nilifika mbele ya Baraza kulalamika, Mdaiwa alitwa, baada ya kuitwa shauri liliendelea baaada ya hapo mimi nilileta mashahidi wangu na Mdaiwa alileta mashahidi wake, na Baraza la Kata lilipanga siku ya kwenda kutembelea eneo la mgogoro Baraza lilitoa uamuzi tarehe 15/11/2015, katika Shauri No. 17/2015. Mdaiwa yeye hakuridhika na uamzi wa Baraza alikata rufaa katika Baraza la Ardhi na Nyumba la Wilaya Tarime. Rufaa No. 96/2015, Mimi nilishinda na kupewa eneo tarehe 29/04/2016 Mdaiwa hakuridhika alikata rufaa Mahakama Kuu Mwanza Kesi No. 101/2016. Rufaa

lilendelea hadi tarehe 13/09/2017/ mbele ya Jaji R. V. MAKARAMBA. Jaji Makaramba aliifuta kesi hii ikarudishwa kwenye baraza la kata Kemambo Mimi nilifungua shauri tena kwenye Baraza la Kata-Kemambo tarehe 07/11/2017. Shauri liliendelea baada ya kuitwa Mdaiwa nilitoa maelezo yangu na mashahidi wangu pamoja na vielelezo vyangu. Mdaiwa alitoa maelezo yake na Mashahidi wake. Baraza lililhamia eneo la mgogoro baada ya hapo Baraza lilitoa uamuzi wake tarehe 14/08/2018. Ndipo mimi nilipewa haki kwa mara ya tatu (3). Mdai alikata rufaa Baraza la Ardhi na Nyumba Wilaya Tarime Rufaa No. 115/2018.

Baraza la Ardhi na NyUmba lilifuta rufaa hiyo tarehe 28/09/2018 na shauri hilo limerudishwa kwenye Kata-Kemambo, Shauri No. 7/2019 tarehe 17/02/2019. Nilitoa maelezo yangu upya na kuleta Mashahihidi pamoja na vielelezo vyangu. Mdaiwa wake, alitoa maelezo pamoja na mashahidi wake. Baraza lilipanga siku ya kutembelea eneo la mgogoro, uamuzi ulitolewa nilipata haki kwa mara ya pili. Mdaiwa alikata rufaa mara ya tatu, Rufaa No. 115/2018. Uamuzi ulitolewa 17/01/2020 na Mh. Ngukulike N.O Rufaa ya Mdaiwa ilifutwa mara ya tatu shauri hili limerudishwa kwenye Baraza la Kata kwa mara ya nne (4) wakati huo huo mdaiwa yeye anaendelea kutumia ardhi yangu na kukalia. Naomba Baraza la Kata Kemambo linirudishie haki yangu, kwani ni muda mrefu umepita.


From the record and without mincing words, it is vivid that the respondent had declined to establish its complaint at the required standard in substantiating civil cases with regard to the size, location and demarcations surroundings the disputed land.

This is clear breach of law enacted in Regulation 3 (2) (b) of the Regulations. It is fortunate that the Regulation has received interpretation of this court in the precedents of **Hassan Rashidi Kingazi & Another v. Halmashauri ya Kijiji Cha Viti**, Land Case Appeal No. 12 of 2021 and **Sila Waryoba v. Lois Akeyo**, Misc. Land Appeal No. 71 of 2022.

Following the vivid error material to the merit of the case, which had caused injustice to the parties, I invoke section 43 (1) (b) of the **Land Disputes Courts Act** [Cap. 216 R.E. 2019] to nullify the impugned decisions and set aside all proceedings of both tribunals below for want of proper application of the Regulation and cited precedent, as I hereby do. I do so without costs as the wrong was committed by the respondent, but blessed by both tribunals below.

In the end, I leave it to the parties to decide on the proper cause to follow, and if any party is interested in the disputed land, he may wish to lodge a fresh and proper land dispute in appropriate forum in accordance to the current laws regulating land disputes. It is so ordered.

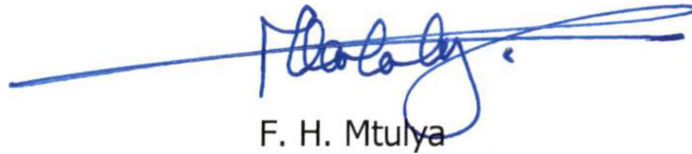



F. H. Mtulya

Judge

16.03.2023

This judgment was pronounced in Chambers under the Seal of this court in the presence of the respondent, **Mr. Kubyo Mbusiro** and in the presence of **Mr. Baraka Makowe**, learned counsel for the appellant.



F. H. Mtulya

Judge

16.03.2023