

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

**LAND APPEAL NO. 325 OF 2023**

(Appeal from the Judgment and Decree of Temeke District Land and  
Housing Tribunal in the Land Case No. 245 of 2021)

**CHARLES KINYUNYU.....APPELLANT**

***VERSUS***

**SIMBA OIL.....1<sup>ST</sup> RESPONDENT**

**FARID NAHDI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

10<sup>TH</sup> to 17<sup>TH</sup> October, 2023.

**E.B. LUVANDA, J**

The Appellant above mention unsuccessful sued the First and Second Respondents above for a claim of ownership of the property located at Mbagala Charambe near Mbagala Rangi Tatu - Charambe - Mbande Junction Road. In the memorandum of appeal, there are three grounds of appeal: One, the trial Tribunal erred in law and facts by holding that the Appellant failed to prove his ownership of the disputed land; Two, the trial Tribunal erred in law and facts by holding that the Appellant testified the different area as stated in pleadings; Three, the trial Tribunal erred in law and facts holding that TANROADS are the one demolished the properties of the Appellant.

Mr. Francis Makota learned Counsel for Appellant submitted that the Appellant is claiming for ownership of the property located at Mbagala Charambe near Mbagala Rangi Tatu – Mbande Junction Road, as per contract for allocation exhibit P1, argued the Tribunal did not consider it. He submitted that the witness proved the Appellant as the owner of the suit property since 1970. He submitted that the Appellant had proved the adverse possession of the disputed land as was in the demolished area since 1970's to 2015, citing the evidence of Abdallah Minge, arguing was not considered. He submitted that the Tribunal considered a certificate of title tendered before the Tribunal as a proof of ownership to the Respondent, arguing it is contrary to what was testified by the Appellant that his property measure twenty by twenty metres, which is in front of the area built filing station. He submitted that it is not the area covered by a certificate of title.

Four ground number two, the learned Counsel submitted that at page 3 of the judgment indicate the Appellant testified that the land in dispute is twenty by twenty in front of the filing station namely Simba Oil Petrol Station. He submitted that pleadings save clearly stated that the area which has been built the Simba Oil Petrol Station, arguing in evidence the Appellant said portion of land twenty by twenty. He submitted that this does not make difference in semantic, arguing the evidence tendered by

the Appellant relate to what has been pleaded. He submitted that the Appellant stated that the area in dispute seems to be in front of the building of the Respondent which were used for parking purposes. He submitted that the word building includes the parking area.

Ground number three, the learned Counsel submitted that the First Respondent had declared the interest in obtaining the land, after several years the First Respondent demolished the said properties of the Appellant. He submitted that there is no evidence which shows that TANROADS are the one who demolished apart from a letter produced by the Respondent purporting to be a notice of TANROADS. He submitted that only few houses in front of the Respondents filling station were demolished, argued if were TANROADS could demolish along Mbande – Chamazi Road. He submitted that TANROADS were not summoned.

In reply, Jamal A, learned Advocate for the Respondents submitted that the Appellant who testified as PW1 denied to own the land where the Respondents filing station was built, rather his land is the one which is in front of the Second Respondent's land. He submitted that the Appellant claim that he is the rightful owner of the Second Respondent's plot is not correct, argued the Appellant knew his area measuring twenty by twenty which is subject matter to this dispute was not within the Seconds Respondent's Plot No. 8 Mbagala Industrial Area, within Temeke Dar es

Salaam, which was purchased in 2010, from Upeka Abdallah Kanda the administratrix of the estate of the Late Abdallah O. Kanda, who was the original owner allocated in 1986, as per a certificate of title exhibit D2. He cited the case of **Amina Maulid & Two Others vs. Ramadhani Juma**, Civil Appeal No. 35/2019 CAT at Mwanza; **Jaswinder Pal Singh vs. Clavery Mayongo & Four Others**, Land Case No. 10/2019, HC Mbeya.

Ground number two, the learned Counsel submitted that when the Appellant was giving his testimony he failed to show the location of the suit land due to the fact that the area measuring twenty by twenty claimed are nowhere to be found. He submitted that the Appellant was just alleging that the disputed plot measuring twenty by twenty feet is located in front part of the Second Respondent's plot, but failed to properly describe the suit premises as required by law. He cited regulation 3(2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003, Order VII rule 3 of the Civil Procedure Code, Cap R.E. 2019, **Mwanahamis Habibu & Seven Others vs. Justine Ndunge Justine Lyatuu & 173 Others**, Land Case No. 130/2018, Land Division.

Ground number three, the learned Counsel submitted that exhibit P5 indicate that the Appellant was among Plaintiffs who sued TANROADS in the year 2014, which was dismissed for want of prosecution. Exhibit D1 a letter from TANROADS shows intention of TANROADS to demolish all the

premises which were built in the road reserve. He submitted that the Tribunal reached a decision that it was demolished by TANROADS after evaluating the evidence together with exhibit produced by both parties. He submitted that the Appellant was duty bound to prove his allegation, but nowhere the Appellant has alleged seeing the Second Respondent or any officer of the First Respondent participating to demolish his property.

To start with ground number one, the learned Counsel for Appellant submitted that the Appellant stated that the property which belongs to him is a piece of land measuring twenty by twenty metres which is in front of the area built a filling station. He submitted that the Appellant tendered annexure MP1 as exhibit in court (sic, Tribunal) which indicate the Appellant was allocated that piece of land under a slogan "nguvu kazi" in 1980. However, the alleged document dated 05/03/1980 does not depict the size of the alleged piece of land measuring twenty by twenty. In the application (plaint) the Appellant did not plead a size of the alleged land allocated to him under a slogan of "nguvu kazi". In the application (plaint) nowhere the Appellant pleaded that his piece of land under disputed is located in front of the petrol station. In fact the testimony of the Appellant introduced a new strange claim or area which was not pleaded in his application (plaint). In that way, it cannot be said the Appellant had proved his claim let alone ownership of any piece of land. As alluded by

the learned Counsel for Respondents that a call and invitation by the Appellant for him to be declared a rightful owner over the Second Respondent's plot was incorrect and a misplaced idea, for he knew his area measuring twenty by twenty which he introduced at the witness box is not within the plot No. 8 Mbagala Industrial Area, owned by the Second Respondent as per a certificate of occupancy exhibit D2.

Regarding ground number two, to my view the Tribunal is faulted for nothing, as indicated in ground number one above, in the testimony the Appellant claimed ownership of a land measuring twenty by twenty alleged located at Mbagala Charambe the way towards Chamazi Temeke. In his testimony, the Appellant stated that at a place where there is a petrol station is not part of his area. I reproduce a portion of his testimony

*"Wadaiwa walimaliza kuvunja eneo langu au majengo yangu walijenga hapo kituo cha mafuta kinaitwa Simba oil. Eneo la petrol station si sehemu ya eneo langu.*

This was a total departure to his substantive claim in the plaint or application at paragraph 7(a)(i), I quote,

*"That the cause of action arose due to unlawful intentionally, malicious and unprocedural act of the Respondents demolishing the commercial houses of the Applicant and erect*

*thereat the petrol filling station running in the name of the Simba Oil.*

At the relief claimed by the Appellant, paragraph 7(i), I quote

*"The declaration order that, the property located at Mbagala Charambe, near Mbagala Rangi Ratu – Charambe Mbade Junction Road, which is now constructed Simba Oil Filling station is the lawful property of the Applicant"*

Therefore, technically in the plaint or application the Appellant was claiming ownership of the area of the Second Respondent, no wonder he did not depict measurement or size. The Appellant witness Juma Abdallah Minde (PW2) is the one who twisted this fact by asserting that the area of the Appellant is located in front of the area currently under Simba Oil. Therefore, it is the Appellant who twisted his claim by adducing testimony which is at variance with what he pleaded in his application (plaint).

For ground number there, the Appellant stated that he was not there when a demolition was carried out, rather asserted that he believe it is the Second Respondent who demolished, for reasons that he showed some interests some years back and that he is using it as a parking lot.

PW2 who witnessed a demolition, said he did not see the Respondents participating in the demolition.

As such the Appellant was merely speculating under assumption that it is the Respondent who demolished, without proof whatever. A fact that the Second Respondent had approached him and showed interest over a suit land is too remote. Equally a fact that, currently the Respondent's are using it as a part lot, is irrelevant. This is because his claim was that the Respondent demolished his structure and constructed a petrol station. Equally, a claim that only fewer houses were targeted, which have located adjacent to the petrol station, is of little value.

This is because PW4 said they were served with a notice by TANROADS in 2014, which fact was supported by PW1 said a demolition was carried out in 2017, as also indicated in a letter or notice for demolition dated 25/07/2017 exhibit D1. Indeed PW1 conceded a fact that TANROADS was sued for demolishing buildings.

Therefore suing the Respondents to my view was an after thought and out of confusion as to who is the real and actual enemy as far as demolition is concerned. To my view the testimony of Mrisho Juma (DW1) who was a hamlet chairman between 2014 and 2017, completely exonerated the Respondents with the impugned demolition. According to



- DW1 on 25/07/2017 he received a letter from TANROADS exhibit D1
- informing him that they are intending to carryout a demolition exercise of all huts along road reserve on 29/07/2017, where DW1 attended and witnessed demolition of the two hurts for carpentry workshop for the Appellant, thereafter TANROADS erected beacons for boundary.

Therefore the Tribunal was justified to rule that it is TANROADS who carried out the demolition, as per the assessment of evidence adduced and tendered before the Tribunal, which verdict I upheld it.

Appeal dismissed for want of merit with costs.



E.B. LUVANDA  
**JUDGE**  
17/10/2023

Judgment delivered through video conferencing at 11:28 hours where neither Mr. Francis Matola learned Counsel for Appellant nor Ms. Maria Pengo learned Counsel for Respondent attended.



E.B. LUVANDA  
**JUDGE**  
17/10/2023