

IN THE HIGH COURT OF TANZANIA
AT SONGEA

LAND APPEAL NO. 18 OF 2013

**(Originating From Songea District Land and Housing Tribunal
Case Appeal No. 5 of 2012 and Ward Tribunal of
Bombambili Land Case No. 61 of 2012)**

ISMAIL KAPONDA APPELLANT

VERSUS

ELIMIGIA LUAMBANO..... RESPONDENT

JUDGMENT

29/10 – 10/12/2013

KWARIKO, J.

The appellant herein was charged before the Ward tribunal of Bombambili with the offence of Malicious damage to property. It was alleged and evidenced that the appellant had on 11/6/2012 uprooted vegetables, cassava and pawpaw plants property of the respondent herein. He denied the allegations and at the

end of the trial he was acquitted for reason that the land in which the crops had been planted belonged to his deceased mother.

The respondent herein successfully appealed against that decision before the district land and housing tribunal of Ruvuma at Songea. The appellant through the services of Mr. Waryuba learned Advocate filed this appeal against the decision of the district tribunal. The following four grounds of appeal have been raised in this appeal:

- 1. That, the learned chairperson erred in law and fact to entertain and determine the appeal before her as a civil matter whereas the matter before the Ward Tribunal was of a criminal nature i.e trespass to land which the Appellant was acquitted for alleging a bonafide claim of right.*
- 2. That the learned chairperson erred I law and fact by not quashing the Ward Tribunal's decision and advise the parties to institute the civil matter afresh whereby the Appellant whose mother; the owner of the disputed land died, and the Appellant could be afforded opportunity to appoint the administrator of*

the deceased estates.

3. *That the learned chairperson was wrong in law and fact to determine the appeal as if the Appellant was a legal representative of his deceased mother.*
4. *That alternatively but without prejudice to the foregoing ground the learned chairperson erred in law and fact to hold that the disputed land belonged to the Respondent whereas the evidence on record i.e written sale agreement proved that the Appellant's mother bought that piece of land from PW2 or **JAFARI MPUTA'S** father on 14/4/1996; but the Respondent had no document to prove her allegation; therefore the disputed land belonged to he Appellant and his family members.*

In this appeal though the respondent was duly served but did not put appearance when the matter was called for hearing. Thus, the appeal was heard *ex-parte* against her. Essentially, generally, Mr. Waryuba learned Advocate for the appellant submitted that the district tribunal erred in law to treat the matter

between the parties as a civil matter whereas the case was opened as a criminal case before the trial tribunal. That, the charge against the appellant was malicious damage to property where the district tribunal ought to have quashed the proceedings as the ward tribunal has no criminal jurisdiction. Further, Mr. Waryuba continued to submit that, the district tribunal should have quashed the trial tribunal's proceedings and ordered the matter to start *de novo* to determine ownership of the administrator of the estate of the appellant's mother has been appointed.

Mr. Waryuba learned Advocate argued in the alternative that the district tribunal should have decided in favour of the appellant since the evidence on record shows that the disputed land belongs to the appellant's deceased mother which she bought from one Jafari Mputa's father in 1996 as shown in the documents tendered at the trial.

Now, having heard the appellant's counsel the issue that pose for decision here is whether this appeal has merit. This court firstly, agrees with the appellant's counsel that the tribunal erred in law and fact to treat this matter as a civil one by finding the appellant liable with the tort of destroying crops and ordered him to pay general damages of Tshs. 200,000/=. The original record is clear that this matter was filed as a criminal charge of malicious damage to

property against the appellant as opposed to a claim of general damages under tort.

Secondly, this court is also in agreement with the appellant's counsel that the district tribunal should have nullified and quashed the proceedings of the trial tribunal but it should not have done that because the ward tribunal does not have criminal jurisdiction as contended by the learned counsel. The ward tribunal has criminal jurisdiction as provided under **section 9 of the Ward Tribunals Act Cap. 206 R.E. 2002.**

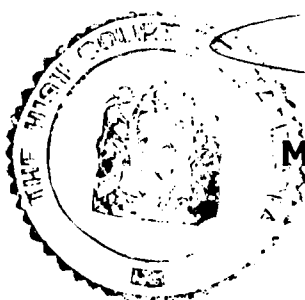

The reason that the district tribunal ought to have nullified the trial tribunal's proceedings is that a criminal charge could not have legally stood against the appellant since there was a dispute over the ownership of land upon which the alleged crops had been planted. Both the appellant and the respondent claimed that they were rightful owner of the land in which the crops were planted. Therefore, after the trial tribunal heard that assertion it ought to have stayed the criminal proceedings and ordered the parties to file a civil suit to determine ownership of land before any criminal charge could be brought up.

I have been inspired by the decision of my learned brother Mwalusanya, J (*as he then was*) in the case of **SYLIVERY NKANGAA V. RAPHAEL ALBERTHO [1992] T.L.R. 110** in respect of a criminal charge where there is dispute of ownership of the subject matter. It was held in that case that;

*" A charge of criminal trespass cannot
succeed where the matter involves
land in dispute whose ownership has
not been finally determined by a civil
suit in a court of law".*

Therefore, in the case at trial since there was dispute over the land the criminal charge should not have stood against the appellant. Hence, the proceedings of the trial tribunal were null and void *ab initio* and are hereby quashed. Likewise the proceedings of the district tribunal which originated in the null proceedings are equally declared null and are quashed.

The parties are advised to file a fresh suit to determine ownership of the disputed land before any one brought a criminal charge against another. This appeal thus succeeds and the appellant shall have his costs. It is so ordered.

 
M.A. KWARIKO
JUDGE

10/1/2013

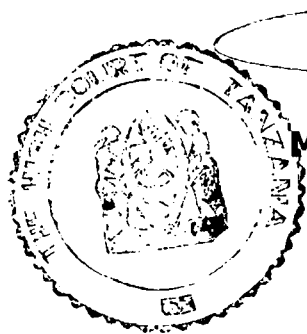

DELIVERED AT SONGEA

10/12/2013

Appellant: Present Mr. Waryuba Advocate.



Respondent: Absent.

C/C: Miss Hobokela.

 
M.A. KWARIKO
JUDGE

10/12/2013

Court: Judgment be typed and supplied to the respondent.

 
M.A. KWARIKO
JUDGE

10/12/2013