

TANZANIA / JUDGMENT

RULING DAATI SIIMA

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA [ARUSHA SUB - REGISTRY] AT
ARUSHA LAND APPEAL NO. 11509 OF 2024 (Original Misc Land Application No. 17 of 2024
of Karatu District Land and Housing Tribunal of Karatu at Karatu) DAATI
SIIMA..... ..APPELLANT VERSUS ERRO SIIMA
{Administrator of the estate of the late Siima Waree)RESPONDENT

JUDGMENT

24th September & 3rd October, 2024 I.C. MUGETA, 3. The respondent applied at the trial tribunal for injunctive orders to prevent the appellant and his agents from entering, developing, selling or dealing in any way with a 6.5 acres farm land, 2.5 acres land located at Dipu hamlet, mapera village; a 16 acres, 1 2.5 acres lands located at Kirurumo hamlet, Huduma village, Rhotia, Karatu District. In its decision, the tribunal gave the following orders:

- i. The parties and their defendants to keep using lands distributed to them by the administrator pending determination of the appeal in the Court of Appeal challenging the appointment of the respondent as administrator. ii. On residence, each party to reside at their current places of residence which has no dispute iii. The OCD Karatu District to take legal action against any party who would breach the orders of the Tribunal. The appellant is challenging those orders on a petition with three grounds of appeal. The first two grounds are similar to the effect that the orders of the trial tribunal in the application for injunction had the effect of determining the main application without involving the assessors. The third ground is that the trial tribunal ignored the contents of the respondent's affidavit. The application was disposed of by way of filing written submissions. In his submission the appellant has averred that as application No. 15/2021 on which the application for injunction is based was undetermined, the tribunal erred to make orders which touched merits of the main case. In reply, the respondent submitted that the orders were necessary for ensuring the parties continued with their daily activities including farming for livelihood. That the orders did not determine the main case but explained how the parties can access the dispute land for cultivation 2 without raising fictions between the parties. That as the case was an application, the trial tribunal was right to determine it without assessors. It is a settled principle which needs no authority to drop it up that an application ought to be determined on facts in the affidavit and counter affidavit. The subsequent orders ought to be confined to

the prayers in the chamber summons. In this case, none of the orders passed by the lower tribunal were prayed in the chamber summons. The tribunal gave reliefs which were not prayed. This was a misdirection. Further the facts upon which the case was decided are based on allegation that the decision in application No.21/2013 has been quashed by the High Court. This finding is appearing at the page 3 of the tribunal judgment. Such facts are also not in the affidavit nor the counter affidavit. The foregoing means the trial tribunal used extraneous matters to come to its decision. A decision which is pegged on extraneous matters cannot be allowed to stand. The foregoing notwithstanding, as submitted by the appellant, the decision in the application touched ownership of the land per the distribution made by the administrator in the presence of the hamlet and Ward government leaders. There is no evidence to that effect in the counter affidavit and he affidavit. The learned chairman seems to have his own sources of fact other than the contents of the affidavit and the counter affidavit. On assessors, I find no merits in the complaint. Before the trial tribunal was an application whose determination does not require sitting with assessors. In the event, I find merits in the first ground of appeal in that the trial tribunal exceed its jurisdiction in the determination of the application. Regarding the 3rd ground of appeal no submission was made by the appellant to support it. I therefore, consider that it was abandoned. The appeal is allowed. As the parties are related, I give no orders as to costs. I.C. MUGETA JUDGE 30/ 10/2024 Court: Ruling delivered in chambers in the presence of Bura Siima (son of the Appellant) and respondent in person. Sgd: I.C. MUGETA JUDGE 30/ 10/2024

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Prepared on 14 October 2026 · Esheria