

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LAND APPEAL NO. 000004110 OF 2024 DISMAS MDONGWA
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS HERMAN
KUMWE RESPONDENT / DEFENDANT

JUDGMENT

NKWABI, J, 06 & 06/01/2025 The appellant sued the respondent, in the trial tribunal over a piece of land allegedly the property of the late Mdongwa Kengwa. The appellant is administrator of the estate of the late Mdongwa. The land in dispute is described as a forest (eucalyptus) and Kijwali trees at Murunyinya area, Kisozi Hamlet, Kalinzi ward and Kalinzi division within Kigoma district council. It is claimed in evidence by the plaintiff and his colleagues that they sold quarter an acre of the land to the respondent, but encroached to another piece of land. The respondent disputed the allegations. The trial tribunal dismissed the suit on merits having found that the evidence of the appellant did not prove ownership of the disputed piece of land by the appellant. It held the view that there was no any evidence be it oral by the appellant over the ownership of the disputed piece of land by the father of the appellant and there is also no documentary evidence to prove that the respondent had his piece of land sold to him by the family of the appellant. Apart from the claim that the piece of land is said to be owned jointly by joint heirs, it is stated in the application that: Kwamba msitu was miti wenye mgogoro ni mirathi ya marehemu Mdongwa Kengwa aliyefariki dunia tarehe 01/07/1981 inayomilikiwa kwa pamoja na warithi kwa pamoja, the appellant indicated that he would rely on no any document. No boundaries are indicated in the land application. Be that as it may, aggrieved with the verdict of the trial tribunal, the appellant has approached this Court through his counsel. He has two vindications thus: Page. 1

1. That the trial Kigoma District Land and Housing Tribunal, at Kigoma erred on point of law in failing to invite the assessors to read their opinion to the parties in Court.
2. That the trial Kigoma District Land and Housing Tribunal, at Kigoma erred on point of law in properly observing the procedures governing visit at the locus in quo and the same wasn't recorded accordingly. Owing to the two grounds of appeal, the appellant is beseeching this Court to nullify the entire proceedings of the trial District Land and Housing Tribunal, quash the decree with costs. When the appeal was called on for hearing, the appellant was represented by Mr. Masendeka A. Ndayanse, learned advocate. The respondent appeared in

person, unrepresented. The counsel for the appellant submitted on the grounds of appeal. The respondent, being a lay person at law, replied that the grounds of appeal do not concern him. When I went through the submissions as well as the record. As I am not stranger to the obligation to make sure that the record is correct and too being alert to legal requirement of indicating the boundaries of the disputed piece of land, in a land case as per *Olorubare Nginyu v. Kilempu Kinoka Laizer*, Civil Appeal No. 416 of 2021, CAT at page 20 where it was stated that: “We have considered the counsel rival submissions and were persuaded that, the amended plaint omitted to disclose boundaries and names of owners of the adjacent parcels of land, being particulars necessary to describe the suit property. Since disclosure of the particulars was a statutory requirement and necessary to identify the suit land, the missing information were an integral part of the plaint whose absence could not establish the cause of action.” and *Martin Fredrick Rajabu v. Ilemela Municipal Council & Others*, Civil Appeal No. 197 of 2018, CAT where it was held that: “... the description of the property was not stated in the plaint and it violated the provision of Order VII Rule 3 of the CPC. ... the omission to give proper description of the suit land renders the plaint incompetent and ought to be struck out.” I called upon the parties to address me on the quirk that this land case appears to suffer from. I am sure as eggs is eggs that the unconformity ought to be dealt with by the trial tribunal at the preliminary stage. It is clear as daylight, in our jurisdiction, that this Court is compelled to follow the decision of the Court of Appeal as per *Juwata v. Kiuta*, Civil Appeal No. 29 of 1987, (Unreported) (CAT). When addressing the point raised by this Court, Mr. Ndayanse conceded to it, so is the respondent. Indeed, the piece of land under my consideration is not surveyed one. Had it been surveyed, and assigned a plot number, the plot number would be sufficient to describe the piece of land. But that is different where a piece of Page. 2 land has not yet been surveyed, whereas there is a requirement of indicating the boundaries and the names of the owners of adjacent pieces of land. As that was flouted, the proceedings, judgment and the decree of the trial tribunal cannot stand because the land application did not disclose a cause of action under the authority of *Olorubare* (supra), so, it has to be struck out in accordance with *Rajabu’s* case (supra). To that end, I apply my revisional powers and I proceed to strike out the land application in the trial tribunal. Following that action of mine, the proceedings and judgment of the trial tribunal are nullity and I proceed to nullify the same. I also set aside the decree of the trial tribunal. Consequently, I make no order as to costs because the anomaly was raised by the Court suo motu. It is so ordered. Dated at KIGOMA this 6th of January 2025 . J. NKWABI JUDGE OF THE HIGH COURT Page. 3

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