

TANZANIA / JUDGMENT

nyaryogu silingwe vs sangi chacha

2021 tzhc 5927 31 august 2021

COURT
TZHCDECIDED
31 August 2021

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MUSOMA - SUB REGISTRY AT MUSOMA MISC. LAND APPEAL NO. 27 OF 2021 (Arising from Land Appeal No. 113 of 2020 at District Land and Housing Tribunal for Mara at Musoma, Originating from Land Application No. 8 of 2020 for Nyamatare Ward Tribunal) NYARYOGU SILINGWE..... APPELLANT VERSUS SANGI CHACHA..... RESPONDENT

JUDGMENT

2nd Aug and 31st Aug, 2021 4 F. H. MAHIMBALI, J.: The appellant NYARYOGU SILINGWE who is also known as NYARYOGU MARO lost the case twice in the lower tribunals in a land dispute preferred by the Respondent at Nyamatare Ward Tribunal. The brief facts of the case stipulate that, the appellant and the 4 respondent since 1997 are neighbours of land plots at an area called Inyentero within Kemgesi village in Nyamatare ward which is in Serengeti District. At all the time, there has been a peaceful enjoyment of land by each party until 2017 when there emerged a quarrel between the Appellant and one Nyanchogu Maro (not party to this case) on 1 ownership of land in which the Appellant won and the land was properly demarcated. Having won that dispute, the Appellant then started expanding and thus encroaching into the alleged land of the Respondent. This aggrieved the Respondent and led to the genesis of this dispute first at Nyamatare Ward Tribunal where he won exparte. Dissatisfied with that decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal at Musoma as first appellate tribunal. Still dissatisfied, she has now knocked the doors of this court in attempt of her second appeal with the following grounds of appeal:

1. That, the 1st Appellate tribunal erred in law and fact for disregarding the strong and sufficient grounds of appeal filed by the Appellant at the 1st Appellate Tribunal.
2. That, the 1st appellate tribunal erred in law and fact for deciding in favour of the Respondent while the Respondent in the case no. 99 of 2016 appeared as witness in the defense side and the proper remedy was to file objection proceedings and not a fresh suit at the ward tribunal.

3. That, the 1st Appellate tribunal erred in law and fact for disregarding the prayer of the Appellant to conduct visit/locus in quo to ascertain whether it was same or different plot of land with 2 the plot involved in land case no. 99/2016 filed at the 1st appellate tribunal. t
4. That, the 1st Appellate tribunal erred in law and fact for disregarding the evidence adduced by the appellant at the trial tribunal which proved how the appellant acquired the land indispute.
5. That, the trial tribunal erred in law and fact for deciding the matter in favour of the Respondent on the reason of age and not on reason relating to how he acquired the land in dispute.
6. That, the trial tribunal erred in law and fact for deciding the matter in favour of the Respondent while opinion of each assessor were not read by assessors before the parties, when the matter was scheduled for opinion of assessors before judgment. During the hearing of the appeal, both parties were I unrepresented, thus each fended by himself/herself. The appellant in her submission argued that with the grounds of appeal she had filed in this Court, were sufficient. She only insisted that the said plot is hers. Thus, the appeal be allowed as to the line of her grounds of appeal and that the respondent is not the owner of it. He is less concerned with the ownership of the said plot in dispute. Regarding the trial of the case at the Ward Tribunal, she submitted that it is the 3 respondent who filed it at the Ward Tribunal against her that she was using his land. Unfortunately, she submitted that she was not served and the case was thus heard and determined exparte. In the circumstances she prayed for her appeal to be allowed. On the other side, Mr. Sangi Chacha, the Respondent submitted that originally the Appellant had a land suit case against Nyanchoгу t Maro (Land Case No. 99 of 2016). He wonders that after the said dispute, the Appellant encroached into his land where it was ruled that he is out of the boundaries of the land in dispute. Thus, this appeal is out of context against him. Let this appeal be dismissed. In essence, he submits that his plot is free from any land dispute. Regarding the case at the Ward Tribunal being heard exparte against the Appellant, he submitted that it is true that the case was heard exparte after the appellant had refused service of the case. The case was thus heard and rightly determined against her exparte. Upon being aggrieved by that decision, the appellant opted to file appeal to the DLHT. She is now appealing to this Court. The vital question here is whether the appeal is meritorious. According to the trial tribunal records, it is clear that land case 4 no.8/2020 was heard exparte. The reasons for exparte hearing as per trial tribunal is this: "Dai hi/i Hnaende/ea kusikilizwa upande mmoja baada ya Baraza la Kata kumpeiekea mdaiwa kuitwa shaurini (samansi) yapata mara tatu mfululizo na madaiwa kukataa kuzisaini
- mbele ya Mwenyekiti wake wa Kitongoji. Shauri linaendelea kusikilizwa upande mmoja ieo tarehe 16/03/2020". Sgd Bw Costantine M. Mayengo. On that finding, it is undisputed that the originating trial forming the basis of this appeal traces its etymology from the exparte proceedings and judgment. In law, an exparte award or decree is not appealable unless first attempted to be set aside. In the instant matter, the first legal option available by the

Appellant was to have attempted it set aside before opting for an appeal. The legal course taken by the appellant to appeal against an exparte decree before she had applied to set it aside is not an appropriate. One cannot appeal against exparte « order, unless it is first set aside or challenged by way of revision (if the need be) to the superior tribunal or court in hierarchical order. That said, this appeal is out of place. The legal course taken by the Appellant is legally speaking misconceived. She is dully advised to go 5 back to the Ward Tribunal to seek its proceedings and the resulting decision in respect of Land Case No. 8 of 2020 are set aside first but subject to the law of limitation. < That said, the appeal is dismissed with costs. DATED at MUSOMA this 31st day of August, 2021. F. H. Mahimbali JUDGE 31/08/2021 Court: Judgment delivered this 31st August, 2021 in the presence of both parties and Mr. Kelvin - RMA. Right of further appeal is well explained. F. H. Mahimbali JUDGE 31/08/2021 6

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CASE PAGE	https://chat.esheria.ai/case-law/tanzania/nyaryogu-silingwe-v-sangi-chacha-exparteproceedings-tzhc-2021

Prepared on 14 October 2026 · Esheria