

TANZANIA / JUDGMENT

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA MISCELLANEOUS LAND APPEAL NO. 000013422 OF 2024 THADEO
SIMON COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS
ERNEST MKANDA RESPONDENT / DEFENDANT

JUDGMENT

RWIZILE, J, The appellant has been locked in this litigation with the respondent for nearly a decade. It would appear, they have been in conflict over the land which is alleged was acquired by his father, who after clearing the bush, took possession in the 1960s. The land is located at Nyamnyusi village. The respondent as well claims right over the same land upon having alleged, it was acquired by purchase from Milembe and his father Kupakula. Upon failure to settle the same at the preliminary stages, the appellant in 2015, filed a dispute before Nyamnyusi ward tribunal, against the respondent. It was heard and determined in the favour of the respondent. Being aggrieved, he unsuccessfully appealed to the District Land and Housing Tribunal for Kigoma (DLHT). In what strikes me, is that the appeal was filed in 2015 and first appeared before the tribunal on 20th May 2015. It was heard on 14th January 2016, and on 26th February 2016, the chairman visited the disputed land. The judgement was then fixed for delivery on 4th July 2016. One fails to understand what then followed. The record is silent. Sad indeed, a two-page judgement was delivered four years later, it was signed by the chairman who heard the appeal on 17th September 2019. Yet it was delivered 6 months after it was signed which is on 12th March 2020 by the seemingly successor chairperson. All that is reflected in the original record that is hand written, worse still, it took another good number of years to supply the same to the parties. Even though, it was certified on 29th January 2021 still, it was supplied according to the appellant on 13th July 2023, three years after its delivery. The events are shameful and disgrace to our justice system. Things must change. Having got the judgement, the appellant applied for extension of time to appeal to this court which was granted on 14th May 2023, hence this appeal, with five grounds: -

1. That, the Honorable Chairman of the appellate Tribunal erred in law and in fact for not including the opinion of the second assessor in the decision/Judgement contrary to the mandatory requirement of the law. Page. 1

2. That, the Honorable Chairman of the appellate Tribunal erred in law and in fact for raising a new issue on the doctrine of adverse possession without affording the respective parties an opportunity to address the same.
3. That, the Honorable Chairman of the appellate tribunal erred in law for failure to find that the trial Tribunal had erred in law for not ascertaining the locus stand of the parties before embarking into entertaining the matter and delivering the decision thereof.
4. That, the Honorable Chairman of the appellate Tribunal erred in law and in fact for failure to note that the suit land was not open to adverse possession.
5. That, the learned Chairman of the appellate Tribunal erred in law and in fact for entertaining an appeal which emanated from the defective pleadings which at all had no legal status in the eye of law. Briefly, the appellant submitted that the decision of the ward tribunal was not right as the law was not considered. He asked this court to nullify the decision of the tribunals. In his response, the respondent submitted that he acquired the land in dispute by purchase. He added, it is the appellant's father who encroached his land and crossed the border into it. He invited this court to visit locus in quo. In a rejoinder, it was submitted that the land belonged to the appellant's father as he is the one who cleared and acquired it. Having heard the parties. I have to start with the first ground on not including the opinion of the 2nd assessor in the judgment. From the record, it is true that the opinion of the 2nd assessor is not mirrored in the judgment. The record shows when the tribunal was constituted with a chairman and two assessors namely Mzee Msechu and Mama Katuku. Given the situation shown in my introductory remarks of this judgement, Mama Maria Katuku was the only assessors who was present to opine, and actually filed her opinion on 13th March 2016, which the chairperson concurred with. Therefore, there was no opinion of the second assessor. The chairman on page 1 of the judgement stated the reasons as follows; "The other lay assessor Mzee Msechu Kanifikiti has retired before he gave out his opinion so his opinion cannot be trace." He then proceeded to give his judgement under section 23(3) of the Land Disputes Courts Act, Cap. 2016. I think, the chairperson was right in doing so. The law cited states that; 'notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence'. It is therefore not against the law to act in the manner he did. In terms of section 24 of the same Act, it is provided that in reaching at the decisions, the Chairman shall consider the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion. It is clear from the judgement that the chairman did not shun away from the opinion of the assessor who was present. He agreed with it, and proceeded to make the judgement. I find no merit, in this ground of appeal. Page. 2 Having determined this ground on the manner I have shown, I do not think, there is any reason to deal with other grounds of appeal. My point here is if there was enough evidence to support the appeal. I have gone

through the record of appeal right from the trial tribunal to the first appellate tribunal. It seems to me the appellant is claiming ownership of the piece of land. The only evidence available is that, the same land was acquired by his father in 1968 and the respondent said, he purchased it from some other person. Although, the original proceeding of the ward tribunal hand written in the exercise book was not clear, but what I manage to grasp in it, did not show the proper description of the land in dispute. The size of the same was not stated in the pleadings neither did they state the boundaries. One of the witnesses for the appellant attempted to state the boundaries but did not attempt to deal with the size. The District Land and Housing tribunal visited the disputed land. In its observation, it said, the problem is the boundary that the appellant claimed was crossed, the respondent took his shamba as per the decision of the ward tribunal. This finding of the DLHT is rather confusing. What then was the nature of the dispute? Was it about the boundaries of the disputed land. Was it encroachment after crossing the boundary or it was about taking possession of a piece of land of no defined size. If it is a boundary, which size and how can this court appreciate the truthfulness or otherwise of the evidence of the parties in the absence of the evidence clearly showing so. In my considered opinion, there was no sufficient evidence showing the nature of the claim and the evidence brought did not shed some light on that aspect. That being the case. The whole proceedings is nullified. The judgement and all findings of ward tribunal and the district land and housing tribunal are hereby set aside. There is no order as to costs. Dated at KIGOMA this 5th of December 2024 .

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