

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND APPEAL NO. 03 OF 2017

(From the decision of the District Land and Housing Tribunal of Tarime at Tarime Appeal No. 22/2016)

MWEGENYA A. ALUM APPELLANT

VERSUS

RAEL AKAMA RESPONDENT

JUDGMENT

25/09/2018 & 31/01/2019

RUMANYIKA, J.:

The 2nd appeal is against the 09/09/2016 judgment and decree of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT). Having reversed decision of Mirare Ward Tribunal (the w/t) which had declared Mwegenya A. Alum lawful owner of the disputed land.

The 4 grounds of appeal revolve around points as under:-

1. the w/t lacked jurisdiction.
2. the w/t erred in fact having not visited the locus in quo.
3. the DLHT erroneously held the disputed land as extending to the respondent's Plot Nos. 28, 30 and 31.

4. the DLHT improperly evaluated the evidence.

Messrs. Rugaimukamu and Ngocho learned counsel appeared for the appellant and respondent respectively.

Mr. Rugaimukamu only argued and submitted on the first two grounds of appeal and abandoned the others. That the w/t of Rorya lacked territorial jurisdiction. As case originated from Rorya District. Not Tarime District by GN No. 316 of 2002 conferred jurisdiction but the DLHT chair just proceeded (case of **Monga Kasaroho Vs. Mwiregi Mwita & Another**, Land Appeal No. 26 of 2017 (HC) Mwanza.

Secondly, that the dispute was on boundaries. In which case therefore , after parties were heard, the DLHT should have visited the locus in quo. But didn't (case of **Mwita Chacha Vs. Etembe Makorere**, (PC) Civil Appeal No. 99 of 1998 HC. Mwanza) (unreported). Appeal be allowed with costs. Submitted Mr. Rugaimukamu.

Mr. Ngocho replied and submitted that Rorya and Tarime wasn't at the time one district therefore the respondent instituted the case unknowingly. That the DLHT just misdirected her. Matter should have, on that basis and at stage been rejected.

Thirdly, the respondent had occupied and utilized the disputed land considerably for quite long. That the tribunal visiting the locus in quo was uncalled for, and appeal lacked merits. That is all.

A brief account of evidence on record would show that as he needed in year 2011 a plot to install his milling machine, the appellant applied for

and was, by the local village authorities allocated a 8 X 10 paces plot. But as was in 2015 extending the structure, the land allocators just stopped him. Allegedly it had been meant for temporary use only. But the land actually belonged to respondent (three plot numbers 28, 30 and 31). Such that disputed wasn't part of the three plots.

The respondent (at the time 78 years old) stated that she was blessed with all her children there. Therefore for quite long she occupied the disputed land undisturbed.

The issue could be whether the respondent's three plots extend to the said 8 X 10 paces plot. It is very unfortunate that the two tribunals below bothered not to visit the locus in quo. Nevertheless, it wasn't at once established how could the 8 X 10 paces be measured and established extending to the 2015 three plots. Much as the former had not been revoked. Whether it was temporarily allocated to appellant is immaterial. As there was no serious evidence to that effect adduced by allocators. If anything, as admittedly undertook to extend to structures, the appellant may have attempted to encroach the respondent's three plots but at the earliest opportunity interrupted. Ground of appeal succeeds.

The issue of territorial jurisdiction is, with greatest respect to Mr. Rugaimukamu learned counsel neither here nor there. The w/t was actually in Rorya administrative district. Where there wasn't any law at that level depriving it (Mirare w/tribunal) original jurisdiction. GN No. 316 of 2002 cited by Mr. Rugaimukamu concerned with jurisdiction of the DLHT. Not of

trial ward tribunals. Indeed the DLHT had jurisdiction. The ground of appeal fails.

Appeal is allowed with costs. Appellant is, for avoidance of doubts lawful owner of "the 8 X 10 paces" only. Which the w/t during execution shall in favor of the appellant exclude.

Right of appeal explained.

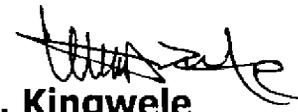
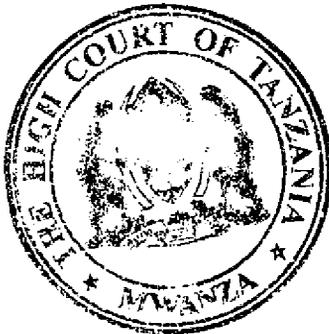


S.M. RUMANYIKA

JUDGE

26/01/2019

Delivered under my hand and seal of the court in chambers this 31st day of January, 2019 in the presence of the respondent in person and in absence of the appellant.



O.H. Kingwele

DEPUTY REGISTRAR

31/01/2019