

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 3 OF 2021

(C/O Land Appeal No. 26/2020 District Land and Housing Tribunal for Katavi, originating from Land Dispute No. 44 of 2020 of Kapalamsenga Ward Tribunal)

(Gregory K. Rugalema, Chairperson)

FIKIRI RASHIDI APPELLANT

VERSUS

YOHANA AMOSI RESPONDENT

Date: 02/11/2021 & 05/01/2022

JUDGMENT

Nkwabi, J.:

The appellant instituted a land dispute in Kapalamsenga Ward Tribunal seeking to be adjudged the owner of the piece of land in dispute. He lost the suit to the respondent. He thus appealed to the District Land and Housing Tribunal for Katavi region whereby he lost his appeal too. Therefore, this is a second appeal.

As this is a second appeal over concurrent findings of lower tribunals, this court, has to be guided by **Ahmed Said v Republic, Criminal Appeal No. 291/2015** CAT (unreported):



We similarly understand that this is a second appeal to which it is well settled that this Court will ordinarily be slow to intervene and overturn the concurrent findings of the two courts below. But this established rule of practice is predicated on the premise that the two courts below did not act upon a misapprehension of the evidence, a miscarriage of justice or a violation of a principle of law or practice. Where the concurrent findings are based on such incorrect premises, the Court will certainly interfere on a second appeal to right the injustice ...

One could as well see guidance from **Neli Manase Foya v. Damian Mlinga [2005] T.L.R 167**

All the same, displeased with the decision of the District Land and Housing Tribunal, the appellant lodged a petition of appeal to this court. The petition of appeal has three grounds of appeal. Two grounds of appeal were however, later abandoned by the counsel for the appellant. They are the 2nd and 3rd. The remaining first ground of appeal was couched:



1. *That the first appellate tribunal grossly erred both in facts and law to determine the issue of boundary while the dispute is over ownership of land.*

The appellant prayed the concurrent findings of both lower tribunals be reversed in his favour with costs.

When the appeal was called up for hearing the respondent appeared in person while the appellant was represented by Mr. Elias Julius Kifunda, learned counsel. In his submission, Mr. Kifunda learned Advocate for the appellant faults the decision of the District Land and Housing Tribunal. He however sought to withdraw the 2nd & 3rd grounds of appeal as I have already illustrated above. He argued the first ground of appeal. In his submissions, Mr. Kifunda maintained that the District Land and Housing Tribunal was wrong in determining the boundary. The issue in question was the ownership of the land in dispute, Mr. Kifunda impressed upon me.

At pages 4 & 5 of the judgment of the District Land and Housing Tribunal, the District Land and Housing Tribunal said it was not important to identify

the issues, as such the lower courts erred in law. The matter at issue was a land which had 25 acres, Mr. Kifunda contended.

Mr. Kifunda invited this court under Section 42 of Land Disputes Courts Act, to revise the decision of the lower tribunals. He prayed that the appellant be declared owner of the land, and the house built by the respondent be ordered it be removed (vacant possession).

In reply, the Respondent argued that the ground of appeal has no basis since it was not raised and determined in the District Land and Housing Tribunal. He pressed the appeal be dismissed.

When the opportunity was availed for Mr. Kifunda to make a rejoinder submission, he stressed that the ground of appeal is not a new matter. He made reference to pages 4 & 5 of the Judgment of District Land and Housing Tribunal. He urged that the judgment be entered in favour of the appellant.

Admittedly, the ground of appeal is not a new matter as it was raised in and discussed by the first appellate court. In my view, and after passionately

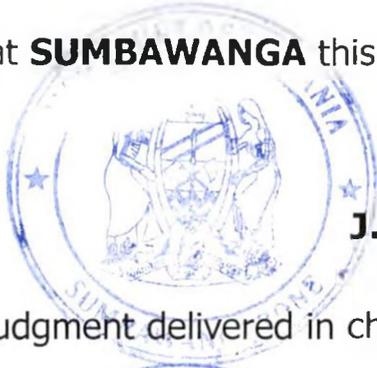
going through the evidence that is in the court record, both lower tribunals were justification in reaching at the decision they came at. It is inconceivable for a person who does not know even the boundaries of his piece of land to claim the whole piece of land. Both lower tribunals were entitled to decide as they did as it is based on the solid evidence that is on the court record. There is nothing to reprove neither in the trial tribunal nor in the first appellate tribunal. The first appellate tribunal went to the extent of letting the appellant speak for himself on what he stated about the boundary between the pieces of land at issue. I need not repeat that approach.

As to the question that was raised by the counsel for the appellant during submissions as to the failure by the trial tribunal to frame the issues, what the first appellate tribunal held is in accordance with the law. The important matter here is that justice was done. Members of the ward tribunal are lay persons, as such they cannot be expected to follow and adhere to the procedures like learned adjudicators. There is nothing to find fault with the decision of the trial tribunal on that regard either.

That said, the appeal is dismissed with costs for being flawed.

It is so ordered.

DATED at **SUMBAWANGA** this 5th day of January, 2022



J. F. Nkwabi
JUDGE

Court: Judgment delivered in chambers this 5th day of January 2022 in the presence of the appellant in person but in the absence of the respondent.



J.F. Nkwabi
JUDGE

Court: Right of appeal is explained.



J.F. Nkwabi
JUDGE
05/01/2022