

**IN THE HIGH COURT OF TANZANIA
GEITA SUB REGISTRY
AT GEITA**

CRIMINAL APPEAL No. 6356 OF 2024

*(From Criminal Appeal No. 8/2023 of the District Court of Geita Originating from
Criminal Case No. 14/2023 of the Bugando Primary Court)*

JAMES KALIMANZILA APPELLANT

VERSUS

1. MARIAM KENGELE

2. BENJAMIN MATHIAS.....RESPONDENTS

JUDGMENT

Date of last order: 03/04/2024

Date of Judgment: 12/04/2024

MWAKAPEJE, J.:

The Appellant herein initiated legal proceedings by lodging a charge of criminal trespass against the Respondents before the Primary Court of Bugando in Criminal Case No. 14 of 2023. These accusations stem from a prior land dispute before the Geita District Land and Housing Tribunal in land appeal No. 69 of 2021 involving the Appellant and one Daniel Kengele, who expired before the resolution of the aforementioned dispute. Subsequently, one Mishack Leonard was appointed as the administrator of the deceased's estate and assumed the role in the

litigation. Notwithstanding, the District Land and Housing Tribunal placed custody of the disputed land to the Plaintiff for the reasons to be advanced later.

The Primary Court, in its decision on criminal trespass, found itself bereft of jurisdiction due to the unresolved issue of land ownership. Discontented with the Primary Court's findings, the Appellant lodged an appeal with the District Court, which, in accordance with section 167(i)(a)-(e) of the Land Act, upheld the Primary Court's decision. The parties were thereby instructed to pursue resolution of their land dispute within a forum possessing requisite jurisdiction.

Dissatisfied with the determination rendered by the first appellate court, the Appellant now seeks recourse before this court, presenting the following grounds of appeal:

- 1. That the Appellant is the lawful owner of the land in dispute upon being declared so by the District Land and Housing Tribunal of Geita dated 16/09/2022.*
- 2. That the Respondents appointed Mr MISHACK LEONARD as the administrator of the estate of the late DANIEL KENGELE, who lost a case in Land Appeal Case No. 69/2021.*
- 3. That upon being declared the lawful owner of the suit land, the Respondents, being aware of that, intentionally trespassed on the said land and harvested his crops valued at Tsh 3,098,000/=.*

4. *That the District Court erred in referring the Appellant to the Land Tribunal for determination of the ownership while the documents show that the ownership had already been determined, which is the reason for instituting a criminal case before the Primary Court.*
5. *That the Appellant is not in agreement with the decision of the District Court that he did not argue the other five grounds of appeal, rather all grounds he presented, and it is the reason why he listed them. The District Court erred in not going into details and ignored the documentary evidence presented by the District Land and Housing Tribunal.*

During the hearing of this appeal, both parties appeared *pro se*, without legal representation. The Appellant commenced proceedings by presenting his case. However, he merely recited the grounds of his appeal without further elucidation, thereby implying adopting of said grounds. Subsequently, the Respondents articulated their defence by asserting that they had not trespassed upon the disputed land; they asserted its vacancy to date. They further contended that they had never been party to a land dispute with the Appellant; rather, it was the administrator of the deceased estate who had engaged in such litigation. Additionally, they argued that the land they cultivated differed from the parcel claimed by the Appellant to have been trespassed upon.

In assessing the merits of the grounds of appeal before me, I deliberated whether the lower courts were justified in referring the matter to the appropriate forum for determination of ownership.

It is firmly entrenched in law that for a charge of criminal trespass to succeed, inter alia, proof of ownership is imperative. In the case of **Ismail Bushaija v Republic 1991** TLR 100 (HC), with reference to **Said Juma v Republic**, [1968] H.C.D 158, it was categorically stated that:

*"it is wrong to convict a person for criminal trespass **when ownership of the property alleged to have been trespassed upon is clearly in dispute between the complainant and the accused.** ...when in a case of criminal trespass, a dispute arises as to the ownership of the land, the court should not proceed with the charge and should advise the complainant to bring a civil action to determine the question of ownership."*

Further, in the case of **Sylvester Nkangaa v Raphael Albertho 1992** TLR 110 (HC), this court unequivocally stated that:

*"a charge of criminal trespass **cannot succeed where the matter involves land in a dispute whose ownership has not been fully finally determined by a civil suit in a court of law.....a Criminal Court is not the proper forum for determining the rights of those claiming ownership of land. Only a Civil Court via a civil suit can determine matters of land ownership.**"* [Emphasis supplied]

Upon thorough consideration of the grounds of appeal, which are intricately interwoven, it becomes evident in the present case that the Appellant was embroiled in a land dispute within the Geita District Land and Housing Tribunal with Daniel Kengele, subsequently succeeded by Mishack Leonard. The Tribunal's decision in the aforementioned case indicated the existence of a land dispute. However, it appears that the Tribunal refrained from adjudicating ownership but instead placed the land under the Appellant's custody, pending determination should either party opt to pursue it. The same elucidated that:

"...eneo la mgogoro litaendelea kutumiwa na mrufani hadi hapokutakapokuwepo na maelekezo mengine ya chombo kingine chenye maamuzi isipokuwa Baraza la Kata.....yeyote mwenye kudai haki afungue shauri katika Baraza lenye mamlaka kwa utaratibu sahihi wa kisheria ikiwa ana nia ya kufanya hivyo "

Simply translated as:

*".....the area in dispute will continue to **be utilised** by the appellant until there are further directives from another decision-making body other than the Ward Tribunal.....**anyone claiming rights should file a case in the Tribunal with jurisdiction following the appropriate legal procedure if they intend to do so.**" [Emphasis supplied]*

From the verbiage of the District Land and Housing Tribunal, the District Court, in its decision, deduced that:

".....kwanza katika shauri namba 92/2023 lililoamriwa na Baraza la Ardhi la Wilaya, iliamuliwa kuwa wahusika wafungue shauri upya katika mahakama husika ili mgogoro huu uweze kushughulikiwa kwa usahihi...."

Translated as:

"..... first, in case No. 92/2023 as directed by the District Land Tribunal, it was decided that the parties should initiate a fresh land case in the appropriate court so that this dispute can be appropriately addressed....."

The aforementioned excerpts suggest to me that ownership of the disputed land needed to be definitively established. Despite the custody for utilisation of the land being entrusted to the Appellant, the need for ownership resolution persisted, as the Respondents also asserted their entitlement to utilise the land inherited from their deceased husband and father, respectively, thereby asserting a bona fide claim of right. In such wordings, it implies that, even the Appellant was entitled to file a suit if he so wished. In the circumstances, the rights of the parties should have been determined in the first place.

Consequently, in line with the guidance provided by both the trial and first appellate courts, as well as the District Land and Housing Tribunal in land appeal No. 69 of 2021, which concluded that due to procedural irregularities, the Ward Tribunal lacked jurisdiction to adjudicate but rather mediate, it was incumbent upon the Appellant to initiate a land

dispute proceeding in a court possessing the requisite jurisdiction to determine the ownership in question. Therefore, it is erroneous for the Appellant, at this juncture, to assert that the Land Tribunal had declared him the owner of the disputed land.

Given the well-established legal principle that success in a charge of criminal trespass necessitates prior resolution of rights, as expounded in the aforementioned authorities. It is improper to pursue such charges in the criminal court before the rights are determined in the apposite tribunal. Hence, I answer the 1st, 2nd, 3rd, and 4th grounds of appeal in the negative.

The 5th ground of appeal posits that the District Court erred by disregarding documentary evidence purporting the Appellant's ownership declaration over the disputed land. However, this contention does not warrant prolonged deliberation. It is apparent that in its decision, on page 2, the District Court made reference to the District Land and Housing Tribunal's ruling in Land Appeal 69 of 2021. It was neither ignored nor disregarded; rather, the same was considered, though erroneously referred to as appeal No. 92/2023 instead of 69/2021, which is a clerical error that I hereby rectify.

Subsequently, following a comprehensive review of the presented facts and evidence, it was evident that ownership remained undetermined, thus prompting both the Primary and District Courts to advise the parties to pursue their rights in a forum with appropriate jurisdiction.

Consequently, I find the appeal bereft of merit and hereby dismiss it accordingly. The findings of both the trial and first appellate courts are hereby upheld. The Appellant is once again advised, should he choose to do so, to institute a land suit in the respective forum possessing the requisite jurisdiction to determine ownership of the disputed land.

It is so ordered.

DELIVERED at **GEITA**, this 12th day of April 2024.



G.V. MWAKAPEJE
JUDGE

Judgment delivered at **GEITA**, this 12th April 2024 in the presence of the both Appellant and Respondents in person.



G.V. MWAKAPEJE
JUDGE