

IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 17 OF 2012

(From the decision of the District Land and Housing
Tribunal of Iringa District at Iringa in Land Case
Appeal No.27 of 2012 and Original Ward Tribunal
of Kising'a Ward in Application No. 02 of 2012)

CHRISTOPHER MTUMBUKA APPELLANT
VERSUS
JUMANNE MLAGALA RESPONDENT

10/6/2014 & 26/9/2014

JUDGEMENT

MADAM SHANGALI, J.

This matter started in the original Land Case No. 2 of 2012 before Kising'a Ward Tribunal where the present respondent JUMANNE MLAGALA sued the present appellant CHRISTOPHER MTUMBUKA over the ownership of farm land located at Igingilanyi village. After hearing the evidence from both sides the trial Ward Tribunal unanimously deliberated in favour of the respondent.

The appellant was bitter with that decision of the trial Ward Tribunal. He filed his first appeal to the Iringa District Land and Housing Tribunal. The first appellate District Land Tribunal heard the appeal and vigorously revisited and critically examined the record of proceedings and decision of the trial Ward Tribunal. In its decision dated 13/6/2012 the first appellate District Land Tribunal unanimously ruled in favour of the respondent and upheld the decision of the Ward Tribunal.

Still disgruntled, the appellant has now come to this court in this second appeal based on three grounds of appeal namely;

1. That the District Land and Housing Tribunal erred in law and facts for giving more weight on the evidence of witnesses who have no knowledge of the disputed land.
2. That the Hon. Chairman erred in law and facts by not considering the customary right of occupancy and various receipts of Melina Msemwa from the Village Authority.
3. That, the Hon. Chairman erred in law and facts for not considering that the appellant is the administrator of the estate of the late Melina Msemwa.

For better understanding of the case let me depict the crucial facts from the record of proceedings of the lower tribunals. According to the evidence of the respondent, he purchased the land in dispute from one Jitunze Mbogela on 8/6/2011 at T.Shs.150,000/- which was paid in two ways. T.Shs.100,000/= was paid in cash while T.Shs.50,000/= was paid by way of one sack of maize valued to that amount of money. This transaction was witnessed by several witnesses including Cosmas Mgunda, the Village Executive Officer who as a village leader officiated the sale transaction. Other witnesses were Lenata Sanga, hamlet chairman and Filimon Chaula. The ownership of the said piece of land descended from the late father of Jitunze Mbogela called Augustino Mbogela who died in 2010. Unfortunately Jitunze Mbogela also died thereafter on 30/11/2011.

On the other hand the appellant gave two different versions on how he acquired the alleged piece of land. In his evidence before the trial Ward Tribunal and during cross-examination he claimed that he was given that piece of land by his family. Then he changed and stated that he purchased the said pieces of land from Jitunze Mbogela while admitting that the later inherited that piece of land from his late father Tino Mbogela (*Augustino*). His witness Meliana Kinda claimed that the piece of land belonged to her late grandmother called Fatia Mbogela. That after her demise the clan appointed Emelina Msemwa, the mother of the appellant

to care for the land. That after the death of Emelina, the clan appointed the appellant to own the alleged piece of land.

Having critically examined and evaluated the evidence from both sides the trial Ward Tribunal found that the evidence of the respondent side was compelling and probable compared with the evidence of the appellant which was weak and sketchy.

As I have stated above, also the first appellate District Tribunal concurred with that decision and discredited the appellant for raising yet another version on how he acquired the alleged piece of land at the appellate stage. Before the appellate District Tribunal the appellant had claimed that he acquired that piece of land through inheritance from his late mother Emelina.

During the hearing of this appeal and in support of his grounds of appeal, the appellant claimed that the lower tribunals were wrong to give much weight on the evidence of the respondent witnesses who had no knowledge of the land in dispute. He insisted that the land in dispute was a property of his late mother and being an administrator of the estate of her mother he is entitled to claim for it. He further condemned the lower tribunals for refusing to accept and rely on the customary title deed and receipts showing the piece of land belong to her late mother. The appellant also complained that

the trial Ward Tribunal was wrongly constituted because it was constituted of four members, all men.

In response, the respondent re-stated on how he acquired the piece of land in dispute in 2011 from Jitunze Mbogela and how the appellant who was living in Iringa Town re-surfaced at the village and started to trespass and damage his crops on the land in dispute. That he referred the matter before the police, the court and eventually before the trial Ward Tribunal.

At the end of the hearing of the appeal it was disclosed and admitted by both sides that the piece of land in dispute was declared part of road reserve by the Government and confiscated by TANROAD since 2012. It is surprising that inspite of that development the parties continued abet silently to proceed with their appeal.

Be it as it may, there is nothing substantive in this appeal to warrant any interference with lucid decisions of the lower tribunals. The lower tribunals were correct to believe and give weight on the evidence of the respondent because of its probability and credibility, unlike the fumbling explanations and evidence from the appellant's side. The issue of customary title deed and receipts was raised during the first appellate stage hence not discussed and determined before the trial Ward Tribunal. I have perused the record of

proceedings of the trial Ward Tribunal and find that the trial Ward Tribunal was properly constituted. There is no evidence to support the appellant's claims that he was appointed to be administrator of the estate of her late mother. There is no evidence to support his claims that the land in dispute belonged to her late mother. All grounds of appeal filed by the appellant have no merit.

In conclusion and without affecting the confiscation of the alleged pieces of land by the Government as part of road reserve, this appeal fails. The decisions of the lower tribunals are upheld. The appeal is hereby dismissed with costs.

M. S. SHANGALI

JUDGE

26/9/2014

Judgement delivered in the presence of both parties in person.

M. S. SHANGALI

JUDGE

26/9/2014