

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISC. LAND CASE APPEAL NO. 19 OF 2014

(Originating from the decision of the District Land and Housing Tribunal of Arusha District at Arusha in Land Case Appeal No. 21/2010 and original Ward Tribunal of Mlangarini Ward in Application No. 8 of 2009)

SHABANI SWALEHE.....APPELLANT

VERSUS

MSABAHA MOHAMED.....RESPONDENT

Date of last Order: 23/06/2015

Date of Judgment: 11/08/2015

JUDGMENT

MASSENGI, J

The Appellant SHABANI SWALEHE being aggrieved by the decision of Arusha District Land and Housing Tribunal in Appeal No. 21/2010 dated 29th day of March, 2011 appeals before this court, basing on the following grounds;

1. That, the tribunal erred in law and in facts by adjudicating the appeal without considering the Appellant's evidence which was adduced during the hearing at the trial Tribunal that he never signed the purported minutes of the meetings.
2. That, both the appellate tribunal and the trial tribunal erred in law by adjudicating the matter in favour of the respondent relying on his acquisition of the suit land by the purported administration of estates

of the deceased who died since 1983 vide the administrator who was appointed in 2003 and ignored the fact that the Appellant has been in possession of the said land since 1963.

3. That, the decision of the trial tribunal is defective on matters of coram because no signature signed in respect of their names and with respective genders.

In this appeal, the Appellant was represented by Mr. Massawe learned counsel while the respondent acted through the service of Mr. Yoyo learned counsel. The Appellant's counsel with the consent of Mr. Yoyo prayed this appeal be argued by way of written submissions and this court granted the prayer. The Appellant was ordered to file his submissions in chief by 14/7/2015, the respondent to his reply submissions by 21/7/2015 and rejoinder if any to be filed by 28/7/2015. Both parties filed their respective submissions accordingly.

Arguing the first ground of appeal, the appellant's counsel contended that the Appellant never participated into the clan meeting which sat on 11/3/2003 and showed that it was signed by the Appellant on 08/04/2003. But the lower tribunal wrongly relied on the said minutes. He contended that the minutes shows that the Appellant signed it on 8/4/2003 almost a month after the alleged date of which the meeting was convened. He added that section 16(2)(a) of the Ward Tribunal Act, 1985 give duty to the Ward Tribunal to give each party to the case an equal opportunity to explain his case and give evidence but the Appellant was denied that opportunity. He therefore maintained that the Appellant never participate

in the clan meeting nor signed it but the trial tribunal did not consider his evidence.

In regard to the second ground of appeal, it was submitted that it was never disputed that the Appellant was raised on the suitland and had been living there since 1963 with his grandfather who died in 1983 and after the death of his grandfather MOHAMED MOBAHE in 1983, he left the Appellant on the suit land taking care of SHABANI MOBAHE who died in 1992. Since then until 2009 he has been in possession of the suit land hence he is the lawful owner by prescription and referred this court to **Item 6 Rule 2 to the Schedule of the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules G.N No. 311 of 1964** and the case of **YUSUF SAME AND ANOTHER VS. HADIJA YUSUF 1996 TLR 347**. He therefore contended that the distribution by administration of estates of the late MOHAMED MOBAHE and SHABANI MOBAHE does not warrant the taking away of the Appellant suit land.

Submitting on the third ground of appeal, it was contended that the decision of Nduruma Ward Tribunal is defective for matters relating to coram for reasons that section 11 of the Land Disputes Courts Act, 2002 insists that each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women elected by the Ward Committee as provided under section 4 of the Ward Tribunals Act but the records of the Ward Tribunal show that the names of a female is only one and further there is no signature appearing in the respective names. Therefore he prayed this court to re-consider this appeal.

Opposing this appeal, the respondent started by giving a brief background and proceeded by responding to the first ground of appeal in which he submitted that the confirmation made by the District Land and Housing Tribunal over the signatures and minutes of the family meeting held on 11th March, 2003 was verifiable and in accordance to the laws of the law. He further submitted that the minutes whose signatures is purported to have been forged was part and parcel of the records of the administration cause No. 13/2003 at Nduruma Primary Court which were exhibited by the documents tendered at the trial and it is from the very minutes that the inventory was filed and adopted by the primary court. It is his argument that the respondent's ownership was pronounced by the primary court of Nduruma vide Matrimonial Cause No. 13/2003 and the same has never changed nor varied by higher courts hence it was unjustifiable for the District Land and Housing Tribunal to nullify the minutes for family meetings held on 11th March, 2003 because by doing so, could amount to pre empting or else nullifying the Probate Cause No. 13/2003. He added that the Appellate Chairman correctly reasoned while dismissing the appeal that whatever the anomalies, queries or paradox touching to the minute for family meeting held on 11th March, 2003 ought to have been channeled vide the said Probate Cause by way of appeal or revision and not otherwise. Besides that, he contended that the District Land and Housing Tribunal went further by taking additional evidence in order to meet the end of justice, and the additional evidence taken by the learned Chairman established beyond doubt that the land in dispute was subjected to the administrative cause No. 13/2003 at Nduruma Primary

Court and from the very minutes that the administrator of the estate filed an inventory and finally enabled the court to adopt and declare the respondent as legal owner of the suit land. Referring to section 43 of the Law of Evidence Act, Cap. 6 R.E 2002 he contended that the fact that the suit land was subject matter of Shauri la Mirathi No. 13/2003 at Nduruma Primary Court and the fact that the respondent was the one apportioned to own the same under administrative cause is a conclusive proof against the whole world that the respondent is the legal owner of the suit land. He added that the Appellant's arguments which tend to pre-empt the authenticity of the family minutes does not hold water and cannot be relied upon to fault or invalidate the respondent's ownership that was duly established under Administrative Cause No. 13/2003 at Nduruma Primary Court.

Responding to the second ground of appeal he contended that the purported ownership by prescription cannot override the respondent's ownership in the absence of any order from the higher courts reversing the decision of Nduruma Primary Court. It is his argument that the Chairman of the District Land and Housing Tribunal properly found that the proper forum to challenge the merit of the distribution made in Shauri la Mirathi No. 13 of Nduruma Primary Court was through appeal or revision thereto and not by initiating a fresh complaint.

In regard to the third ground of appeal, it was submitted that the issue of composition and quorum for the Ward Tribunal is guided by section 11 of the Land Disputes Courts Act, 2002 and further stated the intention of legislature in enacting that provision was to ensure gender

balance as such the provision requires three members out of eight members to be female and not three out of four members to be women. He further referred this court to the provision of Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977 which states that the courts should not be tied up with technicalities in dispensation of justice. Basing on the above, he therefore prayed this court to dismiss this appeal costs.

The Appellant filed rejoinder submissions thereto, which I have gone through it. I have considered the submissions of both parties and thoroughly gone through the records of the lower tribunal. Starting with the first ground of appeal that the trial tribunal erred in law and in fact by adjudicating the appeal without considering the Appellant's evidence which adduced during the hearing at the trial tribunal that he never signed the purported minutes of the meeting; this court on a perusal of the proceedings of the Ward Tribunal is satisfied that the minutes of the clan meeting which sat on 11/3/2003 proves that the Appellant attended that meeting and his name appear in number 8 as a member. In the 4th page under paragraph 15:7 of the said document states that;

"Ufuatao ni uthibitisho toka kwa wajumbe kuwa walishiriki katika mjadala wa kikao cha boma cha tarehe 11/3/2003 na kwamba taarifa hii ni sahihi. Orodha ya washiriki na saini yao."

There under the name of the Appellant appears in number 8 and the same is signed. On top of that, having gone through the proceedings of the trial tribunal there is no where the Appellant objected the said minutes or raised

an issue that he never attended the said minutes. When the respondent was testifying before the trial tribunal he stated that Appellant attended the clan meeting convened on 11/3/2003 and the Appellant never objected or denied that fact before the trial tribunal. As such this court finds that, the Appellant's argument that he never attended or signed the minutes of the clan meeting is frivolous, unfounded and afterthought. In regard to the allegation that the Appellant was denied an opportunity to explain his case and adduce evidence in relation of the matter of issue in determination before the trial tribunal, the records shows that the Appellant was given that opportunity and he did adduced his evidence and he called another witness who was his wife. He also had an opportunity of cross examining the respondent's witness as such his allegation is unfounded. Therefore this court finds that the first ground of appeal lack merits and accordingly dismissed.

Coming to the second ground of appeal, the evidence on record show that the Appellant was living in the suit land by his grandfather but the suit land belonged to his grant father who is the respondent's father. At no point during the survival of the Appellant's grandfather the suitland passed to the Appellant. The Appellant testified that he was given that land by his deceased grandfather but never brought even one witness before the trial tribunal who witnessed that arrangement. Furthermore, the evidence on record show that even during the clan meeting the Appellant never tendered any WILL to show that he was given that land and that is gathered from the evidence of the respondent which stated that;

"Baada ya kuitwa wanaboma wote pamoja na wale waliokua wanaishi pale, je kuna mtu yeyote aliyepata "wosia" wa baba wa urithi yupo ajitokeze, baadhi ya wanaboma walijitokeza:-

1. Abibu Mdaki (Mkaziwa)

2. Rose Shabani

3. Hadija Adamu

Ilipofika hapo ikaulizwa hakuna mwingine, wakasema hakuna mwingine."

The Appellant irrespective of the fact that he attended that clan meeting he never rise up and claim that the deceased gave him the suit land. As such this court is satisfied that the Appellant was not given the suit land by the deceased only that he was living with the deceased. On the other side, the evidence on record prove that during the distribution of the deceased properties in Probate Cause No. 13/2003 it is the respondent who was allocated the suit land. Hence the respondent is the lawful owner of the land in dispute thus the second ground of appeal lack merits as well and it is dismissed.

In regard to the third ground of appeal that the decision of the trial tribunal is defective on matters of Coram because the names are not signed and with respect of genders; this court has gone through the proceedings of the trial tribunal and is satisfied that the original decision of the trial tribunal which is in manuscript is signed by all members. In regard to section 11 of the Land Disputes Courts Act, [Cap. 216 R.E 2002] which provides that;

"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."

This court finds that the Ward Tribunal was composed of six members as such the Coram was proper since it was not below four. In regard to the issue of gender as raised by the Appellant that Coram consisted of only one woman, I think the Appellant's counsel observed the issue of gender through names as contained in the records of the trial Tribunal. The coram consisted of six people.

1. S.F. Massawe
2. Charles Ngoshoi
3. Noah Morwo
4. Sarah Charles
5. Solomoni Sawaya
6. Rahel Loningo

If gender of the members will be identified by observing the names, this court finds that the Coram contained three women; 1. Noah Morwo, Sarah Charles and Rahel Loningo. Even if will be found that "Noah Morwo" is not a woman as that name is normally used in both sex still that defect itself cannot justify this court to nullify the proceedings of the trial tribunal unless the Appellant would have established that the composition of two women instead of three women caused any failure of injustice to him.

Basing on the above, this court finds that the decision of the lower tribunals was proper and therefore this court sustains the decision of the

Ward Tribunal and the District Land and Housing Tribunal. Appeal dismissed with costs.

Order accordingly.

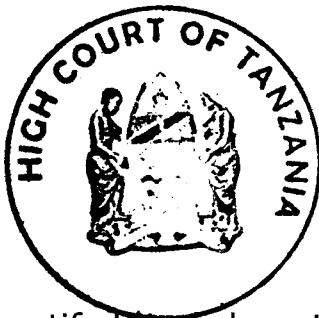
(SGD)

F.H. MASSENGI

JUDGE

11/08/2015

Judgment delivered in Court this 11th day of August, 2015 in the presence of Appellant in person and Mr. Yoyo for the respondent.



(SGD)

F.H. MASSENGI

JUDGE

11/08/2015

I hereby certify this to be a true copy of the original.


DEPUTY REGISTRAR

ARUSHA

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