

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT IRINGA

LAND CASE APPEAL NO. 13 OF 2015

(From the Decision of the District Land and Housing
Tribunal of Iringa District at Iringa in
Land Case Appeal No. 66 of 2014)

GRACE MDEMU (As Administratrix of the deceased ----- }
estate one Norbert Galafunga s/o Mdemu) } APPELLANT

VERSUS

ZAITUN MDEMU & OTHERS ----- RESPONDENTS

1/12/2015 & 10/12/2015

JUDGMENT

KIHWELO, J.

The appellant herein above being dissatisfied by the decision of the District Land and Housing Tribunal for Iringa in Land Application No. 66 of 2014 has filed the instant appeal before this court. The appeal is supported by a Memorandum of Appeal which had the following grounds:-

1. *That the Chairman of the tribunal erred in law and facts to borrow evidence from unknown sources and plant into the suit land while delivering its judgment and hence reached to an unfair and injustice (sic) decision.*
2. *That the Chairman erred in law and facts to hold that the disputed piece of land belongs to my late grandfather and hence subject to prove the change of ownership of it to my father while there was no such evidence before the tribunal to prove the same.*
3. *That the Chairman erred in law and facts to hold that the respondents were children of my late grandfather Galafunga s/o Mdemu and hence my relative while there was neither an issue nor such evidence before the tribunal to prove the same.*

Before this Court both the appellant and the respondents appeared in person and the appeal was argued orally and both the appellant and the respondents did not have much to submit.

The brief background to this appeal is that on 4th November, 2014 the appellant filed a Land Application No. 66 of 2014 at the District Land and Housing Tribunal of Iringa against the respondent claiming among other things for declaration that the disputed piece of land belongs to the appellant as an administratrix

of the deceased the late Nobeth Kituta Mdemu as well as an order for the respondents to give vacant possession of the suit land.

According to the records of the District Land and Housing Tribunal the suit land was originally part of the vast and virgin land which fell into the hands of the late Galafunga Mdemu who had two wives. One of the wives was the mother of the first and the second respondents while the other wife was the mother of the late Nobeth Kifuta Mdemu who is the appellant's late father. Whereas it is the appellant's claim that the entire suit land belonged to their late father the first and the second respondents alleges that the suit land belonged to their late mother one Semsekwa and not the appellant's late father.

The application at the District Land and Housing Tribunal proceeded *ex parte* since the respondents did not appear despite the fact that the first and the second respondents filed a joint reply. Upon hearing the appellant *ex parte* the District Land and Housing Tribunal on 23rd June, 2015 handed down the judgment by dismissing the application in its entirety.

Aggrieved by the decision of the trial tribunal the appellant preferred an appeal before this Court hence the instant appeal.

I have given an anxious and careful consideration to the records of the trial tribunal along with the grounds of appeal and I have remained with one issue only which cries for my determination and that is none other than whether or not the present appeal is meritorious.

Arguing in support of the appeal the appellant was conspicuously very brief in that she merely stated that in her testimony there is no where she stated that the suit land belonged to her grandfather but rather she testified that the suit land belonged to their late father.

The respondents were equally very brief. The 3rd respondent frankly stated that he has no right in the suit land being the son of the second respondent while the first and the second respondents valiantly argued that the suit land belonged to their late mother one Semsekwa and not the late Nobert Mdemu as alleged.

In an attempt to answer the issue raised above I painstakingly scrutinized the evidence on record in order to establish whether the appeal before me is meritorious. It is a cardinal principle of law that he who alleges a fact has the duty to prove it (see **Lamshore Limited and J. S. Kinyanjui V Bazanje K. U. D. K** [1999] TLR 330).

Before the trial tribunal the appellant produced two witnesses namely the appellant herself Grace Mdemu (PW1) and Leonida Mdemu (PW2) who both testified that the suit land belonged to their late father Norbert Galafunga Mdemu and not anyone else.

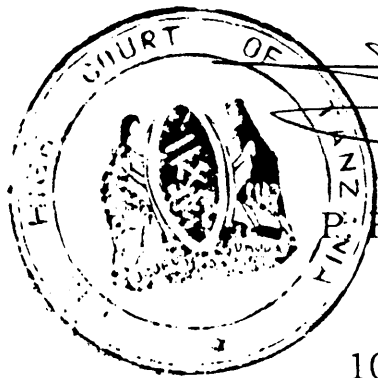
To say the least the evidence of the appellant seems to have suffered in a remarkable way in that it did not suffice to warrant the District Land and Housing Tribunal grant the application in favour of the appellant.

I will endeavour to briefly explain the reasons for my above observation. The appellant's evidence and that of PW2 who is her sister were full of lies, distortions and contradictions. For instance the appellant and PW2 pretended not to know the first and the second respondents who are blood sisters of their late father the fact which is shown in Exhibit "P2", whereas the appellant claimed in her testimony that the suit land was 70 acres in the application in particular at clause 4 she claimed the suit land to be 25 acres valued at TShs. 25,000.000/-. As rightly pointed out by the trial chairman the appellant's late father if at all had written will which was not tendered before the trial tribunal appears not to have involved her blood sisters and as a male son of the late Galafunga Mdemu discriminated the respondents by the mere fact that they were female members of the clan something which this court can

not condone ie discrimination based on gender since the constitution, our laws and various instruments to which Tanzania is a signatory prohibits any form of discrimination based on gender.

It is my considered opinion therefore that there is considerable merit in the findings by the trial Chairman as such I find no reason to disturb the decision of the District Land and Housing Tribunal as such the instant appeal is hereby dismissed with costs.

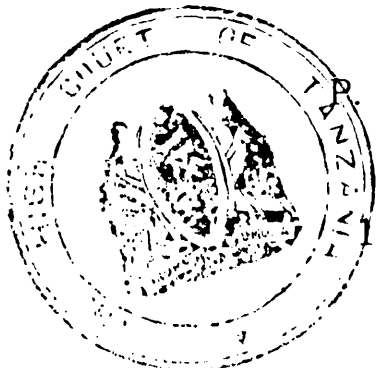
Ordered accordingly.



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P. F. KIHWELO
JUDGE
10/12/2015

Right of Appeal is fully explained.



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P. F. KIHWELO
JUDGE
10/12/2015