

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DODOMA

MISC LAND CASE APPEAL NO 77 OF 2014

(From the Decision of the District Land Housing Tribunal of Dodoma District at Dodoma in Land Case appeal No. 1 of 2012 and Original Ward Tribunal of Nghong'onha Ward Application No. 3 of 2011)

LEVISION MCHELEWA..... APPELLANT

VERSUS

OLIPA MAZOYA RESPONDENT

A. MOHAMED, J.

JUDGEMENT

Levision Mchelewa, the appellant herein, has lodged his second appeal to this court having lost both at the trial in the Nghog'onha Ward Tribunal and the District Land and Housing Tribunal of Dodoma in Appeal No. 1 of 2012 .

He has the following four grounds of appeal.

1. That the Singida district Land and Housing Tribunal erred in law and in fact in not considering his complaints that his evidence was not properly recorded by the trial tribunal.

2. That, the District Land and Housing Tribunal erred in law and in fact in deciding that the evidence shows that the disputed land is not his as it was reserved as a passage of cattle without considering that the respondent trespassed on the said land and as such he has no right.
3. That, the District Land and Housing Tribunal erred in law and fact in raising the issue of locus standi against the Appellant which was neither raised nor decided by the trial tribunal.
4. That, the Honourable District Land and Housing Tribunal erred in law and fact in not considering the fact that, the proceedings and decision of the trial tribunal were legally defective for want of proper procedure.

On 23/4/2015, the parties agreed to argue the appeal by way of written submissions.

In his submission in support of his first ground of appeal, the appellant argued that the learned Chairman in the lower appellate tribunal quoted a portion of the appellant's testimony to reach a conclusion that he had confused the dates when he had started using the land in dispute. The appellant further argued that it was wrong for the learned Chairman to use the proceedings which the appellant had complained of. He further argued that his evidence was not properly recorded.

On ground two, the appellant contended that the disputed parcel of land is not reserved as a cattle path. He argued as the

appellate tribunal did not determine the first ground of appeal, it has no right to use the same evidence to enter the said decision.

In regard to the third ground, the appellant vehemently opposed the finding by the appellate court that he has no locus standi as he never claimed he inherited the land to necessitate his having been appointed as the administrator of a deceased's estate.

The appellant fourth ground of appeal is that he was denied the right to be heard.

In rebuttal, Mr. Kidumange, for the respondent, argued that challenging the correctness or propriety of the proceedings is a serious matter and it was dangerous to believe such allegations unless evidence from the record backs such assertions. The counsel argued the appellant ought to have shown what was said but was wrongly recorded in writing. He argued the allegations were generalized.

On ground two, Mr. Kidumgae contended that the appellant has failed to tell this court what he said and what was not recorded by the trial court. He argued the tribunal could not have invented information such as the presence of the **hame** and cattle path as such facts are peculiar to the parties living in or near the dispute.

On the issue of locus standi, the respondent thought his counsel argued that since it is a point of law, the court can *suo moto* raise it without being moved by a party. He further argued that as the appellant and his younger brother Hamisi Machelewa had claimed the land through inheritance from their father, then there ought to

be an administrator of the deceased's estate to have the locus to sue.

As for ground four of the appeal, Mr. Kidumage opposed the appellant's claim that he was denied the opportunity to call his witnesses by arguing that the record does not support such an allegation. Neither did he complain anywhere nor has he mentioned any witnesses to the court. The counsel further argued that section 45 of the Land disputes courts Act [Cap 216 RE 2002] provides that a Ward Tribunal's decision cannot be altered on appeal merely because a certain piece of evidence was either improperly admitted or refused unless such irregularity occasioned a failure of justice.

Having heard the parties respective contentions and having gone through the record of the lower tribunal's proceedings and upon my anxious consideration to the grounds of appeal, I am unclaimed to say, that this appeal is devoid of any merit.

On grounds one and two which relate the appellant's claim that his testimony was not or improperly recorded, which is a serious allegation showing bias, it is clear the appellant has not stated in his submissions in support of his grounds of appeal what did he actually say and what was recorded by the trial tribunal. He ought to have shown the alleged discrepancy for this court to consider his allegations. He did not do so and I am inclined to conclude that he raised this issue as an afterthought after the trial tribunal's decision. I find that these two grounds have no merit and I hereby dismiss them.

In regard to the third ground, it is trite law that a court can address itself on any point of law not whether raised by a party or not in order to ascertain whether it has the jurisdiction to adjudge the matter or whether that matter is properly before the court. In this case I entirely agree that as the appellant has raised the issue of his claim to the property through inheritance together with his younger brother then, an administrator of their father's estate was the person who had the locus to sue. I accordingly dismiss this ground of appeal.

The fourth ground of the appellant's appeal is vague. It is unclear to which improper procedure is he referring to. If as he claims he was denied the opportunity to call his witnesses, he ought to have at least detailed their names which are not shown in the proceedings. Nor as, the respondent's counsel submitted, has the respondent make any complaint anywhere of this fact. I subsequently find this ground devoid of merit and dismiss it.

The record of proceedings is clear that the trial Nghog'onha Ward Tribunal heard the witnesses, visited the locus in quo and then carefully and judiciously analyzed the whole evidence before it arrived at a unanimous decision in favour of the respondent. Likewise on first appeal, the district Land and Housing Tribunal heard the appellant's claims, revisited and digested the evidence on record and arrived at the same decision in favour of the respondent with a further finding that the appellant lacked the locus standi to sue as he was not vested with letters of administration.

After the foregoing, I entirely agree with the trial and the first appellate tribunals' sound decisions. I am satisfied that both decisions were based on sufficient and credible evidence and I see no reason to disturb them and I hereby uphold them.

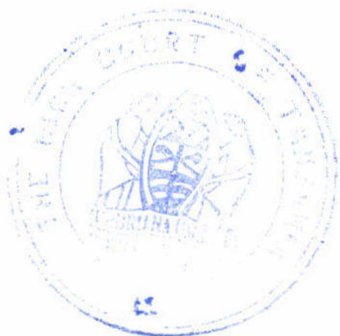
The appeal is hereby dismissed with costs.

It is so ordered.



A. MOHAMED
JUDGE
9/11/2015

The right of appeal to the court of Appeal of Tanzania explained.



A. MOHAMED
JUDGE
9/11/2015