

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT IRINGA**

**MISCELLANEOUS LAND CASE APPEAL NO. 12 OF 2015**

**YERIKO MGEGE ..... APPELLANT**

**VERSUS**

**JOSEPH AMOS MHICHE ..... RESPONDENT**

**JUDGMENT**

**5<sup>th</sup> July, 2016 & 15<sup>th</sup> December, 2016**

**KIHWILO, J.**

This appeal is against the decision of the District Land and Housing Tribunal at Njombe by G. Kagaruki Chairperson that upheld the decision of the Njombe Urban Ward Tribunal delivered on 12<sup>th</sup> September, 2014 and in which the present Respondent successfully won the land dispute against the Appellant.

Aggrieved by the said decision the present Appellant preferred this appeal with six grounds as follows;-

- 1. The District Land and Housing Tribunal on first appeal erred in law and fact in holding that the evidence proves that the respondent purchased the suit plot from the appellant's father when there is absolutely no such evidence on record.*
- 2. The District Land and Housing Tribunal erred in law and fact in rejecting the fact that the appellant has been using the disputed land for 15 years from 1999 to 2014 after inheriting it from his late father, Rivesco Mgege, in 1999.*
- 3. The District Land and Housing Tribunal on first appeal erred in law and fact in entertaining claims of the respondent against the said deceased's estate when the respondent had presented his claims 15 years after the Primary Court of Njombe Urban had given 90 days for any claimant to present his/her claims.*

4. *The District Land and Housing Tribunal erred in law and fact in giving ownership of the disputed land hopelessly out of time to the respondent in total disregard to the undisputed fact that the appellant had been given the disputed land by a legally appointed administrator, Peter Mgege Msafiri, 15 years after the distribution of the deceased's estate had been made.*

5. *The District Land and Housing Tribunal on first appeal erred in law and fact in holding that the disputed land belongs to the respondent simply because the appellant had agreed to settle the dispute amicably out of the Court by agreeing to pay the respondent Tshs. 400,000/=.*

6. *The District Land and Housing Tribunal on first appeal erred in law and fact in holding that there was a sale of the disputed land between the deceased and the respondent when the appellant had categorically disowned the signature appearing on the alleged sale agreement.*

When this matter came for mention on 19<sup>th</sup> May 2016 and upon the request of appellant which was not objected to by the respondent the court ordered the appeal to be disposed by way of written submission something which was complied with by both the appellant and the respondent. It is instructive to state that both parties represented themselves.

The appellant argued in his written submission in support of the appeal that he did not wish to make any further submissions other than adopting the grounds of appeal as contained in the Petition of Appeal. He finally prayed that the court should allow the appeal.

On his part the respondent strongly contended in reply but in essence repeated more or less what has been stated in the six grounds of appeal with almost no addition at all.

Having carefully considered the grounds of appeal and the submissions made by both parties the central issue for determination is whether the current appeal is meritorious.

In my attempt to answer the above issue I will not deal with each ground of appeal separately. This is for the sake of preciseness and clarity as stated in the case of **Melita Naikiminjal & Loishilaari Naikiminjal V Sailevo Loibaguti** [1998] TLR 120 at 130 where the Court of Appeal of Tanzania Nyalali C.J (as he then was) had the following to say;

*"We are however, of the considered opinion that an appellate court, so long as it grasps the essence of the case before it has the discretion to summarize the case and the grounds of appeal for purposes of conciseness and clarity. It does not need deal with them separately and with seriatim."*

A cursory perusal to the records of the District Land and Housing Tribunal as well as the Ward Tribunal speak loud and clear that the respondent filed a case against the appellant on the ground that the appellant had trespassed the respondent's suit premise despite the fact that he (the appellant) was the witness in the sale agreement between the respondent and the appellant's father.

On the strength of the evidence adduced by both the appellant and the respondent the Ward Tribunal found out that the respondent proved the case and hence declared him the winner. Consequently the appellant appealed to the District Land and Housing Tribunal which also upheld the decision of the Ward Tribunal on the grounds that the appeal has no merit as a result the appeal was once again dismissed hence this present appeal.

The records of the two lower tribunals reveals in clear terms that the suit land was bought by the respondent from one Msafiri Mgege on 31<sup>st</sup> March 1999 and this was according to the testimonies of William Mhiche, Frank Sanga and Diana Simime. This was contrary to the testimony of the appellant's witness in particular one Peter Mgege Msafiri whose evidence was too general and did not in any way touch upon the suit land. I am mindful of the cardinal principle of civil trials that he who alleges must prove and the standard of proof is always on the preponderance of probabilities and since both parties in a suit cannot tie (See **Hemed Said V Mohamed Mbilu**(1984) TLR 114) the respondent's evidence at the trial tribunal overweighed the appellant's evidence.

It is also imperative to stress that this is a second appeal. The appeal is therefore on a point of law. This court can only fault the concurrent findings of facts by the two tribunals below where there is a misapprehension of the evidence, a miscarriage of justice or violation of some principles of law. This is the long established principle of law as clearly stated in **Musa MwaikundaVs Republic** [2006] TLR 387 where the court had the following to say;

*"In the second appeal the court rarely interferes with concurrent findings of fact by the courts below. Only where there are misdirection's or non-directions on the evidence a court is entitled to look at the relevant evidence and make its own findings of fact."*

After carefully reviewing the evidence on record, the Petition of Appeal and the written submissions filed by the appellant and the respondent I am of the strong opinion that in the present appeal there were neither misdirection nor misapprehension of evidence to warrant this court interfere with the concurrent findings of the two tribunals below.

In the final result the appeal is dismissed with costs.

It is so ordered accordingly.

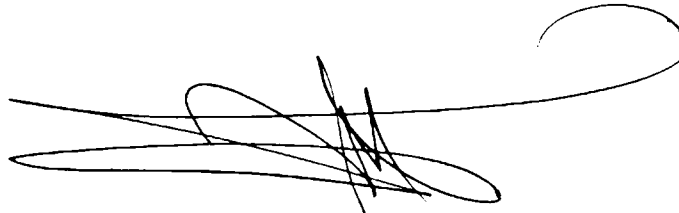
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P. F. KIHWELO

**JUDGE**

12/12/2016

Judgment to be pronounced by the Deputy Registrar on a date to be fixed.

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P. F. KIHWELO

**JUDGE**

12/12/2016