

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

MISC. LAND APPEAL CASE NO. 64/2016

(Arising from Land Appeal NO.178/2014 and Original Land Application No. 2 of 2014 of Kaagya Ward Tribunal)

1. BED BENEZETH

2. STIVIN FURANCE } **APPELLANTS**

VERSUS

1. EGIDIUS BEBWA

2. ELIZABETH ALFRED } **RESPONDENTS**

3. YUDES ALFRED

JUDGMENT

29.06. & 27.07.2018

BONGOLE, J.

At Kaagya Ward Tribunal the appellants successfully sued the respondents for encroachment by tilling a piece of land which they alleged to have inherited from their mothers. The ward tribunal decided in their favour and aggrieved, the respondents lodged an appeal before the District Land and Housing Tribunal of Bukoba. The former overruled the trial tribunal's decision thereby deciding in favour of the respondents.

This time, the appellants were aggrieved thus they preferred the present appeal armed with four grounds of appeal. The gist of the grounds centres on two pertinent points namely that, the appellate tribunal erred in law to hold that the suit land was a matrimonial property and that he further erred to differ with his Assessors in his decision to overrule the trial tribunal's decision.

In reply the respondents refuted all the grounds of appeal.

Briefly, the facts giving raise to this appeal is that the suit land is said to belong to the appellants' mothers who are no more. On the 31.01.2014 they found the 1st respondent, Egidius Bebwa tilling in the suit land and on being asked to stop tilling, he became adamant arguing that he had complied with all requisite procedures to acquire the same and added that he would not stop tilling unless the government barred him.

After the appellants found it improbable to resolve the dispute amicably they channeled it to the Ward Tribunal of Kaagya which tribunal decided in favour of the appellants. As stated earlier on, the respondents appealed to the District Land and Housing Tribunal of Bukoba which overruled the earlier decision.

Dissatisfied they preferred the present appeal.

Before this court, the appellants were represented by Mr. Rweyemamu learned Counsel while the respondents were represented by Mr. Bengesi learned Counsel. By the permission of this court the appeal was disposed by way of written submission.

Mr. Rweyemamu stated his submission by giving the history of the suit land that one person named Ngemera Buchurula was a brother to one Tegira Buchurula and both were of Abalwami ethnic (clan). He submitted that the former got children at the oldest age he left will direct his sister Tegira to take care of young children named Ngele Ngemera and Celina who were from the same clan. That the Tegira Buchurula brought those children up and controlled all the estates of his late brother until when they acquired the age of majority.

He went on submitting that the appellants were assigned the suit land by the head of clan of Abalwami after Ngele Ngemera and Celina had died intestate. That after all that it was learnt that Tegira Buchurula who was a female could not inherit from the said estates but was found to have tried to enrich herself from those estates of Ngele Ngemera and Celina so she was stopped from doing that thus the estates reverted to the children. He insisted that from this scenario the suit land cannot be a matrimonial land of the 2nd and 3rd respondents as held by the

district tribunal. He argued that the suit land is not related to the respondents either by inheritance or assignment and that the fact of being a care taker of the children and estates could not entitle the respondents to own the suit land. He invited this court to allow this appeal and uphold the Ward Tribunal's decision.

In reply, Mr. Bengesi had it that the claim of ownership over the suit land by the appellants on mere fact that they are of the same clan with the former one Ngemera Buchurula of Abalwami ethnic clan does not hold water. He argued that since Abalwami clan is of maternal side of the appellants then they cannot inherit instead it is the Byazi clan of the respondents who are supposed to inherit it. He contended that the record does not show any will to show how the suit land was supposed to be dealt with and furthermore, no letters of administration was tendered to prove locus standi of the appellants on the suit land.

He went on submitting without clarification that, the 2nd and 3rd respondents acquired the title over the suit land from their deceased husbands. He submitted that the 2nd and 3rd respondents were married to Alfred Bwoki the latter having acquired the suit land in 1948 from his late maternal grandfather that is, Bachulila. In his view, after the death of Bachulila the

respondents being spouses have good title over the suit land. He invited this court to dismiss this appeal with costs.

Have considered the submissions of the counsel of both parties and perused the record of this appeal and noted that none of the parties have locus standi to pursue this appeal. According to the evidence of the appellants at page 2 and 7 of the handwritten proceedings the suit land formerly belonged to one Tegila. When the appellants were cross-examined on how they acquired the Suitland they stated that they inherited it from their mothers without disclosing who those mothers were. When they were further cross- examined on whether they had a will, the 2nd appellant stated at page 6 that they were merely told of the will by other people. They did not prove by evidence that they were either Administrators of the suit land or heirs.

On the other hand, the 1st appellant alleged to have purchased the suit land yet he did not prove this fact by evidence. Mr. Bengesi, though he demanded the appellants to prove by document whether they purchased or Administrators of the suit land yet he also failed to prove how his clients acquired the suit land. He was emphatic that the land is matrimonial without any proof to that effect. It follows therefore that, both sides of the

case had no locus stand. Consequently, both lower tribunals erred in both law and facts for failure to note.

Due to this anomaly, I hereby declare all the proceedings of both lower tribunals a nullity and set aside the judgments and orders thereof. As it is not disputed that the owner of the suit land is no more, his family (clan) should take control of the suit land pending the appointment of an Administrator of the estates to distribute the same to the appropriate heirs.

Each party to bear own costs

Order accordingly.



S. B. Bongole

Judge

27/7/2018

Date: 27/7/2018

Coram: Hon. S. B. Bongole, J.

1 st Appellant:	}	-Ms. Aneth Lwiza, Advocate
2 nd Appellant:		
1 st Respondent:	}	- Present
2 nd Respondent:		
3 rd Respondent:		

B/C: Gosbert Rugaika

Court:

The appeal comes for judgment and the same is delivered in the presence of the parties in my presence this 27th July, 2018



S.B. Bongole

Judge

27/7/2018

Right of Appeal explained.



S.B. Bongole

Judge

27/7/2018