

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 53 OF 2018

(From the decision of the District Land and Housing Tribunal of Tarime at Tarime in
Land Appeal No. 124 of 2016)

MACHENES OTAIGO APPELLANT

VERSUS

SABAS MGESI RESPONDENT

EXPARTE JUDGMENT

20/09/2018 & 24/01/2019

RUMANYIKA, J.:

The 2nd appeal is against judgment and decree of the District Land and Housing Tribunal for Tarime at Tarime (the DLHT) upholding decision of Sirari Ward Tribunal (the w/t). That Sabas Mgesi (the respondent) lawfully owned the disputed land. Mchenes Otaigo (the appellant) is not happy. Here he is. Both appeared in person.

The five (5) lengthy and argumentative grounds of appeal revolve around 4 points basically:-

1. that the DLHT improperly evaluated the evidence on record. Hence reaching at a wrong conclusion.

2. that the DLHT grossly erred in law and fact in not holding that evidence of the respondent and purported vendor of the disputed property materially contradicted each other.
3. that the DLHT denied him (appellant) of right to a fair hearing in not allowing him to cross examine the respondent.
4. that the DLHT erred in law and fact basing its decision on extraneous evidence. Namely a non-produced in court TLP documentary.

When the appeal was called on for hearing on 20/09/2018, though duly served on 14/09/2018 (as per copy of returned summons), the respondent was not in attendance. His appearance was, pursuant to my reasons and order of 20/09/2018 dispensed with.

The appellant in his submissions just urged me to adopt contents of his petition of appeal and blamed the DLHT for having relied on extraneous and irrelevant evidence on record. That is all.

A summary of evidence on record runs as follows:-

From the appellant's side, it was stated that w.e.f 1988, he occupied and without interference utilized the disputed land (dully allocated to him) by the local villager government authorities.

The respondent's story was to the effect that he purchased the disputed land from a young brother Mwikwabe Otaigo in 2013. That is it.

Then the DLHT's chair, it appears on balance of probabilities convinced, believed the respondent's evidence and found it weighed heavier. That the respondent/purchaser and vendor was right/true.

I do not think that the DLHT's chair could be more incorrect for two simple reasons:-

One; the year of Lord 1988, or as reduced by chair 1986 allocation of the land by the local village authorities was not seriously challenged. Leave alone attempts to. No single member of the said local land allocating authorities appeared to disprove the allegations.

Two; each one of the appellant and respondent may have had claims of title, one having acquired the disputed land in 1988 and the other one in 2013 respectively. Fine! But now that there was, for reasons two conflicting interests, and seniority of the appellant's title was not sufficiently challenged, the DLHT should have found and hold that appellant had, w.e.f 1988 a better title. The purchaser respondent may have been supported by the vendor yes! But even more crucial evidence should have been whether the vendor had a title to pass onto the respondent in the first place. It is very unfortunate the point escaped minds the two tribunals below. In other words appellant had a better title and the tribunals should have held as such.

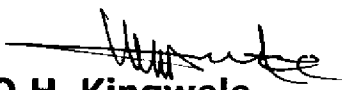

Decision and order of the DLHT are quashed and set aside respectively. Appeal is allowed in its entirety with costs. Ordered accordingly.

Right of appeal explained.



S. M. RUMANYIKA
JUDGE
19/01/2019

Delivered under my hand and seal of the court in chambers this 24th day of January, 2019 in the presence of the appellant and in absence of the respondent.



O.H. Kingwele
DEPUTY REGISTRAR
24/01/2019