

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. LAND APPEAL NO. 17 OF 2017

*(Arising from the judgment of the District of the Land and Housing Tribunal for Tarime
in Land Appeal No. 71 of 2016 dated 10th day of December, 20`16 originating from
Application No. 07 of 2016 Ikoma Ward Tribunal)*

WILLIAM OMBAKA OGUTU APPELLANT
VERSUS

STEPHANO ONYANGO OMOLO..... RESPONDENT

EXPARTE JUDGMENT

28/09/2018 & 15/01/2019

RUMANYIKA, J.:

The 2nd appeal is against judgment and decree of 16/12/2016 of the District Land and Housing Tribunal of Tarime at Tarime (the DLHT). Having upheld decision of Ikoma Ward Tribunal (the wt) and declared Stephano Onyango Omolo (the respondent) lawful owner of the disputed land Ombaraka Ogutu (the appellant) is aggrieved. Here he is.

The 7 lengthy ground of appeal revolve around two points essentially and rephrased as hereunder:-

- (1) That the DHLT improperly evaluated the evidence on record.

- (2) That the DHLT chair erred in law and fact not holding that the respondent denied one right to be heard (not entertaining evidence of any one from the village Land Allocating Committee).

Mr. Mashauri learned counsel appeared for the appellant.

When the appeal was called on 28/9/2018 for hearing, but though duly served, neither the respondent nor his advocate was in attendance. His appearance was, pursuant to my reasons and order of 28/9/2018 dispensed with. Hence the ex parte judgment.

Mr. Mashauri learned counsel very briefly submitted that had the DHLT chair considered fact and evidence that since 1974 the appellant was accordingly allocated and customarily owned the disputed land (S.2 of the Villages Land Act 1999), but without justification the same village authorities re-allocated it to the respondent, he would have arrived at a different conclusion. That the under laid procedure under S. 8 of the said Act for reallocation were, in this case not followed. The reallocation therefore was illegal. Stressed the learned counsel.

The evidence on record, but very brief runs as follows:-

That upon application to the local village authorities the respondent was accordingly allocated the disputed land. Formerly, but during the mid-1970's Operation Vijiji owned by Rusabela A Ogutu but now for quite some time abandoned. As the owner was long reported dead. That the plot bare the family grave yard (inclusive of grave of the appellant's sister).

Also briefly, appellant is on record having testified that since Operation Vijiji of 1970, the disputed land belonged to his deceased wife one Rusabela A. Ogutu. That there were graves of his mother, son and sister in law. That they occupied it undisputed since. That is it.

Laying down it's decision, the wt basically held that as a matter of policy or so, once it was, for some reasons abandoned, any land allocated during the Mid. 1970's Operation Vijiji went back to the local village authorities, if need be, for being reallocated. Indeed the disputed land was, on that basis re- allocated to the respondent. It is very unfortunate that the DHLT adopted the approach whole sale!

If anything, the above said land policy mainly presupposed that the land was proven abandoned. Now, was the disputed land proven abandoned? The answer is for three reasons no. **One**, not only admittedly there was appellant's family grave yard, but also the appellants evidence that they had occupied and utilized the disputed land wasn't sufficiently challenged by the respondent. **Two**, upon receiving the respondent's application, like was not sure, the village allocating committee went back to the plot with a view to establishing whether there was any 3rd party interests (see respondents evidence) **Three**, in the same breath, the respondent is on record saying that the disputed land belonged to his father, If anything, the former may have had claim of usufructuary rights thereon yes! But the fact that he applied for reallocation and admittedly title was now transferred from Rusabela A. Ogutu to him, the fundamental contradiction leaves a million questions! **Four**, now that the disputed land was in the name of the appellant's wife (deceased), and appellant wasn't

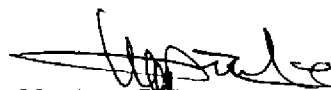
disproved survivor of the estate, it was respectfully wrong for the two tribunals below holding that the disputed land was abandoned. If would have been a different scenario which had not been the case, if held that the appellant had no locus standi. **Five**. If, basing on the said policy the land allegedly abandoned had gone back and therefore belonged to the local village government, the village land allocating committee had no legal mandate to allocate or reallocate the land as the case may be. Only a village council could. Upon being sanctioned by the local village general assembly (see the villages Act 1999). It follows therefore, but without prejudice to the foregoing discussion, that nothing was reallocated to the respondent.

In the upshot, decision and orders of the two tribunals bellow are quashed and set aside respectively. Appeal is, for avoidance of doubts allowed with costs. Ordered accordingly.


S.M. RUMANYIKA
JUDGE
08/01/2019

Delivered under my hand and seal of the court in chambers this 15th day of January, 2019 in the presence of Mr. Mashauri advocate for the respondent and in absence of the appellant.




O.H.KINGWELE
DR
15/01/019