

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MBEYA

LAND APPEAL NO. 62/2016

(Originating from the District Land and Housing Tribunal of Mbeya
Application No.205 of 2011).

F. THOMAS MWAMBINGU APPELLANT

VERSUS

ANDREW SIMWINGA 1ST RESPONDENT

MBEYA CITY COUNCIL 2ND RESPONDENT

Judgment

Date of last Order: 18/12/2019

Date of Judgment: 30/12/2019

Dr. A. J. Mambi, J

This appeal originates from an appeal filed by the appellant namely **F. THOMAS MWAMBINGU**. Earlier in the District Land and Housing Tribunal of Mbeya the Tribunal made the decision in favour of the respondents. The appellant appealed against the



decision of the District Land and Housing Tribunal basing on five grounds of appeal as follows:

1. That the trial tribunal erred in points of law and facts by failing to analyze the evidence in record properly hence leading to unfair decision to detriment of appellant.
2. That the trial tribunal erred in points of law and facts by failing to consider the impartial and credible evidence of the Land Officer (DW3) on the ownership of the dispute land by the appellant without assigning reasons for so doing.
3. That the trial tribunal erred in points of law and facts by delivering a loop sided judgment to the detriment of the appellant.
4. That the trial tribunal erred in points of law and facts to hold that the applicant obtained a title without compensation to customary owner.
5. That the trial tribunal erred in points of law and facts to hold that the disputed land by the appellant be cancelled/revoked and the same be issued in favour of the 1st respondent while there was no lawful justification for so doing.

During hearing, all parties agreed to argue by way of written submissions. While the appellant was represented by the learned Counsel Ms Silvia, the first respondents was represented by the learned Counsel Mr William Mashoke. On the other hand the second respondent was represented by the City Solistor Mr Brayson Ngulo.

The appellant Counsel briefly argued that the District Land and Hosing Tribunal failed to analyze the evidence at the detriment of the appellant. The appellant counsel on his grounds of appeal has argued that the appellant is the rightful wonder of the disputed land as testified by DW3 and DW1. He averred hat the first respondent was just a trespasser to the land that belonged to the appellant.

In response, the respondents' Counsels briefly submitted that the District Land and Housing Tribunal, was right and clearly analyzed the evidence. They argued that the appellant also failed to pay compensation to the some people such as Anyasime Katebela as agreed.

I have carefully gone through the grounds of appeal and reply by the respondent. I have also keenly gone through all records from the District Land and Housing Tribunal. In my observation and considered view, the main issue at hand is whether the Tribunal was right in holding that the first respondent was the rightful owner of the disputed land or not. The other issues is whither the trial tribunal analyzed evidence of both parties.

My perusal from the records show that the trial Tribunal Chairman clearly analyzed evidence of both parties and he made his decision with reasons. This can be reflected from the judgment at pages 2 and 3. Indeed the judgment at page 3 show that the Chairman clearly raised three issues and he addressed himself on those issues before making his decision. The claim by the appellant that

the Chairman failed to analyze the evidence has no merit. The documents tender by the second respondent clearly show that the first respondent is the lawful owner of the disputed land. Indeed there was a time the appellant wanted to won the dispute land and he was informed by the second respondent that before being allocated the land he had to first pay compensation to local people who developed that land but he failed to do so as agreed. This means that the appellant had no interest to own and develop the land in dispute.

The appellant at the trial Tribunal failed to prove his case. It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities. This simply means that he who alleges must prove as indicated under section 112 of the **Law of Evidence Act, Cap 6 [R.E2002]**, which provides that:

“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person”.

The court in **NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZALIA & 4 OTHERS, Comm. CASE NO 59 OF 2003() HC DSM**, observed that:-

“The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side”.

Therefore, since the appellant was claiming that the land belonged to him and the respondent is not the owner of the land, it is the

duty of the appellant to prove his claim but he did not do so at both at the two Tribunals. Indeed the evidence and records show that the land belonged to the first respondent. Worth at this juncture making reference to Lord Denning in a persuasive case of ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** [1966] 1QB 380 at 400-1 had once observed that:

"The court would dwell much, of course, to a mere busybody who was interfering in things which did not concern to someone who has not been affected. But it will listen to anyone whose interests are affected by what has been done." The court will only consider and deal with anyone whose interests are affected by what has been done."

Therefore, since the appellant is claiming that the land belonged to him and the first respondent is not the owner of the land, it was the duty of the appellant to prove his claim but he has not done so. I am of the considered view that the second respondent correctly allocated the land to the first respondent.

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Land and Housing Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. The decision of the District Land and Housing Tribunal is upheld and it is hereby declared as done by the decision of the District Land and Housing Tribunal that the first respondent was the lawful owner of the suit land. In the

event I make no orders as to costs. Each party to bear his own costs.



Dr. A. J. Mambi

Judge

30.12. 2019

Judgment delivered in Chambers this 30th day of December, 2019 in presence of both parties.

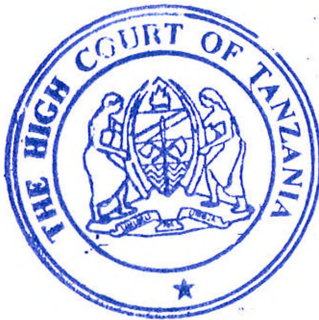


Dr. A. J. Mambi

Judge

30.12. 2019

Right of appeal explained.



Dr. A. J. Mambi

Judge

30.12. 2019