

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

LAND CASE APPEAL NO. 30/2015

*(Arising from the District Land and Housing Tribunal Application No.
22/2011)*

MAIDAT SUED ----- APPELLANT

VERSUS

1. MOSES PAULO
2. ANATI ADAMU
3. MUDIRI BADRU } ----- **RESPONDENTS**

JUDGMENT

30/11/2018 & 11/1/2019

Kairo, J.

Having been dissatisfied by the decision of the District Land and Housing Tribunal in land application No. 22/2011 delivered on 5/7/2015, the Appellant decided to institute this appeal to challenge it raising 7 grounds of appeal. I should state from the onset that the said grounds were poorly

drafted with a lot of repetitions, but after going through them and grasp the gist of them, the court has observed them to have been centered into the following grounds:

1. That the District Land and Housing Tribunal erred to find out that the 2nd Respondent was married to Adam Ferooz who was her father while she got married to Mustafa. Besides Adam is not related to the family of the Appellant.
2. That the District Land and Housing Tribunal erred to find that the 2nd Respondent was given the land by his father in law without any document to support the said finding.
3. That the Judgment was based on mere allegations which were purposely made to deprive the legal heirs of their legal rights to inherit the land in dispute.

The Applicant thus prayed the court to allow her appeal. The Appeal on the other hand was resisted by the Respondents. All of the parties in this matter are self represented.

Briefly the genesis of this dispute is that; the Appellant instituted a suit against the Respondents alleging that the 2nd Respondent who was her sister in law had illegally sold the land in dispute which she alleged to belong to her late father one Sued Ferooz to the 3rd Respondent in year 2010. The Appellant who was appointed Administratrix of the estate of her late father

Sued Ferooz claims the said land so that she can distribute the same to lawful heirs.

The allegation was disputed by the 2nd Respondent alleging that the land was given to her by the late Sued Ferooz, her father in law way back in year 1995 and had continuously utilized it until 2010 when she decided to sell the same to the 3rd Respondent at the presence of the 1st Respondent, a clan head. After hearing the testimonies from witnesses of both sides, the District Land and Housing Tribunal ruled/decided in favor of the Respondents, the decision which aggrieved the Appellant, hence this appeal raising the above grounds of appeal.

When invited to make their oral submissions to elaborate for and against the appeal, both parties informed the court that they had nothing useful to add to the petition of appeal and a joint reply respectively already filed in court. They both prayed the court to adopt the same and proceed to give the judgment accordingly.

Having gone through the grounds of appeal and respective reply together with the records, the issue for determination is whether this appeal is based on founded grounds.

In so determining the court will determine as to whether or not the land in dispute was given to the 2nd Respondent by the late Sued Ferooz.

The Appellant has argued that it was an error for the District Land and Housing Tribunal to find that the late Sued has given the land in dispute to

the 2nd Respondent without any document to prove. It should be understood that legally a fact can be proved by a document or witnesses who witnessed the incident. According to proceedings in application No. 22/2011, the 2nd Respondent (Rw2) testified that she was given the land in dispute by her the late father in law; Sued Ferooz way back in year 1995 together with her two daughters and utilized the land until the demise of the said father in law in 2003 and later went on to utilize it until in year 2010 when she decided to sell it to the 3rd Respondent (page 26). The contention was echoed by the 1st Respondent (testified as Rw1) who also was a clan member and witnessed the sale between the 2nd and 3rd Respondents. The 1st Respondent also when testifying told the court that he was called by the late Sued Ferooz and together with other seven persons went to the late Sued Ferooz in year 1995. He further told the court that the late Sued Ferooz told the people he called that he has decided to give a portion of his land he has bought as a gift to the 2nd Respondent for taking care of him when he was sick (page 22). Similar testimony was given by Rw4, one Erasto Karumuna who was mentioned by the 1st Respondent (Rw1) to be among the persons called by the late Sued Ferooz to witness the distribution of his bought land (page 36).

The witnesses further clarified that the late Sued Ferooz had two farms, one inherited from his late father, the late Ferooz Kabyesiliza and another one he bought and that he had given a portion of the land he bought to the 2nd

Respondent. **The Law of Evidence Act 1967 Cap 6 RE 2002 places the burden of proof on the party alleging the fact. Section 110 (1) states:-**

“whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he/she asserts must prove that those facts exist”

In this matter the 2nd Respondents asserted that, the land in dispute was given to her by the late Ferooz, her father in law, the contention which was refuted by the Appellant. However apart from Rw1, Rw2 and Rw4 to support the contention of the 2nd Respondent, the Appellant during cross examination by the 2nd Respondent, failed to explain why she didn't raise a concern or complained against the land given to her while the deceased was still. As an answer she said *“we don't know”* (page 12 proceedings).

Looking at the consistency of the witnesses testified on behalf of the 2nd Respondent the court is convinced that the 2nd Respondent has proved on the balance of probabilities that her late father in law, Sued Ferooz has given her the land in dispute before his death. The Appellant has argued that there was no document tendered to support the said donation, but as earlier stated, legally a fact can also be proved by witnesses who witnessed its occurrence/existence, and as such the argument holds no water.

In the circumstance therefore, I am satisfied that the 2nd Respondent did on the balance of probabilities discharged the burden of proving that the land in dispute was given by the late Sued Ferooz to her through the evidence

adduced at the trial and that the same belonged to her. As such I found nothing to fault the finding of the District Land and Housing Tribunal in this aspect – thus 2nd ground of appeal has no merit.

The Appellant has also stated that it was an error for the District Land and Housing Tribunal to find that the 2nd Respondent was married to Adam Ferooz while she got married to Mustafa Sued, adding that Adam is a father of Anati (2nd Respondent). According to record it is true that Anati got married to Mustafa Sued, the Appellant's brother and not Adam Ferooz. However, this court has considered that as a minor oversight which doesn't go to the root of the dispute or in other words it didn't prejudice rights of the parties. But further when one looks closely will note that even *Ferooz* is not the sir name of *Adam* as such it cannot be concluded that Adam Ferooz is the father of Anati. Besides, even if it is assumed that Adam Ferooz is the father of Anati, in no way, in my opinion the situation would have changed or affected the finding reached by the District Land and Housing Tribunal. After all even the Appellant hasn't stated how the said oversight or a slip of the pen has affected her legally.

The Appellant has also stated that they don't have a name of Adam s/o Ferooz in their family and that Adam being the father of the 2nd Respondent had no relationship with the Appellant's family to which explanation I don't dispute. Nevertheless those facts cannot operate as a bar to prevent the deceased from donating/ giving his property to the 2nd Respondent as he did.

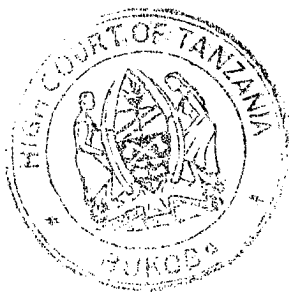
The Appellant has also attacked the District Land and Housing Tribunal judgment arguing that the same was based on mere allegations which were geared to deprive the legal heirs of their legal right to inherit the land in dispute.


The question to be answered is whether the land in dispute is part of the estate of the late Sued Ferooz. The court having found that the land in dispute was given to the 2nd Respondent during the life time of the late Sued Ferooz, it goes that the same is not part of the late Sued Ferooz's estate. Thus the question of denying the legal heirs to inherit it doesn't arise since from the moment the land was given to her, the ownership shifted to the 2nd Respondent. In that respect therefore, she had a right to dispose or sell to another person as she did.

In the foregoing therefore, I find no merit in this appeal and accordingly dismiss the same with cost.

It is so ordered.

Right of Appeal explained.




L.G. Kairo
Judge

At Bukoba.

11/1/2019

Date: 11/01/2019

Coram: Hon. L.G. Kairo,J.

Appellant: Present in person

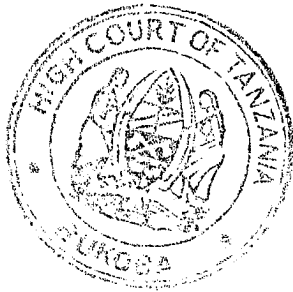
1st Respondent: Present

2nd Respondent: Present

3rd Respondent: Present

B/C: R. Bamporiki

Court: The matter is for Judgment, the same is ready and is read over to parties whereby Appellant is present in person and at the presence of all of the Respondents in open court today.




L.G. Kairo
Judge

11/1/2019