

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC LAND APPEAL NO. 80 OF 2019

(Arising from Land Appeal No. 88 of 2018 of the District Land and Housing Tribunal for Iramba at Kiomboi, Original Land Case No. 3 of 2018 of Mwangeza Ward Tribunal)

YONA ZEBEDAYO APPELLANT

VERSUS

NYASASU SURUJI RESPONDENT

6/7/2020 & 13/7/2020

JUDGMENT

MASAJU, J

The Respondent, Nyasasi Suruji successfully sued the Appellant Yona Zebedayo in the Mwangaza Ward Tribunal. Aggrieved with the decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal for Iramba at Kiomboi. The Appellant then came to the Court by way of an appeal. The Appellants' Petition of Appeal is made up of two (2) grounds of appeal praying the Court to allow the appeal with costs.

The Respondent contests the appeal and filed her Reply to the Petition of Appeal which is made up of two (2) grounds against the appeal.

When the appeal was heard in the Court on the 8th day of June, 2020 the Appellant was in the service of Mr. Fred Kalonga, the learned counsel, while the Respondent appeared in person.

The Appellant vide the service of his learned counsel, submitted on the 1st ground of appeal that, the Respondent's evidence in the trial Tribunal and the District Land and Housing Tribunal was weak. That, her evidence did not show how she got the land in dispute. That, there was contradictions as in the trial Tribunal she claimed to have cleared the bush land but in the District Land and Housing Tribunal she stated that she was given the suitland by her father who migrated to Magugu village.

That, the Respondent alleged to have leased the suitland to the Appellant for 3 years but her witness (Bucha Gidana) testified that the lease was for 6 years and not 3 years. That, the contradictory evidence is false. That, there was a dispute in 2012 between the Respondent's husband and the Appellant before the Hamlet Chairman and it was decided that the land belonged to the Appellant who had been using it since 1992.

That, in 2018 there was a dispute before the village Land Council and on the 9th day of April, 2018 the village Land Council decided that, the suitland belonged to the Appellant. That, there was no appeal. Then on the 24th day of August, 2018 the Respondent got the letter from the Village Executive Officer to the Ward Tribunal where instead of challenging the Village Land Council decision, she stated that the suitland was 17 acres land. The Ward Tribunal decided that the 5 acres belonged to the Appellant and 12 acres belonged to the Respondent. On appeal, the

District Land and Housing Tribunal decided that the entire suitland belonged to the Respondent.

On the 2nd ground of appeal, the Appellant submitted that, the Appellant's evidence in the trial Tribunal was strong that he had been using the suitland since 1992, when he cleared bushland. That, it was also admitted by the Respondent's witnesses, Rengu Neidu and Bucha Gidana that the Appellant is the one who cleared the suitland, although they did not state when was it.

The Appellant finalized his submissions by arguing that, the suitland belongs to the Appellant since 1992 when he cleared a bushland. The Appellant prayed the Court to allow the appeal with costs, quash and set aside the trial Tribunal's decision and the District Land and Housing Tribunal's decision.

On her part, the Respondent contested the appeal by praying to adopt her Reply to the Petition of Appeal to form part of her submissions against the appeal in the Court. She went on submitting that, there was no contradiction when she said the suitland was given to her by her father, and that, when she got married to her husband they remained there and they continued to clear the land when her father migrated to Magugu village.

The Respondent prayed the Court to dismiss the appeal with costs since the suitland belongs to her.

In Rejoinder, the Appellant submitted that the entire suitland, 24 acres belonged to the Appellant so the 17 acres awarded to the

Respondent are part of the 24 acres of the land that belongs to the Appellant.

That is what was shared by the parties in support of and against the appeal in the Court.

The land dispute between the parties can be traced way back in 2011 when the Appellant and the Respondent's husband, one Kidadili Gidabalideda when the land in dispute was only 5 acres, before the Hlamoto village Hamlet and it was decided that the 5 acres piece of land belonged to the Appellant. The Respondent's husband was satisfied with the decision and he requested to use the piece of land for cattle path and the Appellant agreed. The records can be traced in the trial Tribunal's record of proceeding.

Sometime in 2018 the Appellant filed his complaints before the Hlamoto Village Council, against the Respondent's husband where it was decided that the 5 acres piece of land belonged to the Appellant. Then the Respondent's husband gave power to his wife, the Respondent to refer the matter to the Mwangeza Ward Tribunal as it can be reflected in the trial Tribunals record of proceedings. That is when the Respondent sued the Appellant claiming for vacant possession of 17 acres land in dispute.

The trial Tribunal tried the dispute by hearing both parties as well as visiting *locus in quo* and it entered its judgment that the 17 acres disputed land belonged to both parties. That is, 12 acres belongs to the Respondent and the remaining 5 acres belongs to the Appellant.

The Appellant was not satisfied with the decision that is why he appealed to the District Land and Housing Tribunal for Iramba at Kiomboi which overruled the trial Tribunal's decision by declaring the Respondent the sole owner of all the 17 acres disputed land thus the appeal in the Court.

The records of proceedings of the Hlamoto village Council as well as the trial Tribunal who both visited the *locus in quo* shows clearly that the land in dispute belongs to both the parties, the Appellant owning only 5 acres out of the 17 acres piece of land. In both the trial Tribunal and the Village Land Council it was decided that the 5 acres of land was only used as cattle path with the consent of the Appellant.

It is also evident that the 5 acres piece of land was cleared by the Appellant as it can be seen in the village Land Council's proceedings that even the Respondent's husband admitted that fact. The fact that, the Respondent leased the land to the Appellant for 3 years was contradicted by her witness, Bucha Gidama who alleged that the lease was for 6 years. Thus, the Court can not rely on contradictory evidence.

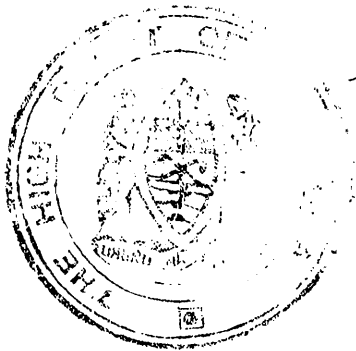
The Court therefore finds the 17 acres land in dispute belongs to both parties, that is, 12 acres belongs to the Respondent and the remaining 5 acres belongs to the Appellant as it was well decided by the Mwangeza Ward Tribunal.

That said, the Court is of the considered position that, the District Land and Housing Tribunal wrongly allocated the 17 acres of land to the Respondent since the record of proceedings shows clearly that the land in

dispute, that is 5 acres of land, has twice been decided by the village Land Council to belong to the Appellant. Thus, it was wrong to allocate the same to the Respondent.

The appeal is therefore partly allowed to the extent that the Appellant is declared the lawful owner of only 5 acres of land and the remaining 12 acres of land belongs to the Respondent, as it was so rightly decided by the Mwangeza Ward Tribunal.

The decision and orders by the District Land and Housing Tribunal for Iramba at Kiomboi are hereby quashed and set aside respectively. No orders as to costs.



GEORGE M. MASAJU

JUDGE

13/7/2020