

IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC.LAND APPEAL NO. 11 OF 2020

(Arising from High Court Mwanza Misc. Civil Application No.118 of
2019 Originated from the District Land and Housing Tribunal for
Mwanza in Appeal No. 19 of 2008)

CHARLES SHIMBAAPPELLANT

VERSUS

EZEKIEL MASEBU & 2 OTHERS RESPONDENTS

JUDGMENT

Last order: 04.06.2020

Judgment Date: 11.06.2020

A.Z.MGEYEKWA, J

The appellant brought an action against the respondent in 2007 in
Kabita Ward Tribunal in Land Case No. 09 of 2007 claiming for

ownership of the disputed land. Aggrieved he decided to appeal to the District Land and Housing Tribunal for Mwanza. Undaunted the appellant has appealed to this court.

A brief background of the case relevant to this appeal is that the appellant (original applicant) claimed ownership of the disputed land whereas the respondent also claimed that the suit land was allocated half an acre and later he claimed that the whole plot was allocated to him in 1974. The 2nd respondent also claimed that the suit land was sold to him in 2004 and the 3rd respondent claimed that her mother gave it to him. After satisfying that the respondents adduced cogent evidence the trial tribunal decided in favour of the respondents.

Dissatisfied by both tribunals decisions, the appellant preferred to knock the gate of this court with the following grounds of appeal:-

- 1. That, the District Land and Housing Tribunal erred in law and facts by deciding in favour of the respondents without considering that the Ward Tribunal awarded the land to the Respondents basing on contradictory testimonies.*
- 2. That, the District Land and Housing Tribunal erred in law and fact by giving the judgment against the Appellant without taking into account*

that the Ward Tribunal's Decision was solely based, premised and acted upon from the Forged purported decision of the Village Council.

- 3. That, the District Land and Housing Tribunal failed to take into consideration that the Ward Tribunal's was bases and did not consider the appellant's evidence.*
- 4. That, both the Appellate and the Tribunal erred in law and facts by failure to take into consideration that the disputed land belongs to the Appellant and his clan under Deemed Right of Occupancy.*
- 5. That, a copy of the ruling of the High Court to enlarge time to appeal out of time and a copy of the Judgment of District Land and Housing Tribunal for Mwanza is annexed hereto marked CS.*

The hearing was done by way of written submission whereas, the applicant filed a written submission as early as 18th May, 2020 and the respondent did not comply with the court order even after they were duly been served. Therefore the hearing proceeded *ex parte* against the respondents.

In support of the appeal, the appellant on the first ground of appeal claimed that the District Land and Housing Tribunal Judgment was tainted with contradiction in respect of the evidence adduced by the respondents. He referred this court to the trial Tribunal

proceedings and argued that the first respondent testified that he was allocated half an acre but later on changed and said he was allocated the whole plot. He went on to argue that the second respondent testified that the land was allocated to him by the mother of the seller and the seller obtained it in 1974. He added that the Village Council testified that the plot was allocated to him in 1976. The appellant further argued that the third respondent stated that he obtained the land from his mother. He argued that the third respondent had no *locus* stand because he did not produce any document to support his claim.

In respect to the second ground of appeal, the appellant argued that the respondent in Land Appeal No.19/2008 which was before the District Land and Housing Tribunal produced a copy of the Village Land Council Decision, which was unsigned by its members.

In respect to the third ground of appeal, he criticized both tribunals for not considering his evidence that the Villagization program did not affect the plot in dispute as it has all the necessary social services. He went on to argue that the land in dispute belonged to his

late father and the respondents failed to substantiate their claim that they were either allocated the land or purchased it as no allocation document or sale agreement was proved. He referred this court to Section 100 (1) of the Tanzania Evidence Act Cap.6 [R.E 2019] that where there is a document to prove a contract, disposition, etc. that document is sufficient proof of the facts alleged. He added that in the instant case, the respondents and their witnesses have failed to produce any document, thus their claim is unproven.

Submitting on the 4th ground of appeal, the appellant argued that he has adduced evidence of how the land in dispute passed from his father to him. He went on to state that though he had no certificate of occupancy as per section 2 of the Village Land Act, Cap.114 [R.E 2019] the appellant owns the suit land by virtue of it being a deemed right of occupancy for those reasons he prays this court to find that he is the rightful the appellant owner of the suit land.

After a careful perusal of the record of the case and the final submission submitted by the appellant. I should state at the outset that, I am fully aware that this is a second appeal. I am therefore

supposed to deal with questions of law only. It is settled principle that the second appellate court can only interfere where there was a misapprehension of the substance, natural, or quality of the evidence. This has been the position of the law in this country; see **Salum Mhando v Republic** [1993] TLR 170. Similarly the same was held by the Court of Appeal of Tanzania in **Nurdin Mohamed @ Mkula v Republic**, Criminal Appeal No. 112 of 2013, Court of Appeal of Tanzania at Iringa (unreported).

In determining the appeal, the central issue is *whether the appellant had sufficiently advanced reasons to warrant this court overrule the findings of the District Land and Housing Tribunal for Mwanza*.

With regard to the first ground of appeal that the trial tribunal erred in law to rely on contradictory evidence, I have perused the trial tribunal records and found that there was no any contradiction as claimed by the appellant all respondents testimonies were clearly articulated. I had to compare their evidence adduced at the District Land and Housing Tribunal for Mwanza and found that the

respondents' evidence was the same as testified at the trial tribunal. The first respondent testified that he was allocated the suit land in 1974 and his witnesses testified the same. They argued that at the time of Villagization the Village Government allocated the piece of land to many people including the respondents and the appellant. The 2nd respondent testified that he bought the suit land in 2004 and the sale agreement was tendered and admitted by the trial tribunal. The 3rd respondent testified that her mother was allocated the said plot in 1974. Therefore, I find this ground demerit.

Addressing the second of appeal, the records show that the 1st respondent tendered a document titled 'Complaints on Land Dispute'. The complainer was the appellant against the respondents. In solving the appellant's complaint, the Village Executive Officer decided per the matter by referring the Government Notice of 1974 " Operation Vijiji" the Village leaders confirmed that the respondents occupied the disputed land in 1974 and that the Ward Administrative Officer of Kabita had no power to remove the respondents from the disputed area which they acquired in 1974. Thus the respondents were allowed to cultivate and own the said land. The document bears an official

stamp and it was signed by Ward Administrative Officer of Kabita the same suffice to prove that the document was genuine and valid.

On the third ground of appeal, as I have addressed the second ground of appeal in length, it is clear that the appellant did not prove his claims to overshadow the respondents. Each of them had a piece of land thus the appellant could not prove that he was the owner of the suit plots.

Concerning the fourth ground of appeal, the appellant testified how the land ended in his hands from his father. The respondents also proved how they acquired and occupied the suit land from 1974. As rightly pointed out by the first appellate tribunal that the appellant filed his claims in 2006 while the respondents occupied the suit land back in 1974. The respondents proved that they were legal owners of the suit plots. The 1st respondent proved his ownership by tendering a Village Executive Officer decision which bears an official stamp and it was signature of the Ward Administrative Officer of Kabita. Therefore this ground is demerit.

The 2nd respondent also proved his ownership by tendering a letter dated 12th April, 2004 titled Sale Agreement to prove that he legally bought the suit plot in 2004 from one Kija. The 3rd respondent claimed that in 1974 her mother was allocated the said plot by the Village Committee and her mother cultivated the said land since 1974. After the death of her mother in 1984 the 3rd respondent continued to cultivate the plot until 2006 when the appellant filed a claim against her. Furthermore, the 1st witness of the 1st respondent testified that the land belonged to the 1st respondent since 1974 when Operation Vijiji declared that all land is public land thus the respondents were given a portion including the appellant.

Subsequently, I am satisfied that in the present case there are no extraordinary circumstances that require me to interfere with the District Land and Housing for Mwanza findings of fact since the appellant has failed to prove his ownership of the suit plots. Therefore, the respondents' evidence overweighed the appellant's evidence as it was held in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113.

Based on the foregoing analysis and circumstance of this case, I uphold the decision of the District Land and Housing Tribunal for Mwanza and proceed to dismiss the appeal on its entirety without costs.

Order accordingly.

Dated at Mwanza this date 11th day of June, 2020.


A.Z.MGEYEKWA

JUDGE

11.06.2020

Judgment delivered on 11th day of June, 2020 via audio teleconference and the appellant was remotely present.


A.Z.MGEYEKWA

JUDGE

11.06.2020

Right of Appeal full explained.