

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT SUMBAWANGA**

LAND APPEAL NO. 26 OF 2019

*(From the Decision of the District Land and Housing Tribunal of Rukwa
District at Sumbawanga in Land Application No. 2 of 2017)*

JENIFRIDA D/O WANCHELELE.....APPELLANT

VERSUS

1. LEUS NGOMENI

2. KISINZA LESA

3. MADIRISHA LUTUMBI

4. JOSEPH NJEGERE

5. DATUS KAOZYA

6. PATRICK LYAMBISI

7. OSWARD MWANANJELA

8. AUGUSTINO MLANDAULA

9. ALCADO SANGU

10. MSAFIRI ZENGO

11. AMOSI NDUNJAGE

.....RESPONDENTS

JUDGEMENT

11st December 2019 – 13th February, 2020

MRANGO, J

This appeal arises from the decision of the Rukwa District Land and Housing Tribunal at Sumbawanga in Land Application No. 2 of 2019.

The appellant and the respondents in this matter at hand are battling over land ownership measured 63 acres whereas both camps claim to be rightful owner of the said land in dispute.

The respondents Leus Ngomeni and 10 others emerged the victorious camp in this battle and they were declared the rightful owner at the District Land and Housing Tribunal of Rukwa. The appellant being aggrieved by the decision of the trial tribunal preferred this appeal to this court so as to challenge the decision made by the District Land and Housing Tribunal which was delivered on 19/08/2019. The appeal is therefore against the whole judgment and decree/order made by the Rukwa District Land and Housing Tribunal on the following grounds:-

- 1. That the Tribunal Chairperson erred both in law and fact in deciding that the deceased one Paschal Wanchelele sold his land without any proof to that effect and hence reaching to the wrong decision.**
- 2. That the Tribunal Chairperson erred in law and fact in deciding on the favour of the respondents basing on the facts that others own the said land customarily without any**

evidence to support the same and hence reaching to the wrong decision.

- 3. That the Tribunal erred in law by holding that the sale agreement dated 10. 8. 2002 is valid while there was no spouse consent of the appellant mother attached with it.**
- 4. That the Tribunal Chairperson erred in law and fact in failing to consider the evidence of the wife of the deceased Paschal Wanchelele one NOWELIA MASANJA who testified that she does not know as to whether her husband sold disputed land thus she did not consent as the same is a matrimonial property and hence reaching to the wrong decision.**
- 5. That the Tribunal Chairperson erred in law and fact in failing to analyse completely the evidence given by the applicant and her witnesses and hence reaching to the wrong decision.**
- 6. That the tribunal Chairperson erred in law and facts in believing the sale agreement witnessed by the Village Executive Officer who is not a custodian of the village land as the same is under a custodian of village chairperson and hence reaching to the wrong decision.**

7. That the tribunal Chairperson erred in law and facts in giving the right over a disputed land to some of the respondents who even failed to defend their case that they even not gave evidence on how they come into possession of the said land and hence reaching to the wrong decision.

8. That the tribunal Chairperson erred in law and facts in being biased. (Copies of the Judgement and decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga Application No. 38/2012)

When this appeal was called on for hearing both camps appeared in person, meaning they were unrepresented. The appellant prayed for the court to adopt her grounds of appeal and she had nothing to add, the same to all the respondents as they also prayed for the court to adopt to their jointly reply they had filed and they had nothing to add.

Having gone through the submissions made by both parties, I have observed that the main issue for determination by this court is whether this appeal is meritorious. The grounds of appeal are therefore dealt together as hereunder.

The appellant claimed in her grounds of appeal that the tribunal erred in law and fact in its decision to declare the respondents as lawful owner of the land in dispute for the fact that respondents did not prove how the land in dispute got into their possession and that the wife of the deceased did neither consent to the sale agreement nor was she aware of the sale of the land in dispute has claimed by the respondents that it was done by the deceased (his husband).

In response to the applicant's grounds of appeal, the 1st, 2nd, 3rd, 4th, 5th, 6th, 8th, 10th and 11th respondents jointly replied to the applicant's grounds of appeal that they were lawful owners of the suitland as they purchased the same from the late Paschal Wanchelele. As for the 7th and 9th respondents, they claimed to own the Suitland customarily since 1962.

In dealing with the grounds laid down by the applicant I would firstly quote Section 110 (1) of the Law of Evidence Act Cap 6 R.E 2002 which states as follows;

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

At the trial tribunal, the records show that the applicant claimed to be the owner of the Suitland as she is the administrator of the deceased's (her late father) land. Furthermore, among the witnesses summoned by the applicant at the trial tribunal was the wife of the late Paschal Wanchelele and her testimony was that her husband died and left her with the suitland, and in cross examination she insisted that the suitland was not sold at any point by her late husband and if it was sold she would have known the sale.

On the other hand, eight (8) respondents as they were defending the suit at the trial tribunal tendered sale agreements between each of them and the late Paschal Wanchelele and to add salt on the wound, they summoned witnesses who were present during the sale between each of them and the late Paschal Wanchelele. As for the 7th respondent, he claimed to inherit the suitland from his late father who owned the same since 1962 and for the 9th respondent, he owned the suitland since 1962.

On perusal of the trial tribunal's records, there was no proof tendered neither by the appellant nor her witnesses that proved contrary to the defense of the respondents that they obtained the suitland by way

of purchase from the deceased and by way of customary ownership as far as the 7th and 9th respondents are concerned, hence the decision reached by the trial tribunal as learned Chairperson stated in her judgment that and I quote;

"The evidence on defence side shows that the respondents are occupying the suitland prior to 2016 when the applicant's father died.....,

.....the late Paschal Wanchelele sold his land before he died thus the suitland is not part of estates of the late Paschal Wanchelele."

However, the fact that the wife of the deceased testified at the trial tribunal that the suitland was not sold and if it was sold it was not under her consent, to me I believe this claim to be afterthought in attempts of trying to persuade this court that the ownership of the suitland by the respondents is acquired by fraud. In my view, the wife of the deceased had the chance to sue the respondents for trespass before the administrator was chosen or even before the suit was instituted at the Mtowisa Ward Tribunal for want of ownership over the suitland. In addition to that, it is cardinal principle of the law that, the onus of proving any allegations lies

on the side of the person who brought the said allegations to life. [See **SABAS BASIL MARANDU & ANOTHER v. REPUBLIC** **Crim. App No. 299 of 2013 CAT**]. Therefore, the claim brought to life by the wife of the deceased has to be proven by her that the suitland was a matrimonial asset and that she never knew it was sold by her husband.

Conclusively, I have not seen a misdirection or non-direction on the evidence by the trial tribunal that this court can interfere, I cannot do anything as it was stated in the case of **Materu Leison & Another V. R. Sospeter [1988] TLR 102** as per **Moshi, J** as he then was;

“Appellate court may in rare circumstance interfere with the trial court findings or facts. It may do so in instances where trial court has omitted to consider or had misconstrued some material evidence, or had acted on wrong principle or had erred in its approach in evaluating the evidence”

I am also aware that the Court of Appeal of Tanzania held in **Ali Abdallah Said V. Saada Abdallah Rajab [1994] TLR 132** that;

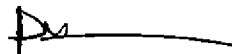
“Where a case is essentially on one fact, in the absence of any indication that the trial court failed to take some

material point or circumstance into account, it is improper for the appellate court to say that the trial court has come to an erroneous conclusion. Where the decision of a case is wholly based on the credibility of the witnesses then it is the trial court which is better placed to assess their credibility than an appellate court, which merely reads the transcript of the record."

It is therefore, my finding that this appeal, is not fitting occasion for me to interfere with the trial tribunal findings, and for the foregoing reasons, I find no merit in this appeal.

It is hereby dismissed.

I make no orders as to costs.



D. E. MRANGO

JUDGE

13/02/2020

Date - 13.02.2020
Coram - Hon. J. O. Ndira – Ag. DR.
Appellant
1st Respondent
2nd Respondent
3rd Respondent
4th Respondent
5th Respondent
6th Respondent
7th Respondent
8th Respondent
9th Respondent
10th Respondent
11th Respondent
B/C - Mr. A.K. Sichilima – SRMA

All present

COURT: Judgment delivered this 13th day of February, 2020 in presence of all parties.

Right of appeal explained.


J. O. NDIRA

AG. DEPUTY REGISTRAR

13.02.2020