

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

MISC. LAND APPEAL NO. 04 OF 2017

(Arising from Misc. Land Application No.113 of 2016 of the District Land and Housing Tribunal of Maswa at Maswa)

SAYI BUBINZA.....1ST APPELLANT

MAGUMBA BUBINZA.....2ND APPELLANT

YUNIS MAKWAYA.....3RD APPELLANT

MASAKA GAGA.....4TH APPELLANT

MANGU KAZILO.....5TH APPELLANT

Versus

MARCO MAGESE.....RESPONDENT

Date of Last Order: 21/11/2019

Date of Judgment: 30/01/2020

JUDGMENT

C. P. MKEHA, J

The present appeal traces its genesis from Land Application No.34 of 2009 of the District Land and Housing Tribunal of Shinyanga. Before the said Tribunal, the appellant and thirteen (13) other persons preferred an

application seeking an order that would restrain the respondent from claiming ownership over the disputed land. The appellants further asked to be declared legal occupiers/owners of the suit land. At the end of trial, the appellants' claims were dismissed for want of merit. The respondent emerged victorious. It was held that, the respondent was entitled to occupy and use the suit land without interruptions from the applicants.

Following the trial tribunal's decision, the respondent filed an application for execution in view of evicting the appellants. The said application was registered as Miscellaneous Land Application No.19 of 2011. The appellants attempted to resist execution of the trial tribunal's decree. Two points of preliminary objection were raised by the appellants that, the application for execution was res subjudice and that the documents relied upon by the respondent to procure the decree which was about to be executed were all forged documents. Both points of preliminary objection were overruled for not being meritorious. That was on 31/01/2013.

The appellants appeared to be dissatisfied with the trial court's order dismissing the preliminary points of objection. They therefore preferred a Revisional Application before the High Court. The same was registered as Land Case Revision No.1 of 2013. On the 10th day of April, 2014, the said

application was dismissed by the High Court, Tabora Sub Registry, for want of prosecution. The appellants took no further step to restore the dismissed Application or otherwise.

Then on 25-07-2016, the appellants filed an application before the District Land and Housing Tribunal of Maswa asking the Tribunal to review the decision and proceedings in Land Application No.34 of 2009 of the District Land and Housing Tribunal of Shinyanga. According to the appellants, they had found new evidence that might affect the whole proceedings in respect of Land Application No.34 of 2009 of the District Land and Housing Tribunal for Shinyanga. The Tribunal held that, there was nothing new to attract alteration of the decision in Land Application No.34 of 2009. It is the appellant's grievances in respect of the said decision in Miscellaneous Land Application No.113 of 2016, that prompted the present appeal. The appeal consists of four grounds as hereunder:

1. That, the learned District Tribunal Chairman erred in law and in fact by failure to evaluate and analyze the appellant's evidence, hence the District Tribunal violated a principle of natural justice of fair hearing.
2. That, the learned District Tribunal Chairman erred in law and in fact that, PW2 and PW6 testified sufficiently since PW6 was present on

the material year (sic) as a member of Ihusi Village Committee who was a proper witness to resolve the dispute as he was the one who knew the matter.

3. That, the learned District Tribunal Chairman erred in law by giving a judgment which lacks elements that constitutes a clear judgment that enabled the District Tribunal to reach such decision (sic).
4. That, the learned District Tribunal Chairman erred in law and in fact to determine the matter which which has no jurisdiction to determine as the subject matter's pecuniary value was above the District Land and Housing Tribunal's jurisdiction.

The second appellant did not appear for hearing of the appeal. He lastly appeared in court on 23/02/2017 when he asked for adjournment in view of settling the matter with the respondent out of court. The other appellants appeared unrepresented during hearing of the appeal. The appellants' submissions revolved around the first ground of appeal. That, the District Land and Housing Tribunal had failed to evaluate and analyze the appellants' evidence thereby violating a principle of natural justice relating to fair hearing.

To be specific, it was the first appellant's submission that, the trial Chairperson did not properly analyze evidence of the appellants. The first appellant referred the court to the testimony of one Kamando Kadashi.

The third appellant submitted that, the Village Committee refused to have allocated the disputed land to the respondent.

The fourth appellant's brief submission was to the effect that, the disputed land belonged to the appellants.

The fifth appellant submitted that, the respondent was a mere trespasser to the disputed land. He then added that, the Village Committee refused to have allocated the disputed land to the respondent.

It was the respondent's reply that the dispute had been resolved before the High Court and that the appellants' claim was not proved. The respondent asked the court to dismiss the appeal.

Nothing significant emerged from the appellants' rejoinders. The three other grounds of appeal were silently abandoned by the appellants. As such, determination of the first ground of appeal will suffice to dispose of the appeal.

The only issue for determination is **whether there was new evidence warranting alteration of the tribunal's decision in Land Application No.34 of 2009.**

It was the appellants' contention that the Tribunal had failed evaluating and analyzing evidence that would have earned them (the appellants), victory. Was there such evidence? Indeed, the appellants' Chamber Summons which initiated Miscellaneous Land Application No.113 of 2016 indicated that the applicants/appellants had found new evidence that might affect the whole proceedings in Land Application No.34 of 2009. However, the applicants' joint affidavit did not point specifically to any such new evidence. Instead of confining themselves to the said new evidence if there was any, the applicants adduced fresh evidence before the District Land and Housing Tribunal. That was not the purpose for which the application for review was filed. The Tribunal ended up conducting a new trial.

In the case of **TARMOHAMED AND ANOTHER VS LAKHANI & CO (1958) EA 567** the then Court of Appeal for Eastern Africa held that, "to justify reception of fresh evidence or a new trial, three conditions must be fulfilled: **First**, it must be shown that the evidence could not have been

obtained with reasonable diligence for use at the trial; **Second**, the evidence must be such that, if given would probably have an important influence on the result of a case, although it need not be decisive; **Third**, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible...”

Therefore in the absence of proof of existence of the three conditions listed in the above cited authority, the Tribunal had no justification of receiving fresh evidence or conducting a new trial.

The aforementioned error on part of the Tribunal notwithstanding, there was nothing new found in the appellants’ so called new evidence that would attract alteration of the decision in Land Application No.34 of 2009.

See: Pages 9 & 10 of the tribunal’s judgment in Land Application No.34 of 2009 as well as pages 8 & 9 of the tribunal’s decision in Miscellaneous Land Application No.113 of 2016.

The appellants did not specifically refer to any such evidence during hearing of the present appeal.

For the foregoing reasons, the appeal is held to be devoid of merit. The same is dismissed. Parties to bear own costs.



C. P. MKEHA
JUDGE
30/01/2020

Dated at **SHINYANGA** this **30th** day of **January, 2020.**



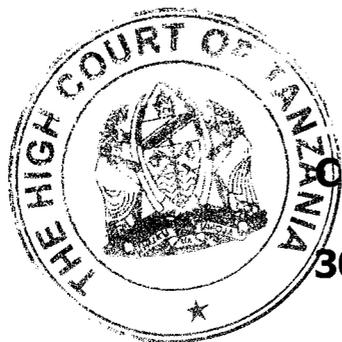
C. P. MKEHA
JUDGE
30/01/2020

Court: Judgment is delivered in the presence of the parties.



C. P. MKEHA
JUDGE
30/01/2020

Court: Right of further appeal to the Court of Appeal of Tanzania is fully explained.



C. P. MKEHA
JUDGE
30/01/2020