IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 27 OF 2020

(Arising from Land Appeal No 59 of 2019 of the District Land and Housing Tribunal of Tarime at Tarime. Original Land Case No 23 of 2018 of Tai ward tribunal of Rorya)

IDI TANU .....APPELLANT

Versus

OBILO NYAMSANGYA ..... RESPONDENT

JUDGMENT

6th & 24th July, 2020

Kahyoza, J.

Obilo Nyamsangya sued **Idi Tanu** before the village council of Masonga. He complained that Idi Tanu intended to sell piece of land and build a house on the trespassed land (disputed land). The village council heard the dispute and reserved a decision. Purporting to act for the village council, the village executive officer gave a decision that the disputed land belonged to **Consolota Suba**. **Consolota Suba** is the grandmother of Idi Tanu, the appellant.

Aggrieved, **Obilo Nyamsangya** approached the Tai ward tribunal complaining against the decision of the village council. Some of the members of Masonga village council also complained that they participated in the hearing of the disputed but the decision was reached by the village executive officer alone.

Tai Ward Tribunal decided in favour of the Obilo Nyamsangya that the disputed land belonged to Osodo Ng'wina and not to Suba Oigo Kateti the late husband of Consolata Suba. Idi Tanu's titled stems from Consolata Suba's title.

Dissatisfied Idi Tanu appealed to the District Land and Housing Tribunal **(DLHT).** The **DLHT** uphold the decision of the Tai ward tribunal. Idi Tanu raised five grounds of complaints as follows -

1. That the District Land and Housing Tribunal for Tarime was biased and erred in law and fact to dismiss the Appellant's Appeal while he knew that the disputed over land having first been lodged and determined by the village land council, it was not proper for the respondent who was aggrieved by the decision of the council to preferring a fresh Application No.23 of 2018 in the tribunal instead of prefer the reference of disputed to the Ward Tribunal in accordance with section 9 of the Land Dispute Court Act.[Cap 216 and section 62 of the village Land Act [Cap. 114 R.E.2019].
2. That the district land and Housing Tribunal for Tarime erred in law and fact for failing to consider the evidence and decision of the Masonga Village land Council, Tai Ward in Rory District that the land in dispute is the property of the Appellant who inherited the land in disputed before and after the death of Tanu Suba (father of the Appellant) who died 1997 and not the respondent who is a trespasser onto the appellant's land (sic).
3. That the trial chairman of the District Land and Housing Tribunal for Tarime was biased and erred in law and fact for failure to follow the procedure for writing the Judgment, because when you

read the judgment Land Appeal NO. 59 of 2019 the trial chairman failed to state the Land Appeal No. 59 of 2019 were arising from which courts/tribunal and which decision from as well as a case number of the lower courts/tribunal, this is proving that the chairman and their assessors was biased the eye of law.

4. That the District land and Housing Tribunal for Tarime erred on point of law to dismiss the Appellant's case without giving any good reasons but merely relying on hearsay from the respondent while he knew that the land in dispute is the property of the Appellant since when he was born until now. The respondent is the person who is no any relationship with the Appellant or Consolata Suuba's family according to the land in dispute (sic).
5. That the chairman of the District Land and Housing Tribunal for Tarime misdirected himself on point of law and fact to believe the hearsay from the respondent that he is the lawful owner of the land in dispute for failure to use on (sic) Bi. Consolata Suba who she is my grandfather and she still alive and she is living in the land in dispute.
6. That the copy of judgment was applied for in time and the same was availed to the Appellant on 13th day of January, 2020. Therefore the Appeal is in time.

This is a third or second appeal. As shown above the dispute commenced in the village council. Later, the respondent referred the dispute to the ward tribunal. It finally found its way to the **DLHT**. One would have expected that the issues of facts are settled. Unfortunately, the facts of this matter are not settled.

I discerned from the record that there is overwhelming evidence that the disputed land belonged to Ossodo Ng'wina. Ossodo Ng'wina gave the land to Oigo for cultivating. The evidence shows that it was Rebecca, Oigo's wife who requested the land for cultivating crops from Ossodo Ngw'ina. Rebecca was Oigo's wife. Ossodo Ngwina died in 1953 and was buried in the disputed land. After Oigo's death, his son Suba Oigo Kateti took over. The late Suba Oigo Kateti was the husband of Consolata Suba, the appellant's grandmother. The late Ossodo Ng'wina settled to the disputed land before Operesheni vijiji and there is no evidence on record that Operation Vijiji disturbed the occupation or ownership of the disputed land. It is also not disputed that Oigo was invited at the disputed land before operation vijiji.

It is from the above evidence the ward tribunal found for the respondent. The appellant's appeal to the **DLH**T was not successful on the ground that the appellant contended that disputed land did not belong to him and that it belonged to his grandmother. The appellant sought to convince this Court that the ward tribunal was biased because it entertained a fresh application instead of hearing a reference as the matter commenced in the village council. He contended that that act was against section 62 of the **Village Land Act**, [Cap. 114 R.E. 2019].

I examined the record to find out if this ground of appeal was raised before the first appellate tribunal. I found that the appellant complained against the procedure adopted by the ward tribunal for the first time before this Court. It is the general principle that an appellate court cannot consider or deal with issues that were not canvassed, pleaded and not raised at the lower court. See the case of **Farida and**

Another v. Domina Kagaruki, Civil Appeal No. 136/2006 (CAT unreported).

Further, the Court of Appeal has, times without number taken the position that it will not look at new grounds of appeal. See the case of **Hassan Bundala @ Swaga v. Republic,** Criminal Appeal No. 386 of 2015 (CAT unreported) where it held-

> *"It is now settled that as a matter of general principle this Court will only look into the matters which came up in the lower courts and were decided; and* ***not on new matters which were not raised nor decided by neither trial court nor the High Court on appeal.***

Applying the above principle to the facts of this case, I find that the issue whether the procedure adopted by the ward tribunal adopted was proper or otherwise is new, the appellant did not raise before it the ward tribunal or before the **DLHT**. For that reason, this second or third appellate Court cannot entertain it. I dismissed the first ground of appeal.

The appellant alleged that the **DLHT** failed to evaluate the evidence and find that the disputed land belonged to his late father Tanu Suba. The respondent resisted the allegation contending that the tribunal evaluated the evidence properly.

I have already pointed out that the **DLHT** and the ward tribunal found in favour of the respondent on facts. I find no reason to disturb the concurrent findings on facts of two lower tribunals. It is trite law that a second appellate court should not disturb the concurrent findings of facts unless it is clearly shown that there has been a

misapprehension of the evidence or a miscarriage of justice or a violation of some principle of law or practice. This principle was propounded in the case of **Hamisi Mohamed V. R.**, Criminal Appeal No. 297 OF2011 (CAT unreported).

I see no reason for disturbing the findings of the two lower tribunals. Not only that but also, even if, I was to examine the facts critically I would have found for the respondent. The evidence on record shows that Mzee Oigo, the father in law of Consolata Suba who is the appellant's grandmother, was invited and licensed to use the disputed land by Ossodo Ng'wina. Ossodo Ng'wina licensed Mzee Oigo's wife Rebecca to cultivated the disputed land. There is evidence that Mzee Oigo did not build on he disputed land until after Ossodo Ng'wina passed away. It means he knew he was a mere lisencee. It is the principle of law that once an invitee or lisencee always an invitee or a lisencee. An invitee or a lisencee cannot acquire land by adverse possession whatever the period of time he remained on that land. Since the appellant traces title from Mzee Oigo, he cannot have a better title than what his predecessor had against Ossodo Ng'wina. See the case of the **Registered Trustees Of Holy Spirit Sisters T. Vs January Kamili** www.tanzlii.org. [2018] TZCA 32, where the Court of Appeal held by quoting with approval the decision in the Kenya case of **Mbira v Gachuhi** [2002] 1 EA 137 (HCK) that-

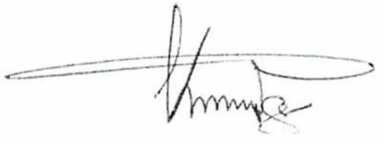
> *"The possession had to be adverse in that occupation had to be inconsistent with and in denial of the title of the true owner of the premises;* ***if the occupiers right to occupation was derived from the owner in the form of permission or agreement; it was not adverse.***"

I considered thoroughly the fourth and fifth grounds of appeal and came to the conclusion that they are baseless. The record shows that the **DLHT** found in favour of the respondent on the reason that the appellant refuted to own the disputed land. The **DLHT** was right to make that determination. The appellant was the one who was constructing a house on the disputed land. He then made a U-turn and contended that the land did not belong to him. The tribunal had no reason not to hold that the disputed land did not belong to him.

On the fifth ground of appeal, the appellant contended that the **DLHT's** based its decision on hearsay evidence. This ground of appeal is meritless. There is ample evidence on record that the disputed land belonged to Ossodo Ng'wina. The respondent traces tittle from Ossodo Ng'wina. For that reason; the respondent has a better title to the disputed land than the appellant.

Eventually, I find that the father in law of the appellant's grandmother was licenced to cultivate the disputed land, he could not acquire title to that land by adverse possession. The disputed land remained the property of Ossodo Ngwina, regardless the period Oigo's family occupied it. I uphold the decision of the two tribunals below the disputed land belongs to respondent. I find that the appeal is meritless and dismiss it with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
24/7/2020

Court: Judgment delivered in the presence of the parties. Right of appeal explained. B/C Ms. Tenga present.

J. R. Kahyoza
JUDGE
24/7/2020