

**IN THE HIGH COURT OF THE UNITED  
REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF TANGA  
AT TANGA**

**LAND APPEAL No. 28 OF 2018**

[Arising From the Decision of the District Land and Housing Tribunal of  
Korogwe District at Korogwe in Land Case No. 81 of 2011]

**BETWEEN**

**HAMISA ATHUMAN** (As administrator of the Estate of the late  
**Halima Athman**).....**APPELLANT**

**Versus**

**HALIMA MOHAMED** (As administrator of the Estate of the  
Late **Tasina Kimela**).....**RESPONDENT**

**JUDGMENT**

**MRUMA, J.**

In the District Land and Housing Tribunal of Korogwe District at korogwe, the Respondent **Halima Mohammed** (as an administrator of the estate of the late Tasini Kimela) sued the Respondents **Hamisa Athman** (as an administrator of the estate of the late Halima Athman) for trespass to land, seeking a declaration that the Appellant was a trespasser on the Respondent's land on Plot No 7E at Mombo township in Korogwe District, an eviction order evicting the Appellant from the suit land an order of vacant possession and order for compensation for illegal trespass and costs of the suit.

The Appellant's case was that sometimes in the year 2008 the late Halima Athman trespassed into her land situated on Plot No. 7E Mombo area in Mombo Township within Korogwe District and fraudulently changed the Plot number and went there with her agents for the purposes of selling it to third parties.

In her written statement of defence, the Respondent refuted the Appellant's claim and instead she contended that the late Halima Athman never trespassed onto the alleged property and or changing the registration number or selling it through the purported agents. The Respondent stated further that the suit land is not on Plot No.7E as suggested by the Appellant but it was on Plot No. 7 Block E Mombo Small Township. The Respondent further contended further that neither the Appellant Halima Mohammed nor the late Tasini Kimela had in any material time during her life time owned the suit land.

During the trial the Respondent testified herself as AW1 and she didn't call any witness. On the other hand apart from herself, the Appellant Hamisa Athman who testified as RW1, called one witness Bakari Shabani who testified as RW2.

In her evidence before the trial tribunal the Respondent Hamisa Athman (A.W.1) testified that the place where she was living at the time she was giving her evidence was part of the plot which her late mother Tasina Kimela bought from one Hamis Rubojo in 1966. In 1980 the land was surveyed and her

mother was given a letter of offer of a Right of Occupancy (Exhibit A3), and started to pay land rents (Exhibit A2) to Korogwe District Council. In 1990 her mother fell sick suffering from mental problems. She however, continued to pay land rent up to 2010 when her mother passed away. Later on she got a complaint from the Appellant that the suit belonged to her. The Appellant successfully sued the Respondent in the Ward Tribunal of Korogwe. The Respondent was aggrieved and she successfully appealed to the District Land and Housing Tribunal of Korogwe District. The Appellant appealed to this court in Land Appeal No. 34 of 2017 (Exhibit A1).

In its judgment this Court (Benhajj S. Masoud J), ordered the matter to be tried de novo by a different chairperson. The matter was accordingly re-assigned to hon. Mangure who heard it. This appeal emanates from the Judgment of Mangure, learned Chairperson.

In cross-examination the Respondent told the trial tribunal that she paid rent up to the year 2000 when her mother fell sick and she didn't pay up to the date she was testing before the trial tribunal due to financial constraints. She told the tribunal that the plot in dispute was bought as a single room house but in 1972 she constructed three more rooms including a sitting room. She told the trial tribunal that on the frontal part of that plot she constructed a four roomed foundation. She said that her mother enjoyed quite possession of the disputed

plot from 1966 to 2008 when she was sued by the Respondent in the Ward Tribunal.

In her defence before the trial tribunal the Appellant herein Hamisa Athuman R.W.1 (the Respondent therein) who was 92 years old at the time she gave her evidence, told the trial tribunal that the suit plot belonged to her late father one Athman Mwinyimkuu who acquired it by clearing unoccupied land. She said that her father invited one Hamis Ruhoja an old man who had no place to stay, to live in one of the huts. According to the Appellant it is that hut that the Respondent herein claim her mother Tasina Kimela to have bought from the said Hamis Ruhoja. It was further evidence of the Appellant that there were three huts in that plot and his father Athman Mwinyimkuu was living in one of them. She said that later on Hamis Ruhojo started to live with Tasina Kimela (i.e. the Respondent's mother) before he was sent back to his home village in Lindi Region, leaving the Respondent's mother in that hut.

It was further evidence of the Appellant that at one time her father wanted the Respondent's mother to vacate, but she refuse. She stayed there for a long time till all the Appellant's fathers had passed away.

According to the Appellant it was after the death her father that the Respondent's mother started to claim that she had a letter of offer over the disputed land and she instituted a land dispute before a Ward Tribunal where she lost. She

appealed to Mombo Primary Court where she lost again and she never appealed instead she filed a land application before the District land and Housing Tribunal of Korogwe District where it was decided that both parties should stay where they are and the land should be resurveyed.

According to the Appellant was aggrieved and she appealed to this court in Land Appeal No. 34 of 2017 where a trial de novo was ordered. She said that during the trial she tendered in evidence payment receipts (Exhibit R2) indicating that her late father was paying land rents for the disputed suit since way back in 1940s.

In the trial tribunal the Appellant called one witness Bakari Shabani R.W.2 who testified that he knew the Respondent's father one Mzee Athman MwinyiMkuu as his neighbour and owner of a plot adjacent to his own house. He told the trial District tribunal that the land does in dispute does not belong to the Respondent's mother but to the Appellant's father who acquired it by clearing vacant land and he constructed three huts and a mosque on that land.

He further told the trial triubunal Mzee Athman Mwinyimkuu invited one Mzee Hamis Ruhojo who was sleeping in the mosque to live in one of those huts. Later on Mzee Hamis Ruhojo got a woman (i.e. the Respondent's mother) and lived with her in that house. After Mzee Athman Mwinyimkuu had passed away, Hamis Ruhojo was followed by his relatives who took him to his home village in Lindi. The Respondent's

mother refused to go with him so she was left in the hut she was living with Mzee Hamis Ruhojo. Later on Abrahaman Mwinyimkuu who was a brother of Athman Mwinyimkuu also died and when the daughters of Mzee Athman Mwinyimkuu Halima (deceased) and Hamisa asked the Respondent's mother to leave the suit plot she refused claiming that the disputed plot belonged to her.

It was further evidence of Bakari Shaban (R.W.2) that when the Korogwe Local Authority decided to survey Mombo Township in 1981, the Respondent's mother was found there and she was registered as the rightful owner thereof. When the Appellant and her sister Halima got information that the Respondent's mother had been registered as the lawful owner of that land they started paying land rent for the same land in 1985 thereafter they instituted a suit in the Ward Tribunal against the Respondent's mother Tasina Kimela and when she died, Halima Mohammed (the present Respondent) took over the matter.

When he was cross-examined RW2 stated that Hamisi Ruhoja started to live in the disputed house between 1971 and 1972 and he and started to live with Tasina, the Respondent's mother in 1972 and left in 1975 or 1976. He said that Halima Athman (deceased) had land rent receipts indicating that she was paying rents from 1940s up to 1998 and her registration was effected between 1993 and 1995. He further told the trial tribunal that when Halima Mohamed (the Respondent) moved

there she demolished the hut that Mzee Athman Mwinyimkuu had constructed in the plot and in its place she constructed a thatched mud house plastered with cement. She also constructed a toilet and sewage system and planted trees. According to R.W.2 at the time he gave his testimony the trees planted by the Respondent were big to the extent that one could extract timbers there from.

At the trial parties agreed on the following issues for the determination of tribunal;

1. Who is the lawful owner of the land in dispute and;
2. To what reliefs the parties are entitled to.

Having considered the evidence adduced, the District Tribunal found that from the testimony of R.W.2 the Respondent's mother started to live with Hamis Ruhojo in 1976/1977 or 1978 and that taking the last year of 1978 as the year she started to live with Hamis Ruhojo to 2018 when he gave his testimony before the tribunal, the Respondent's mother had stayed in suit premises for a period of over 40 years. That fact coupled with the fact that the Respondent's mother was allocated the suit land by the Local Government Authorities in Korogwe and there being no evidence that her allocation was ever revoked, the disputed land belonged to Tazine Kimela, the Respondent's mother.

The Appellant was aggrieved and he has appealed to this court on the following grounds:-

1. That the honourable chairman erred in law and in fact for not declaring the Appellant a lawful owner of the disputed land and failure to evaluate land rent receipts which show that the Appellant's father was the one who started to pay land rent on the suit land since 1930s;
2. That the honourable Chairman erred in law and in fact for not considering that the Respondent herein was allocated the suit land by way of misrepresentation.
3. That the honourable Chairman erred in law in deciding in favour of the Respondent without proof of sale agreement by the Respondent and transfer of the disputed land from the late Athman Mwinyimkuu to the invitee Hamis Ruhoja;
4. That the honourable Chairman and assessors erred in law and facts for considering the Respondent prolonged occupation (the applicant in the tribunal) and ignoring that the respondent was a trespasser living as girl friend to Hamis Ruhoja and;
5. That the trial tribunal erred in law and fact in entering a judgment without explaining the right of Appeal.



At the hearing of this appeal, the Appellant was represented by Mr. George Raphael, learned advocate and the Respondent appeared in person and was not represented.

Submitting in support of the first ground of appeal, Mr. Raphael contended that on the evidence on record, the Appellant's father Athman Mwinyimkuu was the original owner of the suit land and he paid Native House Tax, Sanitary rate and Ground rent No. 45224 of 27<sup>th</sup> November, 1941, No. 31016 of 29<sup>th</sup> March, 1940, No 88517 of 30<sup>th</sup> June, 1939, No. 16182 of 31<sup>st</sup> March, 1937, No. 45192 of 30<sup>th</sup> October, 1941, No. 45359 of 30<sup>th</sup> June, 1942, No. 88644 of 29<sup>th</sup> September 1939 and No. 45460 of 28<sup>th</sup> August 1942.

Further to that the learned counsel submitted that the Appellant and his sister were making follow-ups over the disputed land at very first when the Respondent's mother Tasini Kimela was allocated land on or around 1992 and later in 2008 when they successfully instituted a land dispute before Mombo Ward Tribunal.

Submitting in support of the second ground of appeal the learned counsel stated that the fact that the Respondent misled land officials that she was the owner of the disputed land was a misrepresentation therefore illegal in view of section 19(1) of the Law of Contract Act [Cap 345 R.E. 2002].

This being a first appeal, this court is under an obligation to re-hear the case by subjecting the evidence presented to the

trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion. This is because it is a well-settled principle that on a first appeal parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in case of conflicting evidence the appeal court has to make due allowance to the fact that it has neither seen nor hear the witnesses, it must therefore weigh the conflicting evidence and draw its own inference and conclusions.

The five grounds of appeal raised by the appellant will be considered jointly. The Respondent's case in the tribunal below was premised on the claim that the late Tasini Kimela had an offer letter of over Plot No. 7 Block E granted to him by the District Land office of Korogwe on 15<sup>th</sup> May, 1980 (Exhibit A.3). The offer letter reads:

"Plot No. 7 Block E. Mji mdogo Mombo.....

*Ukaguzi uliofanyika Kiwanjani Hapo imeonekana wewe ndiye mmilikaji wa Kiwanja hicho.*

*Kutokana na sheria za Ardhi Sura Na. 113 unatakiwa uhalalishwe kwa kupata Hati za Umilikaji wa Ardhi....."*

It is upon being granted letters of offer that the Respondent's mother started to pay land rent in respect of Plot No. 7 Block E Mombo Small town. There were land rent receipts before the trial tribunal (marked Exhibit A2) which

showed that the Respondent's mother paid land rents in respect of Plot No. 7 Block E Mombo small town.

The entire evidence adduced by the Appellant which was intended to establish that her father owned the suit land and that later on letters of offer was granted to her sister Halima Athuman (deceased) was to say the least most unsatisfactory. She claimed the late Halima Athuman to have been granted letters of offer (Exhibit R1) over the same Plot No. 7 Block B Mombo Township on 3<sup>rd</sup> August 1995, over fifteen years after the Respondent's mother grant. I have carefully examined the purported letter of offer. The offer letter reads:

*" Ndugu Halima Athman,*

*Salaam*

*Plot No. 7 Block E. Mji Mdogo Mombo*

*Rejea ombi lako la tarehe.....Kiwanja  
nilichokitaja hapo Juu*

*Kutokana na Kamati ya Kugawa Viwanja iliyoketi  
tarehe .....umekubaliwa kupata Kiwanja  
nilichokitaja hapo juu....."*

Together with that offer letter, the Appellant tendered land rent receipts indicating that between 1995 and 1998 she was paying land rent in respect of the same Plot. She also tendered in evidence payment receipts indicating that her father Athman Mwinyimkuu was paying Township Native

House Tax, Sanitary Rate and Ground Rent in 1930s and 1940.

The offer letter issued to the late Halima Athuman (Exhibit P1), suggests that it was issued to her upon an application. However, her application letter was neither referred in the grant nor was it tendered in evidence to support the claim.

Similarly the Native House Taxes, the Sanitary Rate and Ground Rent receipts tending to show that her late father was paying rents were in respect of "a house at Mombo". That house is not disclosed in the payment receipts tendered therefore it is hard to say that it was in respect of a house on Plot No. 7 Block E Mombo Township as the Appellant would like this court to believe.

Secondly, it should be noted that evidence of paying land rents or possession of receipts showing that one paid land rents in respect of a certain plot is not evidence of ownership of that plot.

It has been submitted for the Appellant that the trial tribunal erred in declaring the Respondent the rightful owner of the suit land without proof of sale agreement. The pleadings and evidence of the parties doesn't suggest that the Respondent's claim of ownership was based upon a sale agreement. It was based on allocation by the local authority

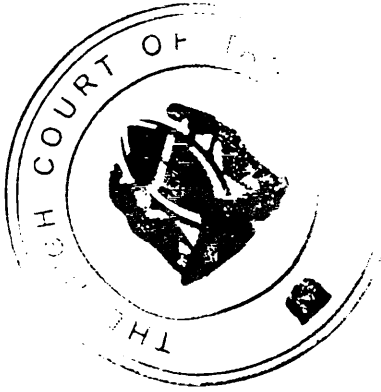
which allocation was proved by letter of offer tendered in evidence.


There was also an assertion that the Respondent's mother was a trespasser and she was in the land as a girl friend of Hamis Ruhojo. In the first place trespass was not established and the mere fact that she was a girl friend of one Hamis Ruhojo couldn't bar her from owning the suit land.

The last ground was that the learned chairperson erred in law and in fact for failing to explain to the parties the right of appeal. In the first place there is no law that mandatorily requires the trial magistrate, chairperson or judge to explain to the parties the right of appeal although in practice they do. Secondly the Appellant didn't expound how she was prejudiced by the alleged failure or whether she had suffered any injustice for the said failure.

Having re-considered the evidence on points as adduced by both parties, I find that plot No. 7 Block E. Mombo Township belongs to the late Tasini Kimela.

Accordingly the Appellant's appeal is without merits and it is dismissed with costs.



  
A.R. Mruma,

Judge.

**Dated at Tanga this 27<sup>th</sup> Day of January, 2020.**