

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IRINGA DISTRICT REGISTRY

AT IRINGA

LAND APPEAL NO.7 OF 2019

*(Originating from a decision of the District and Housing Tribunal for
Iringa at Iringa in application No. 95 of 2017)*

GEORGE NGANDO **APPELLANT**

VERSUS

BAKHITA SALUM ALLY **RESPONDENT**

Date of Last Order: 26/11/2019

Date of Judgment: 06/02/2020

JUDGMENT

MATOGOLO, J.

This is an appeal by one George Ngando after being aggrieved by the decision of the District Land and Housing Tribunal for Iringa at Iringa in Land case No.95 of 2017.

In the District Land and housing tribunal the respondent filed a suit claiming a piece Land located at Mazombe Chelesi B area in Kilolo District. That suit was decided in favour of the respondent thus against the appellant. He was aggrieved, hence this appeal on the following grounds of appeal:

- 1) *That, the Honorable tribunal erred in law and fact by reaching the decision without considering the doctrine of recent possession.*
- 2) *That, the honorable tribunal erred in law and fact by deciding in favour of respondent upon basing on weak evidence adduced by respondent.*
- 3) *That, the honorable tribunal erred in law and fact by deciding in favour of respondent by relying upon cooked evidence.*

He therefore prayed for the following reliefs;

- a) *That the decision of the learned Chairman of the District and Housing Tribunal be quashed in its entirety.*
- b) *That the appellant be declared the rightful owner of the suit land or the suit be heard de novo.*
- c) *Costs of this suit.*
- d) *Any other relief(s) that this court may deem fit, just and equitable to grant.*

This appeal was argued by way of oral submissions, and the parties appeared in person (unrepresented).

The appellant submitted that he was allocated the suit land in 1995 by the Village chairman and his Land allocating committee. The same year he planted trees, banana plants, and bamboo trees and other trees known as "miwengi". The appellant further submitted that he has been living on the

suit land for 26 years. In 2016 he was sued by the respondent at Mazombe Ward Tribunal claiming that the said suit land belongs to her. The appellant submitted further that during the hearing of this suit in the District Land and Housing Tribunal the village chairman who allocated him the land denied to have given the land to the respondent's father.

In reply the respondent submitted that it is not true that the appellant was allocated the suit land by the village chairman, the suit land was allocated to her father some years back in 60s. In 2011 and 2012 the appellant asked the village allocating committee to allocate her the piece of land. There was reallocation of people from Idemle who were allocated land at Mazombe. But the appellant choose to be allocated in their Land. The respondent further submitted that the appellant stayed in the suit land and he built a house on their land after he has demolished the hut that was standing there. The respondent concluded by arguing that the village chairman whom the appellant is saying allocated the suit land to him denied to have allocated the suit land to him but he said he only gave him a small piece of land and the swamp area. Hence the respondent prays before this court to dismiss this appeal.

In rejoinder the appellant submitted that if the respondent is the owner she could have title and he could not entered another's land. He argued that he was born at Mazombe village and he never seen the respondent's father or herself occupying the suit land and there is no evidence to show that he demolished the house of the respondent's father and built his house.

Having heard the parties in their submission and upon perusal of tribunal records, the crucial issue to be determined by this court is whether the appellant was in lawful possession of the suit land after being allocated to him.

The appellant complains that the District and housing tribunal erred in law and fact when decided the case in favor of the respondent. The appellant submitted that he was allocated the suit land from 1995 by the village Chairman of Mazombe and he managed to call one witness who testified before the District Land and housing tribunal that the Land the parties are disputing is of "Ujamaa". I have carefully perused the court records in regards to the appellant complaint. There is nowhere he established his allegations. It is a cardinal principle in civil cases that who alleges must prove, the same was held by this court in the case of ***Rock Beach Hotel Ltd Versus Tanzania Revenue Authority***, Civil Appeal No.52 of 2007 (unreported).

The appellant submitted that he was allocated the suit land by the village Chairman of Mazombe, but the village chairman had no authority to allocate the village land rather there is the village Land committee having such authority. It is my opinion that if the appellant asserts ownership to the suit land, he was required to bring even neighbors to his land to testify before the trial tribunal that the land belongs to him, but did not do so. It is my view that the suit land does not belong to the appellant as he failed to call his neighbours to testify in his favour. Failure to do so raises lots of questions, perhaps had they given evidence would have been against the

appellant's interest. The appellant's neighbours were material witnesses. Failure to call them as his witnesses this court may draw adverse inference against him as it was held in the case of ***Hemed Said Versus Mohamed Mbilu [1984] TLR 144***, where the court stated:-

"Where, for undisclosed reasons, a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to the party's interests".

It is my opinion that those neighbors were material witnesses whom, for undisclosed reasons the appellant failed to call as witnesses on his side.

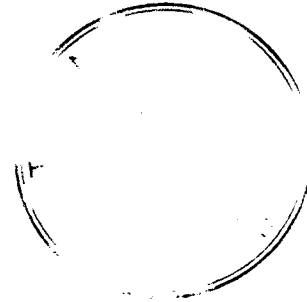
The respondent on her side submitted that the suit land belongs to her late father and the Trial Tribunal records reveal that the respondent called witnesses to testify among them is PW3, Joseph Samwel Nyoni being Village Executive Officer of Mazombe village in 2011 who testified that the appellant asked the land committee to confirm the land he was cultivating. PW3 stopped the village land committee from allocating the land as belongs to the late Salum and could not be distributed. Upon perusing the record I'm of the view that the evidence adduced by the respondent carries more weight than that of the appellant and the law is clear that in civil cases who alleges must prove and the standard of proof is always on the balance of probabilities. The appellant's evidence is scanty compare to that of the respondent. A party to the case whose evidence is heavier than

that of the other is the one who must win. This was also held in the case of ***Hemed Said Vs. Mohamed Mbilu*** (supra).

From the above reasons I'm satisfied that this appeal lacks merit the same is dismissed with costs.

DATED at **IRINGA** this 6th day of February, 2020.



F.N. MATOGOLO
JUDGE
06/2/2020



Date: 06/02/2020
Coram: Hon. F. N. Matogolo – Judge
Appellant: Present in person
Respondent: Present
C/C: Grace

COURT:

Judgment delivered.


F. N. MATOGOLO
JUDGE
06/02/2020

