

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISC. LAND APPEAL NO. 03 OF 2019

*(From Land Appeal No. 32 of 2017, District Land and Housing Tribunal of Kahama, Original Maluga
Ward Tribunal, Land Appl.No.2 of 2017)*

FRANK BUSONGO.....APPELLANT

VERSUS

MARTHA JOSHUA.....RESPONDENT

JUDGMENT

14/7 & 14/8/2020

G. J. Mdemu, J.:

This is a second appeal. In the Ward Tribunal of Maluga, the Appellant lodged a claim against the Respondent for encroachment of his plot. The evidence at the trial tribunal indicated the Appellant to have purchased the plot from Nyerere Chasama at the price of Tshs.400,000/=. As to the Respondent, the evidence is to the effect that, the disputed land is a clan land left by her late father. The Appellant thus purchased the land owned by her clan.

With this evidence, the trial tribunal on 19th of October, 2017 decided in favour of the Respondent in the following version:

"Baraza linamtambua mlalamikiwa Martha Joshua kuwa ni mmiliki halali wa eneo lenye mgogoro kwa kuwa mlalamikiwa ndiye aliyekuwa analimiliki kwa kulima mashamba ya kwa wakwe zake toka mwaka 1984 kwa majibu wa maelezo yake, majirani na ya Mwenyekiti wa Mtaa. Pia Mwenyekiti wa Serikali ya Mtaa aliwaambia wajumbe wa Baraza siku Baraza lilipotembelea na kuona eneo lenye mgogoro kuwa, eneo hilo ni la asili ya ukoo wa marehemu Nchiba na mlalamikiwa anavyo vielelezo vya mahakama ya mirathi ya mumewe.

Kutokana na kutokuwepo ushahidi wa upande wa mlalamikaji moja kwa moja eneo husika ni mali ya mlalamikiwa."

The Appellant was aggrieved by that decision, thus filed an appeal to the District Land and Housing Tribunal, which, on 22nd of March 2019 dismissed the appeal, thus confirming the decision of the trial tribunal. The Appellant was again not happy, hence filed the instant appeal on the following three grounds:

- 1. That the Ward Tribunal which determined the matter, instantly, has no jurisdiction according to the property value.*
- 2. That the judgment and decree of Land Appeal No.32 of 2017 Kahama District Land and Housing Tribunal*

-Hon. Paulo S. Lekamoi is impracticable, implementable, and unmaintainable at law for failure to reflect and describe the dimensions, boundaries, size, location and description of the suit property and the same has left rights of the parties inconclusively determined.

- 3. The District Land and Housing Tribunal erred in not analyzing the evidence before it, otherwise on the balance of probability.*

Parties appeared before me in person on 14th of July, 2020 arguing the appeal. Submitting in the first ground, the Appellant came up with an argument that, the trial tribunal had no jurisdiction because the value of the land was Tshs. 5,000,000/= He stated to have informed the tribunal but turned a deaf ear.

With regard to the other grounds of appeal, his view was that, his evidence was not considered especially the sale agreement. The Respondent had no any document, nevertheless, she was declared a winner. It was on those premises, she prayed to have his appeal allowed.

In reply, the Respondent submitted that, the Appellant is her neighbor and she precisely managed to identify boundaries at the trial tribunal. She further stated that, both tribunals declared her a winner on the evidence on record and that, the Appellant was supposed to sue a person who sold the plot to him. She also submitted that, the tribunal being the only body vested

with land matters, had jurisdiction. She thus found the appeal to lack merit and prayed the same be dismissed.

In rejoinder, the Appellant rejoined briefly that, when the tribunal visited the disputed land, he was able to show the boundaries, and that, Kitongoji Chairman witnessed the whole transaction. He also blamed the Respondent for not mentioning witnesses, allegedly to have witnessed the sale transaction. This was all from the parties.

In addressing the controversy as coached in the grounds of appeal, the major contention by the appellant is that, there is no evidence on record to prove ownership of the disputed land to the Respondent. What has to be resolved therefore is, *who is the rightful owner of the Suitland?* To answer this question, the evidence as was in the trial tribunal's record remains of relevance to be considered.

I should first resolve the first ground of appeal as submitted by the Appellant. This is none other than the question of jurisdiction. The claim raised by the Appellant is that, the Ward Tribunal had no jurisdiction because the value of the land was Tshs.5,000,000/=. He submitted to have raised this fact at the trial tribunal. However, my perusal to the record revealed nothing regarding this fact. In fact, there is no even scintilla of evidence showing value of the landed property. The Appellant himself is not certain on the value, because, much as there is no value of the landed property in evidence, his grounds of appeal to the DLHT was Tshs. 2,000,000/. In his submission in support of the 1st ground of appeal, he said

to be Tshs. 5,000,000/=. In it therefore, as the value of the land is not known, complaint of the Appellant on matters of jurisdiction remains unfounded.

Going to the 2nd and 3rd grounds of appeal, starting in ground two, the Appellant though did not submit on that, his major complaint appears to be on the contents of the judgment. I have gone through the judgment of the Appellate District Land and Housing Tribunal in which, after the Chairman has heard submissions from the parties, made the following observation:

The findings are hereunder:

- i. On the 28/08/2017 the Appellant herein filed complaint before the trial tribunal alleging that he is the lawful owner of the disputed land upon purchased from one Nyerere Chasama*
- ii. That the disputed land measured 30x15 meters and after the survey it became plot No.1464 Block L Malunga*
- iii. The disputed land was purchased at Tshs.400,000/=*
- iv. Both parties accorded opportunity to be heard*
- v. Nyerere Chasama testified before the tribunal*

Having observed so, it is my considered opinion that there is no any irregularity committed by the trial ward tribunal and from the very findings, I dissent with the trial assessors

though not to the detail, is that, the Learned Appellate Chairman disbelieved the evidence of the Appellant.

In his final remarks, the Appellate chairman did uphold the decision of the trial tribunal which declared the Respondent the rightful owner of the land in dispute. It is therefore not true, as alleged by the Appellant in the first ground of appeal that, the Appellate chairman left rights of the parties unattended.

As to the 3rd ground of appeal, the main complaint of the Appellant is on failure of the Appellate chairman to analyze evidence on record. As I observed in the foregoing ground of appeal, the learned Appellate Chairman considered both the evidence of the Appellant and that of the Respondent as was in the trial tribunal. In his judgment, the evidence of one Nyerere who sold the land to the Appellant got considered, but as I stated above, his evidence was not trusted. It is in the record that:

"Shahidi alipohojiwa Zaidi na wajumbe alikiri kuwa hajashirikisha majirani wakati wa kuuza maeneo kwani anajiamini ni mali yake lakini pia alikiri kuwa hana hati milki yoyote kuhusu ardhi hiyo."


This evidence was duly considered by members of the Trial Ward Tribunal. In their considered opinion, they observed that:

"Kulingana na maelezo ya mlalamikaji ndugu Frank Busongo Luhende, alilieleza Baraza kuwa, wakati anauziwa eneo hilo hapakuwa na mashahidi walioshuhudia manunuzi ya eneo bali ni yeye na muuzaji Nyerere Kashindye Chasama ambaye

ni shahidi wake . Mwenyekiti wa Serikali ya Mtaa wa Igomelo aliidhinisha mauzo ya eneo kuwa ni halali. Hakuna shahidi. Ni barua tu. Hakuna picha ya muuzaji wala mnunuzi."

The above opinion and evidence got considered by both tribunals below. There was no reason for the Appellant to purchase the suit land without involving even neighbours. Why there was no transparency? What was to be concealed? I think there are more unanswered questions in the whole exercise. This therefore tells that; the Appellant did not prove the case on balance of probabilities as required in civil litigations.

All said and done, there is no merit in the present appeal and is accordingly dismissed with costs. It is so ordered.


Gerson J. Mdemu
JUDGE
14/8/2020

DATED at SHINYANGA this 14th day of August , 2020.




Gerson J. Mdemu
JUDGE
14/8/2020