

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 30 OF 2020

BETWEEN

LIGAMBA CHARLES _____ **APPELLANT**

VERSUS

CHRISTINA JULIUS JOHN _____ **RESPONDENT**

*(Arising from the decision and orders of the district land and housing tribunal for Mara at Msoma
Hon. Kaare Chairman, in land application no 82 of 2016, dated 14.02.2020)*

JUDGEMENT

Date of last order: 01.07.2020
Date of judgment: 07.08.2020

GALEBA, J.

This appeal is challenging a decision of the district land and housing tribunal for Mara at Musoma (the trial tribunal) in land application no 82 of 2016. In that matter, the land in dispute is measuring 50X40 paces and the same is located at Bweri Street in Musoma Municipality (the disputed land). The respondent's position in the trial tribunal was that she bought the land from **MOKI WANKYO BYANDA** in 2011 and she instituted the application in the trial tribunal to assert her ownership over the land because the appellant invaded it and fell some trees growing on the land. To the contrary the appellant maintained that the said 50x40 paces of land was part of his 8 acres of land which he bought from **NYAMHANGA SHARUTA** in 1998.

The trial tribunal heard the case and finally decided that the applicant (the respondent in this appeal) managed to establish her case on the balance of probabilities, and declared her the lawful owner the land and ordered the appellant to vacate. He raised 6 substantive grounds of appeal to challenge the decision of the trial tribunal. The grounds are lengthy but, I thought it is important for everything to be clear from the outset. The grounds are as follows;

- 1. That the trial tribunal erred in law and facts when it failed to consider the preliminary objection raised by the appellant that the District Land and Housing Tribunal has no jurisdiction to entertain a land dispute whose values does not exceed Three Million shillings (T. shs. 3,000,000/=) since the sale agreement dated 02/11/2011 between the Respondent and seller Moki Wankyo which clearly show that the disputed Land valued at two hundred thousand shillings (T. shs. 200,000/=) this was the case fit to be heard in the Ward Tribunal*
- 2. That the trial tribunal failed to evaluate properly the evidence on record and as a result its reached wrong conclusion that the respondent is the lawful owner of the disputed land while in fact a piece of land the respondent purchased was the appellant's Land within the Land was fenced with sisal plants and he had owned it since 1998 when purchased (sic) it from previously owner one Nyamuhanga Sharuta who was planted (sic) the sisal plants around that land after he acquired the same since 1974.*
- 3. That the trial tribunal was wrong think (sic) that the seller, one Moki Wankyo Byanda was the previously real owner of the disputed land while in fact neither the seller nor his father had at no time occupied or lived the disputed land or planted any crops thereon.*
- 4. That the trial tribunal failed to consider the fact that on 28/01/2014 the appellant was instituted (sic) complaint number 30 of 2014 at the ward tribunal of Bweri, against the seller, Moki Wankyo Byanda after found invaded his land which is the subject matter of this appeal and Sold that land to the Respondent. That on 16/01/2015 the appellant won his case.*
- 5. That the trial tribunal failed to consider the fact that after the appellant won his case No. 30 of 2014 in the Ward Tribunal he was Lodged the application for execution No. 337 of 2017 before the DLHT – Musoma to execute the order of the Ward Tribunal and the appellant's application for execution was stayed practically by the learned trial chairman himself for reasons best known to him.*

The judgment of the Ward tribunal Bweri and application No. 337 of 2017, attached to form part of this appeal marked as Annexure "LC2".

- 6. That the trial tribunal was wrong to think that the Respondent added another portion of Land on one side that measured 10 paces and so her Land measured 50 x 40 paces while there is no any proof actual added another portion of land. Copy of Judgment and Decree attached to proof the said allegation marked as Annexure "LC 1"***

Before getting to the grounds of appeal, there was confusion on the case number in the trial tribunal. The original form commencing the application in the trial tribunal shows that it was filed on 17.05.2018 and that the matter filed was application no 82 of 2018. The amended application form which was filed on 17.04.2019 shows that the matter is application no 17 of 2019. The amended written statement of defence shows that the application is no 82 of 2018. The case number in judgment tallies with neither the above; it shows that the matter between the parties was no. 82 of 2016. This court is of the view that the authentic case number is no 82 of 2018 because that is the year in which the original form commencing the matter was filed. With that clarification, I now turn to the appeal.

When this appeal came up for hearing on 01.07.2020, this court made orders that the appeal be argued by way of written submissions because then, parties who are lay persons could hire advocates to assist them in that respect. The submissions were filed as per the court order except that no rejoinder was filed.

As for the 1st ground of appeal in which the appellant was complaining that the trial tribunal did not determine the preliminary objection, the appellant did not submit anything. It is however not

true that the trial tribunal did not hear the preliminary objection. The tribunal determined the objection by overruling it in a ruling dated 13.09.2018. As that objection was determined, the 1st ground of appeal has no merit and the same is dismissed.

In the 2nd ground of appeal the appellant's complaint was that the trial tribunal failed to evaluate the evidence on record properly because had it done that, it would have reached a conclusion that he was the owner of the land having bought in it 1998 from **NYAMUHANGA SHARUTA** who had planted sisal around it from the time the latter acquired in 1974. This court has painstakingly scanned the entire three page submission of the appellant to see where he submits in supporting this complaint, but there is not a place on which the appellant shows how the trial tribunal made an error he alleges in the 3rd ground. There is a mention in the second paragraph on the first page that he bought the land from **NYAMUHANGA SHARUTA**, and how its part was sold by **MOKI WANKYO BYANDA** to the respondent but no more. In this ground the appellant was supposed to show how the evidence he tendered was not considered by the trial tribunal in his favor, but unfortunately he did not. It is like he opted not to prosecute his appeal in respect of the 2nd ground of appeal. In the circumstances, the 2nd ground of appeal is dismissed.

The appellant's complaint in the 3rd ground of appeal was that the trial tribunal was wrong to hold that **MOKI WANKYO BYANDA** who sold the land to the respondent had legal title to the land without

proving that his father (**WANKYO's** father) or any seller who might have sold the land to **WANKYO** had planted any crops on the disputed land. In support of this ground, the appellant submitted that **MOKI WANKYO BYANDA** failed to prove adverse possession, so he had no right to sell the land to the respondent. With due respect the issue of adverse possession did not arise and was not at all decided this or the other way by the trial tribunal. It is now settled law that a point not raised in the court below cannot be raised on appeal, see **CRIMINAL APPEAL NO 245 OF 2015; DIHA MATOFALI VERSUS THE REPUBLIC**, and **CRIMINAL APPEAL NO 416 OF 2014; HASSAN BUNDALA SWAGA VERSUS THE REPUBLIC CA** both unreported. In the latter case it was held that;

"It is now settled law 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 the trial court nor the High Court of appeal."

Based on that discussion, the 3rd ground of appeal is dismissed for want of merit.

The complaint in the 4th and 5th grounds of appeal was that the trial tribunal failed to consider the fact that in 2014 the appellant had instituted complaint number 30 of 2014 at Bweri ward tribunal following his land being invaded by **MOKI WANKYO BYANDA** and that he won that case. In support of this ground the appellant submitted that he had instituted execution proceedings in miscellaneous land application no. 337 of 2017 against **MOKI WANKYO BYANDA** in enforcing his rights in complaint number 30 of

2014 but the chairman did not afford him a right to be heard. The appellant prayed that this court be pleased to quash the decision of the district land and housing tribunal and order execution of the decree obtained against **MOKI WANKYO BYANDA**. In this ground the appellant wants this court to deal with what happened in miscellaneous land application no. 337 of 2017 which matter was supposedly between him and **MOKI WANKYO BYANDA** which matter is not before this court and it does not concern the respondent who was not a party to their dispute. Any complaint relating to the right to be heard that was not afforded to the appellant in miscellaneous land application no. 337 of 2017 cannot be entertained in this appeal. In the circumstances, the 4th and 5th grounds of appeal are misconceived and the same are hereby dismissed.

As for the 6th ground of appeal, the appellant complained that the trial tribunal erred in believing that the respondent added another portion of land on one side that was measuring 10 paces so that her land was 50X40 paces in area, whereas here was no proof that there was any such addition. I have reviewed the evidence that was tendered by the respondent's side and noted that the respondent herself testified that she bought 10 more paces of land subsequent to the first 40X40 paces. In any event, the appellant's testimony was that the respondent bought the land from **MOKI WANKYO BYANDA** when he (appellant) was in Mwanza, so he could not have any better evidence than that tendered by the respondent on the 10

paces added. In the circumstances, this ground like the rest, has no merit and the same is dismissed.

Before concluding, there two more issues I would want to address. The **first** is that, one may note that this court has rarely referred to the submissions of the respondent. The reason is, that the submissions of the respondent were two paragraphs still with shallow, very shallow content, with very little assistance, if any, to the court, so relying on them would be relying on something unreliable. The **second** is that when submitting on the grounds of appeal, the appellant submitted on some other matters outside the six grounds of appeal. The specific matter that the appellant submitted upon is that the trial tribunal did not seek or receive opinion of assessors as provided by law. Unfortunately this was not one of the grounds of appeal, raised before this court. The same issue of not reading opinion of assessors was raised for the 1st time in the Court of Appeal in **CIVIL APPEAL NO 240 OF 2018 BETWEEN RAPHAEL ENEA MNGAZIJA (ADMINISTRATOR OF THE ESTATE OF THE LATE ENEA MNGAZIJA) VERSUS ABDALLAH KOLONJO JUMA CA (UNREPORTED)** and at pages 7 to 8 of the typed judgment the Court of Appeal quoting its own holding previously in **CRIMINAL APPEAL NO 196 OF 2015; GALUS KITAYA VERSUS REPUBLIC**, held that;

"On the basis of the preceding cited authority, it is therefore settled that this court will only look at matters which came up in the lower court and were decided; not matters which were not raised nor decided by neither the trial nor the High Court on appeal."

Based on that principle, this court refused to entertain a matter that was not a subject in the trial tribunal and or which was not complained about in this court.

Based on the above reasons, this appeal is dismissed with costs.

DATED at MUSOMA this 7th August 2020



Z. N. Galeba
JUDGE
07.08.2020

Court; This judgment has been delivered today the 7th August 2020 in the absence of parties but with leave not to enter appearance. A party aggrieved by this decision has a right to appeal to the Court of Appeal of Tanzania after obtaining leave to do so as required by **section 47(2) of the Land Disputes Courts Act [Cap 216 RE 2019].**



Z. N. Galeba
JUDGE
07.08.2020