



IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF BUKOBA

AT BUKOBA

LAND APPEAL NO. 69 OF 2018

GEORGIA BAKERA.....APPELLANT

VERSUS

1. LEONSI BAKERA

2. GRETURDA KATTO

}RESPONDENTS

JUDGMENT

1/10/2020 & 09/10/2020

KAIRO, J.

This is the second appeal by the Appellant after being dissatisfied by the decision of the DLHT for Kagera at Bukoba in Land Appeal No. 46/2017.

The historical background that can be discerned from the record is that, the Appellant and 1st Respondent are relatives being; sister and brother respectively each claiming to have inherited the land in dispute from their late father one Leonidas Ishengoma Bakera who passed away in 1980s. Sometimes later in year 2014, the 1st Respondent sold the said land in

dispute to the 2nd Respondent, thus a dispute ensued, and the Appellant instituted a claim at Gera Ward Tribunal. The Ward Tribunal decided in favor of the Appellant, the decision which aggrieved the Respondents who lodged an appeal at the DLHT which reversed the decision of the Ward Tribunal for want of *locus standi*. The DLHT decision prompted the Appellant to prefer this appeal raising the following grounds.

- (1) *That the DLHT erred in law and facts for failing to nullify the illegal sale of the land in dispute before proper distribution of the late Leonidas Ishengoma Bakera's estate by a legally appointed administrator after quashing the decision of the Gera Ward Tribunal.*
- (2) *That the DLHT erred in both facts and law for its failure to consider the facts that the Appellant has an interest in the disputed land as a daughter of the deceased therefore a beneficiary of the estate of the late Leonidas Ishengoma Bakera.*
- (3) *That the chairman of the DLHT erred in law and facts to differ with the Tribunal Assessors who opined in favor of the Appellant.*
- (4) *That the DLHT erred in law and facts to decide the case favoring the Respondent who didn't tender any written document concerning claims about their legal ownership of the land in dispute to prove their allegations.*

The Appellant thus prayed this appeal be allowed, cost and any other relief the court will deem fit to grant.

The Appellant was self-represented while both of the Respondents were being represented by Advocate Aneth Lwiza.

In her brief submission to amplify the grounds of appeal, the Appellant prayed the court to adopt her petition of appeal and stated that she was not satisfied with the decision of the DLHT for Kagera as neither the purchaser nor seller of the land in dispute showed the documents to authenticate the sale transaction.

She further amplified that, she was not involved when the 1st Respondent who is her brother was selling the land in disputed to Greturda Katto while she has an interest on the land and was around.

When invited to respond, advocate Aneth Lwiza for the Respondents told the court that, the land in dispute was a property of the late Leonidas Ishengoma Bakera who died in year 1983 (Pg 3 of the DLHT Proceedings). She further stated that the Appellant and the 1st Respondent are sister and brother who both claim to have inherited the land in dispute from Leonidas Bakera according to what they both stated during the hearing at the DLHT. Advocate Lwiza went on that, the DLHT after hearing both parties came out with only one issue which concerned the *locus standi* of the parties whereby the DLHT posed as to whether the claimant at the Ward Tribunal (Appellant herein) had *locus standi*. She further submitted that the chairman at the DLHT differed with the decision of the Ward Tribunal with regards

to locus standi and that the DLHT Assessors were of the view that the Ward Tribunal decision should stand. However the DLHT ended up quashing the proceedings and the decision of the Ward Tribunal as the claimant therein had no *locus standi*.

The Advocate went on to submit that, since this appeal hinge on the nullity proceedings, she prays this court to uphold the DLHT decision. She also told the court that she would not respond to the Appellant's argument in this appeal as the DLHT did not deal with them, praying the court not to allow this appeal. The Advocate further prayed the court to advise the Appellant that if she was still interested to institute a suit against the 1st Respondent then she should be advised to follow the proper procedure of petitioning for the letters of administration first. When invited to make her rejoinder, the Appellant submitted that, what has been stated by Advocate Lwiza wasn't true as the Administrators of their late father's estate were present and had given the land in dispute to her as inheritance.

The main issue for determination in this court therefore is whether this appeal is based on founded grounds. However before I go into nitty-gritties of determining the appeal, I found it apposite, to point out the irregularity observed with regards to parties in this case. The record reveals that, this case originates from Gera Ward Tribunal as Claim No. 2 of 2017. The claimant was *Georgina Bakera and the Respondents were Maklina Bakera, Salvatory Bakera and Greturda*

Katto. The claim was to the effect that, the first and second respondents sold the claimant's land to the third respondent without involving the claimant wherein the claimant succeeded.

In the course of hearing, the Ward Tribunal was informed that the person who sold the land in dispute was Leons Bakera whose mother later came to what it appeared to answer the claim on behalf of her son though the record is silent if she had power of Attorney to represent Leons Bakera. But worse, the said Leons Bakera wasn't a party to the said suit and nowhere in the record had it indicated that he was called/inserted in the case as a party (Respondent). Surprisingly when the matter went for appeal at the DLHT in Land Appeal No. 46 of 2017, the parties were *Leonsi Bakera and Greturda Katto vrs Georgina Bakera*.

It is trite law that an appeal cannot be preferred by a person who was not a part to the original case and no formal order as given to join him/her during the trial.

I am aware that the court may at any state of the proceedings order to join a name of a party whose presence before the court may be necessary in order to enable the court effectively and competently adjudicate upon and settle the dispute/question involved in the suit.

However as earlier alluded, the record is silent on that aspect. It seems as per the trial court proceedings of 2nd page, there was an attempt to

include Leons Bakera, but the attempt ended with the order to call him after the 1st and 2nd respondents mentioned him to be the seller of the disputed land at the trial court and no formal order to effect the changes was made which would have also included amendment of the claim accordingly.

The parties as they stand now at the trial court were Georgina Bakera vrs Maklina Bakera, Salvatory Bakera and Greturda Katto. Surprisingly the DLHT entertained an Appeal whose appellant wasn't a party to the original suit, which is fatal. [Refer the case of Inter **Consult Ltd vrs Mrs W. Kassanga & Mathew Ibrahim Kasanga; Civil Appeal No. 79 of 2015 CAT DSM**]. Strictly speaking, there was no appeal before to DLHT legally. Consequently all of the proceedings and the decision of the DLHT have been rendered a nullity as a result.

I further wish to comment albeit briefly on the basis of the DLHT's decision. Thorough scrutiny of the records reveals further that even if the parties to the appeal would have been proper, again the decision of the DLHT wouldn't have stood since the trial court records depicts that the estate of the late Leonidas Bakera had already been distributed customarily, as such the need to have an administrator appointed is obsolete with due respect to the DLHT chairman. In the same vein, the question of *locus standi* on the part of the Appellant herein doest arise as well.

Now what is a way forward after nullifying the DLHT proceedings and the decision thereon?

Since the 1st Respondent herein was mentioned at the trial court to be the seller of the land in dispute, this court is of the view that, he was supposed to be formerly joined by the trial tribunal so that he could have been heard as well being a necessary party so that the issue of ownership could have been completely adjudicated and determined. The omission has resulted to non- joinder of necessary party, as such the proceedings and decision of the ward tribunal cannot be left to stand as well. In the circumstances therefore this court orders as follows:-

- (1) All of the proceedings and decisions of both the trial tribunal and the appellate District Land and Housing Tribunals are hereby nullified.
- (2) The court orders for fresh retrial by the Ward Tribunal before new Panel members wherein, the 1st Respondent should appear either as applicant or as respondent in the claim to be instituted.

No cost is awarded.

It is so ordered.



L.G.Kairo,

Judge,

09/10/2020

R/A




L.G. Kairo,

Judge,

09/10/2020

Date: 9/10/2020

Coram: Hon. Kairo, L

Appellant: Present in person

1st Respondent: Salvatory Bakera on behalf of the 1st respondent

2nd Respondent: Present in person

E.Kamaleki: Judge's Law Assistant

B/C Gosbert Rugaika:

Court: The matter which was originally scheduled to be read on 16/10/2020 is ready for judgment and is read over before the parties as per today's coram in chamber.




L.G. Kairo,

Judge,

09/10/2020.