IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN DISTRICT REGISTRY OF MUSOMA

AT MUSOMA

LAND APPEAL NO. 62 OF 2020

(Arising from the Judgment of the District Land and Housing Tribunal of Mara at Musoma in Appeal No. 142 of 2019)

MWITA NCHAMA ..... APPELLANT

VERSUS

ABUDU HAMIS MOHAMED ..... RESPONDENT

JUDGMENT

5th August and 30th September, 2020

KISANYA, J.:

The appellant in this second appeal is **Mwita Nchama**. He unsuccessful sued the respondent, **Abudu Hamis Mohamed** before the Buswahili Ward Tribunal (hereinafter referred to as "the trial Tribunal") for uprooting the sisal plants on the disputed land. In the end result, **Abudu Hamis Mohamed** was declared lawful owner of the disputed land. Aggrieved, **Mwita Nchama** appealed to the District Land and Housing Tribunal (the appellate Tribunal). His appeal was dismissed for want of merit. Still determined to challenge the decision of the appellate Tribunal, **Mwita Nchama** has approached this court by way of appeal. He has registered the following grounds of appeal:

1. That the appellate Tribunal erred in confirming the decision of the Trial Tribunal which was a nullity as the proceedings do not show names of members who constituted it.

2. That the appellate Tribunal failed to consider that non-disclosure of name of the Chairperson of the Tribunal was fatal because it rendered section 14(3) meaningless.
3. That the appellate erred in law in confirming the decision of the Trial Tribunal whose members did not cast votes or give their opinion.
4. That the trial Tribunal and appellate Tribunal failed to evaluate properly evidence on record and as result reached a wrong conclusion that the respondent was the lawful owner of the disputed land.
5. That both the trial and appellate Tribunal erred in law and fact by relying on invalid document and in disregard of section 23 (3) of the Village Land Act, Cap. 114, R.E. 2002.

At the hearing of this matter, both parties appeared in persons. As the practice demands, the appellant was called first to submit in support of the appeal. However, he just prayed to the Court to adopt his petition of appeal. Replying, the respondent submitted that the decision of appellate Tribunal was based on the evidence adduced before the trial Tribunal. He went on to argue that, the trial Tribunal was duly constituted and that, each member gave his or her opinion as required by the law. The respondent contended further that, he is the one who developed the disputed land and that, it was allocated to his father by the Village Social Service Committee in 1974. He told this Court that, the evidence on record shows that, his late father gave him the disputed land when he was still alive. The respondent concluded his submission by asking the Court to dismiss the appeal.

Rejoining, the appellant submitted that, the disputed land was not developed by the respondent. He claimed that, the disputed land was allocated to his grandmother one, **Boke Gusuhi** and not the respondent's father. He contended to have tendered letter from the Village Chairman to prove that fact.

I have gone through the evidence on record, the petition of appeal and the submissions made by both parties. The issue for consideration is whether or not this appeal is meritorious.

The first ground is to the effect that the trial Tribunal was not properly constituted. This ground is based on the reason that the proceedings of the trial tribunal do not show names of the members who determined the matter. Pursuant to section 11 of the Land Disputes Courts Act, Cap. 216, R.E. 2019 and section 4 of the Ward Tribunals Act, Cap. 206, R.E. 2002, a ward tribunal is constituted by not less than four nor more than eight members of whom three are women. It is the proceedings which show the members who constituted the Ward Tribunal. Having scanned the proceedings in the case at hand, I have detected that, the matter before the Buswahili Ward Tribunal was heard by four members whereby two were women. These were **Silivester M. Muruga, Adiventina Mugabe, Werema Ntelele** and **Ghati Chacha**. In that regard, it is clear that the trial Tribunal was properly constituted. I therefore find no reason to fault the decision of the appellant court on the first ground.

Moving to the second ground, the appellant stated that the Tribunal failed to consider that non-disclosure of name of the Chairperson of the Tribunal was fatal as it rendered section 14(3) of the Land Disputes Courts Act meaningless. For easy of reference and understand, section 14 of the Land Disputes Courts Act is quoted hereunder:

> *"14.-(1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be a woman.*
>
> *(2) The Chairman to the Tribunal shall select all three members including a convenor who shall preside at the meeting of the Tribunal.*
>
> ***(3) In the event of the equality of votes, the member presiding shall have a casting vote in addition to his deliberative vote.***

(4) The Ward Tribunal shall, immediately after settlement of a dispute record the order of mediation." (Emphasize supplied).

It is clear that, section 14(3) of the Land Disputes Courts Act empowers the Chairman or the member presiding the proceedings to have casting vote where there is equality of votes of the member of the tribunal. In the instant appeal, the trial Tribunal was constituted by four members. I agree with the appellant that the proceedings do not show the Chairman who presided over the matter. However, it is my considered opinion that, the proceedings were not vitiated by the said omission or defect. This is because, save for one member namely, **Ghati Chacha** who voted in favour of appellant, the remaining three members voted in favour of the respondent. Therefore, since there was no equality of votes, section 14(3) of the Land Disputes Courts Act could not apply. In the circumstances, the omission to name Chairman who presided over the matter in the case at hand is curable under section 45 of the Land Disputes Courts Act. I accordingly dismiss this ground as well

In course of addressing the second ground, I have also considered the third ground which is premised on the issue whether the members of the tribunal were given chance to cast their vote. It is apparent on record that, each member of the trial Tribunal did cast his or her vote. Three members decided in favour of the respondent. Therefore, this ground is unfounded.

This drive us to the fourth and fifth grounds of appeal that the appellate Tribunal failed to evaluate the evidence on record thereby reaching to a wrong conclusion. The appellant alluded that, the respondent and his father neither occupied nor developed the disputed land. The trial and appellate Tribunals were of the concurrent findings that, the disputed land belongs to the respondent. This is what was held by the trial Tribunal:

"Baraza hili limeridhika na maelezo na vielelezo vya mdaiwa ABDU HAMIS MOHAMED kuwa ardhi ni halali yake. Imeonesha wazi kwa sababu ni eneo ambalo amekuwa amelitumia kwa muda mrefu hadi sasa ni miaka 45, bila mgogoro wowote na amefuata utaratibu wa kulipata kwa kupewa na Kamati ya huduma ya jamii ya Kijiji husika."

The above decision was upheld by the appellant Tribunal which went on to hold that the appellant was time barred to institute the matter. The appellant Tribunal held as follows:

"The appellant's family has lost touch of the suitland as from far back as 1974. The appellant conceded this fact. The respondent's family has been occupying the suitland since 1974 as now. The matter was therefore extremely time barred against the appellant."

It is settled law that, on second appeal, the Court cannot interfere with the concurrent findings of fact made by the lower courts/tribunals unless it is clearly shown that there has been a misapprehension of the evidence, miscarriage of justice or violation of some principles of law or practice. This stance was taken in **Samwel Kimaro Vs Hidaya Didas,** Civil Appeal No. 271 of 2018 where the Court of Appeal held:

"Nonetheless; both the trial Tribunal, after hearing the evidence ruled that the appellant had knowledge and the High Court, after reviewing the evidence of the trial Tribunal arrived at the same conclusion that the appellant was aware of rent increase. As such the question whether the appellant was notified orally or through formal written notice, is purely based on facts and not law. This being a second appeal, we refrain in interfering with lower courts concurrent findings of fact."

Again, the Court of Appeal stated the following in **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores vs A.H Jariwalla t/a Zanzibar Hotel** (1980) TLR 31:

> *"Where there are concurrent findings of facts by two courts, the Court of Appeal, as a wise rule of practice should not disturb them unless it is clearly shown that there has been a misapprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure."*

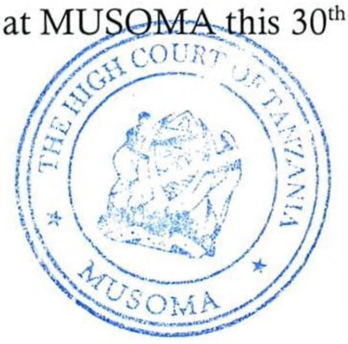
I have gone through the evidence on record to see whether this Court can interfere with the concurrent findings of the lower tribunals. The appellant deposed that, the disputed land was given to her by his grandmother one, **Bhoke Gusuhi**. He went on to state that the said **Bhoke Gusuhi** left the disputed land in 1974. However, the appellant did call **Bhoke Gusuhi** to testify on how she acquired the disputed land. Further, the appellant conceded that, the respondent started to use the disputed land from 1974. This is reflected in his answer to the question put to him by **Werema Ntelele**, member of the trial Tribunal. This is what transpired:

> *"Eneo hilo la mgogoro ndugu mdaiwa ameanza kulitumia lini? – 1974."*

On the other hand, the respondent testified before the trial Tribunal that, the land disputed land was allocated to his father by the Village in 1974. For that reasons, the appellant was time barred to institute the suit before the trial Tribunal. His argument that, the Village Social Welfare Committee had no jurisdiction to allocate land to the respondent's father is devoid of merit. This is because the Village Land Act, Cap. 114, R.E. 2002 which empowers the Village Council to allocate land was not in force in 1974 when the respondent acquired the disputed. For the foregoing, I find no reasons to disturb the concurrent findings reached by both lower tribunals. The fourth and fifth ground are baseless.

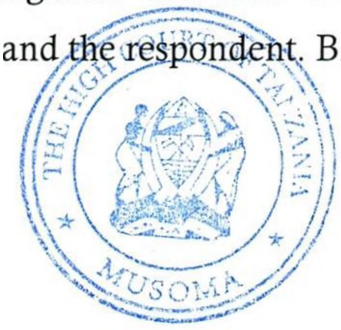
In final analysis, I find no merit in instant the appeal. Accordingly, I dismiss it in entirely with costs.

DATED at MUSOMA this 30th day of September, 2020.



E.S. Kisanya
JUDGE

Court: Judgment delivered this 30th September, 2020 in the presence of the appellant and the respondent. B/C Mariam present.



E.S. Kisanya
JUDGE
30/09/2020