

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBA DISTRICT REGISTRY)**

AT BUKOBA

MISC. LAND APPEAL No. 2 OF 2019

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 14 of 2018 & Original from Ijumbi Ward Tribunal in Land Case No. 25 of 2018)

MARIA GABRIEL MZAURA ----- APPELLANT

Versus

MAGDALENA GABRIEL MZAURA ----- RESPONDENT

JUDGMENT

03/11/2020 & 03/11/2020

Mtulya, J.:

This dispute was originally filed at Ijumbi Ward Tribunal (the Ward Tribunal) in Civil Case No. 25 of 2018 by Maria Gabriel Mzaura (the Appellant) against her daughter Magdalena Gabriel Mzaura (the Respondent) for vacant possession of suit land located at Bugasha Hamlet within Nshambya Village in Ijumbi Ward of Muleba District in Kagera Region. The Appellant complaint against her daughter Respondent is well displayed at page 1 of the proceedings before the Ward Tribunal:

*Mimi huyu ninayemlalamikia ni mototo wangu wa
kumzaa. Namshangaa kumiliki hati ya ununuzi
...waliuziana shamba la familia ya watoto wangu*

*ninaowaza bila ya mimi kuhusishwa na watoto wangu
husika wanaokubalika kisheria.*

In order to substantiate her claim, the Appellant produced in the Ward Tribunal a letter of 10th September 2011 showing distribution of the disputed land. The letter was duly signed by the Appellant, his six children and Bugasha Hamlet Chairman, Mr. Vedasto T. Augustine.

Both the submission and evidence of the letter were registered by the Appellant in the Tribunal, but were disputed by the Respondent. On her part the Respondent produced a sale agreement between the Respondent and her late father, Mr. Gabriel Mzaura of 4th November 1979 and decision of **Kashasha Primary Court in Civil Case No. 14 of 1980** where the Respondent successfully sued his father for ownership of the disputed land and secured a win in **Appeal No. 58 of 1983** emanated from the case in the District Court of Muleba at Muleba.

Basing on the evidences produced the Ward Tribunal decided in favour of the Appellant. Its reasoning is found at page of 24 & 25 of the decision:

*Mdaiwa kukubali kugawana shamba alilonunua mbele ya
Mwenyekiti wa Kitongoji na Baraza lake kwa kuwekea*

*mipaka na kuandika kuwa walikuwa wanagawana
shamba la Gabriel Mzaura, Marehemu baba yao,
wakimshirikisha mjane katika mgao huo...*

This reasoning of the Ward Tribunal dissatisfied the Respondent hence preferred Appeal No. 14 of 2018 (the Appeal) before the District Land and Housing Tribunal for Muleba at Muleba (the Tribunal) complaining that the Ward Tribunal erred for failure to consider that she bought the land in 1979 and there are court decisions on the disputed land. The Tribunal, after hearing the parties, decided in favour of the Appellant, Magdalena Gabriel Mzaura. The reasoning of the Tribunal is found at page 4 of the decision:

*...the appellant had a case against late Mzaura to
recover the land purchased in 1979...in both two
decisions it was confirmed that the late Mzaura truly
sold his land to the appellant in view of purchasing
another land at Kishuro area. The appellant won the
case and there was no further appeal to the High
Court....*

This reasoning and holding of the Tribunal angered the Appellant hence knocked the doors of this court on 5th October 2018 and filed **Misc. Land Appeal No. 2 of 2019** attached with five (5) grounds of appeal. Today, 2nd November 2020, the appeal was scheduled for hearing and both parties invited legal services. The Appellant marshalled Mr. Eliphazi Bengesi, learned counsel and the Respondent invited Mr. Derick Zephrene to argue the appeal.

Before hearing of the five (5) grounds of appeal, Mr. Bengesi, as officer of the court, prayed to add two grounds of appeal, which relate to defects in the decisions of tribunals below which may end the appeal. The prayer was not protested by Mr. Zephrene. Mr. Bengesi briefly stated that the size of the disputed land claimed to have been bought by the Respondent from her father is not stated anywhere, from the land sale agreement of 4th November 1979 to the decisions in **Civil Case No. 14 of 1980 before Kashesha Primary Court and Appeal No. 58 of 1983**. To Mr. Bengesi's opinion, without details and specification of the land in dispute, all efforts in this appeal will be fruitless.

With the second irregularity, Mr. Bengesi submitted that there are claims of forgeries in Appellant's signature which are yet to be

settled by the appropriate authorities. According to Mr. Bengesi, there is an allegation that the Appellant does not know how to read and write, but in the sale agreement of 4th November 1979, it is shown that she signed to register her consent on the sale.

The submissions registered by Mr. Bengesi were well received by Mr. Zephrine hence conceded them without any hesitation. On his part, Mr. Zephrine added two important arguments in support of Mr. Bengesi. Firstly, he stated that the issue of size and value of the land is very important as it confers jurisdiction to the Ward Tribunal. According to him, the issue of size and value is not stated anywhere in the record of this appeal, including the complained decision of the Ward Tribunal in **Civil Case No. 25 of 2018**. With the allegation of falsifications of signature of the Appellant, Mr. Zephrine advised that it should be handled by appropriate authorities dealing with forgeries.

I have had an opportunity to peruse the record of this appeal. I agree with the submissions of learned counsels, but in different thinking. I will explain. Records available show that in the Ijumbi Ward Tribunal, the letter of distribution of the disputed land dated 10th September 2011 was tendered to part of the evidence. Reading

the letter the size of disputed land is stated to have human steps between 168 and 190.

During the hearing of the **Civil Case No. 25 of 2018** before the Ward Tribunal, neither the Appellant nor the Respondent who produced evidence with regard to the size of the disputed land. All witnesses who were marshalled to testify in the Ward Tribunal did not state with certainty the size of the land. It is also confusing that the decision of the Ward Tribunal was attached with sketch map drawn at the *locus in quo*. The map shows the size of the disputed land is 195 steps x 128 steps x 81 steps and 125 steps.

It is unfortunate that when the Tribunal was determining the Appeal No. 14 of 2018, did not detect the issue of size or existing contradictions on the size of the land. In determining land right, size, location and value are very important. That is the requirement of the law in of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** GN. No. 174 of 2003 and precedent in **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of 2015; **Rev. Francis Paul v. Bukoba Municipal Director & 17 Others**, Land Case No.

7 of 2014 and **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018.

With regard to the second registered irregularity spotted by Mr. Bengesi and conceded by Mr. Zephrine, I join them hands. It must be determined by appropriate authorities dealing in handwritings and forgeries. However, the complaint was supposed to be registered with regard to other documents filed in the Ward Tribunal. I perused the record of this appeal and found out that all documents which were registered as evidences were photocopies. The stated letter and land sale agreement, which were the base of the decisions of the tribunals below, were photocopies of the original without any certification required by law or explanations on why they were photocopies.

Having noted all the defects in the record and learned counsels of the parties in this appeal are in agreement that this appeal must be quashed for sake of proper record of our courts, and to search for authentication of the documents tendered in the tribunals below, I think I have to agree with their submissions and prayers. I therefore order the following:

- i. This Misc. Land Appeal No. 2 of 2019 is hereby allowed;

- ii. Proceedings of the Tribunal in Land Appeal No. 14 of 2018 is hereby set aside;
- iii. Judgment of the Tribunal in Land Appeal No. 14 of 2018 is hereby quashed;
- iv. Any other order or decision emanated from the Tribunal in Appeal No. 14 of 2018 is hereby quashed;
- v. Proceedings of the Ward Tribunal in Land Case No. 25 of 2018 is hereby set aside;
- vi. Decision of the Ward Tribunal in Land Case No. 25 of 2018 is hereby quashed;
- vii. Any other order or decision emanated from the Tribunal in Land Case No. 25 of 2018 is hereby quashed;
- viii. This appeal is allowed without any order as to the costs as parties are in agreement on the defects caused by the lower tribunals. Each party to bear its own costs;
- ix. If parties, are still interested in the disputed land, may wish to correct the identified defects and file fresh suit as per requirement of the law regulating land matters; and
- x. Learned counsels for the parties duly notified.

Ordered accordingly.


F.H. Mtulya

Judge

03.11.2020

This Judgment was delivered in Chambers under the seal of this court in the presence of the Appellant, Maria Gabriel Mzaura and his learned counsel Mr. Eliphazi Bengesi and in the presence of the Respondent's learned counsel, Mr. Derick Zephrine.


F. H. Mtulya

Judge

03/11/2020