

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY AT KIGOMA)
(LAND DIVISION)**

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 5 OF 2020

(Arising from the Judgment of the District Land and Housing Tribunal of Kigoma, Land
Case No.27/2015, original Land Dispute No. 15/2014 of Simbo Ward Tribunal, Uvinza
District)

IBRAHIMU S/O M. KAYABA.....APPELLANT

VERSUS

HUSSEIN S/O M. KAYABA.....RESPONDENT

J U D G M E N T

11th & 26th November, 2020

I.C. MUGETA, J

The grounds of appeal upon which the appeal is founded are:-

- 1. That, the District Land and Housing Tribunal grossly erred in law and fact by upholding the decision of the Ward Tribunal which up held that the respondent is a legal owner while both parties to this suit had no locus stand over the suit land which was the estate of the late Mussa Kayaba and neither the Respondent nor the Appellant was appointed as the administrator of the said estate as it was legally belonging to the Appellant's*



mother and has been using the same for her residence.

2. That, the trail tribunal grossly erred in law and fact when it held in favour of the Respondent, relying on the flimsy evidences adduced by the witnesses (the wives of the Respondents brother one Bunga M. Kayaba) who were having interest in the same suit land leaving aside the sufficient evidences adduced by the appellant leading to unjust decision.

3. That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts by failing to recognize that the suit land belonged to the late Mussa Kayaba who left two wives and that no administration of estate which was done a result of which the respondent and his mother has the land from the Appellant's mother and his other family member unjustly.

The appeal proceeded ex-parte as the respondent failed to appear after service by publication. The appellant is represented by Damas Sogomba,

learned advocate. He argued the first ground separately while the second and the third grounds of appeal were consolidated.

The appellant and the respondent are siblings. They are sons of same father but different mothers. They are fighting for their right of inheritance on their father's land. On that account, Mr. Sogomba submitted in respect of the first ground of appeal that since neither the appellant nor the respondent is an administrator of the deceased estate, none of them has a locus stand to sue on the deceased's land, therefore, the proceedings at the ward tribunal which was upheld by the District Land and Housing Tribunal was a nullity for want of locus standi.

While I agree with the learned counsel that after death the person with authority to deal with the deceased estate is the administrator, in this case it is not true that the dispute land was part of the deceased's estate. The respondent and one of his witness testified that the land was given or divided among the heirs by their father before he died. Asha Ntikahera is sister in law of the parties. She supported the respondent on the evidence that the deceased divided the land before he died. Therefore, the respondent had locus to sue on that land which became his property upon the grant.

Mr. Sogomba tried to challenge the evidence of Asha on ground that she is not a family member. With respect to the learned counsel when the witness is competent to testified on the fact in issue, his or her relationship with the family of the party he testifies for is immaterial. Nevertheless, Asha was already a family member after she married the parties' elder brother in 1961 before the parties were even born. Her evidence was direct evidence from her personal knowledge, therefore, admissible. Here is her evidence:-

'...Mimi nina muda mrefu wote wawili wamezaliwa nipo hapo kwao nimeolewa na kaka yao tangu mwaka 1961. Mzee Musa Kayaba alishika viwanja vitatu, sisi tulikuwa kiwanja cha juu mtaa wa pili na hawa shemeji zangu walikuwa chini kila mtu na kiwanja chake alichopewa kabla mzee hajafa...'

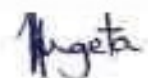
The appellant never cross examined this witness despite being given a chance to do so. The first ground of appeal has no merits.

The complaint in the second and third grounds of appeal is that the claim was not proved. Mr. Sogomba submitted that the two witnesses who supported the respondent are wives of Bunga M. Kayaba who is a blood

brother of the respondent, therefore, they have interests to serve. Mr. Sogomba, however, did not disclose those interests. This has denied the court an objective criteria upon which their credibility can validly be questioned. Further, there is no rule of law or practice which bars relative to testify to support each other. It is also ironical that Mr. Sogomba doubts the credibility of the witnesses for being strangers on one hand and complains of their evidence being from relatives on the other hand which is unacceptable.

The tribunal found the respondent and his witnesses credible which finding was upheld by the District Land and Housing Tribunal. I find no reason to fault the concurrent finding of the two lower tribunals. Their finding is not founded on either misapprehension of evidence or misapplication of the law. The second and third grounds of appeal are therefore, without merits too.

In the event, I dismiss the appeal. Since the respondent did not appear, I give no order to costs.





I.C. Mugeta

Judge

26/11/2020



Court: Judgment delivered in chambers in the presence of Silvester Sogomba, advocate for the appellant and in the absence of the respondent.

Sgd: I.C. Mugeta

Judge

26/11/2020