

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 114 OF 2020

BENARD OKAMBO_____ **APPELLANT**

VERSUS

SAMMY NYAGURA_____ **RESPONDENT**

*(Arising from the Decision and Orders of the District Land and Housing Tribunal for Tarime at Tarime,
Hon. Ngukulike Chairman, in Land Appeal No 9 of 2018 dated 22.05.2020)*

JUDGEMENT

2nd & 27th November 2020

GALEBA, J.

This is a second appeal, seeking to fault two concurrent decisions, the appellant having lost in both civil case no 11 of 2017 before Mirare ward tribunal in Rorya district and land appeal no 9 of 2018 in the District Land and Housing Tribunal for Tarime (the DLHT) in which he was challenging his defeat in the former tribunal.

In this appeal, the land in dispute is situated at Changuge, a rural shopping center located in Sudi village within Rorya district in Mara region. The allegations of the respondent in the ward tribunal was that in 2016 the appellant trespassed on his land and planted trees and built a house on it. The defence of the appellant was that the land on which he planted trees

and built was his because in the year 2006 he bought it from a person called **SIMON MAKABE** who had been allocated the land measuring 12X60 paces by Sudi village authorities previously. As stated above, neither the ward tribunal nor the DLHT believed the story of the appellant. Upon dismissal of his appeal by the DLHT, he has approached this court with 5 grounds of appeal but when the matter came up for hearing he abandoned the 3rd ground and retained 4 grounds only.

The appellant's complaints corresponding to his remaining grounds of appeal are; ***first*** that the DLHT erred for agreeing with the ward tribunal that he was entitled to 12X15 paces instead of 12X60 which he had bought from **SIMON MAKABE**. ***Secondly***, the DLHT did not analyze his evidence, ***third (was abandoned)***, ***fourthly***, that the DLHT erred by awarding the land to the respondent while he did not have any proof of ownership and ***fifthly*** that the DLHT erred in law when it failed to consider that the appellant had been in occupancy of the land for many years without any interruption from the respondent.

In supporting the 1st ground of appeal, the appellant submitted that he bought the land from **SIMON MAKABE** and the land was measuring 12

by 60 paces or steps. He stated that the land had been allocated to **SIMON MAKABE** by Sudi Village council. He submitted that that fact was supported by **PETER AMARA** his witness who was chairman in the land allocation committee at the time. When I asked him as to the evidence of buying the whole of that land, he stated that there were many people at that time including **THOMAS OKAMBO** and **MOSES ORONGO** but were both dead. In reply to that ground Mr. Nyangura submitted that at the center no one was given 12X60 paces, everyone was given 12X15 paces and that **PETER AMARA** was telling lies, the appellant bought only a milling machine from **SIMON MAKABE** which machine was sitting on 12X15 paces of land.

I have considered submission of parties and I am in agreement with the position of the respondent; there was no proof that the appellant bought land measuring 12X60 paces from **SIMON MAKABE**. Whereas he said that when he bought the land there were many people he referred to only two were dead. There was no written document or even any other witness to support the allegation of the size of land that he bought. In the circumstances, the first ground of appeal fails.

In supporting the 2nd ground of appeal the appellant submitted that the evidence which was not analyzed was that of **SAMWEL ONGO ONGARA** and **ANDERICUS OKOTH RAYA** both from the respondent's side. I asked him if he really meant these witnesses because they were from the opposite side, he insisted, that that was the evidence that the tribunal did not analyze. In reply the respondent submitted that **ANDERICUS OKOTH RAYA** and **SAMWEL ONGO ONGARA** were Sudi village and Senta hamlet chairmen respectively and that their evidence did not support the appellant's case. Before the ward tribunal, **SAMWEL ONGO ONGARA** testified that the respondent went to him complaining of trespass on his land and he wrote a letter for the respondent to refer the matter to Sudi village authorities which he did. As for **ANDERICUS OKOTH RAYA** his evidence was that no person, not even **SIMON MAKABE** was allocated 12X60 paces area of land. On a closer scrutiny, one notes that there was nothing in the evidence of these two witnesses that they testified in favour of the case of the **MR. OKAMBO**, which was in any case least expected because they were called by **MR. NYAGURA**. In any event this complaint was not part of the appellant's appeal before the DLHT so it would even be unlawful to set aside a judgment on a matter

that the DLHT did not hear and decide upon. Based on the above reasons, this ground is dismissed.

The complaint in the 4th ground of appeal is that the DLHT gave title to land to **MR. NYAGURA** without him giving any proof. In reply, the respondent submitted that he bought the land in 1985 from a person he has now forgotten and later he paid money to his son for 20 mango trees which had remained to be the seller's. This evidence was heard by the ward tribunal and believed; the DLHT believed the same story. This court does not find any principle of law or of evidence that both tribunals seriously abused. In the circumstances this ground of appeal has no merit.

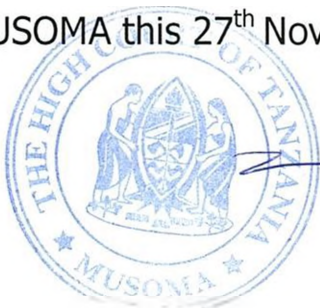
As for the 5th ground of appeal, **MR. OKAMBO** submitted that the DLHT erred in law when it failed to consider that he had been in occupancy of the land for many years without any interruption from the respondent. In reply the respondent stated that the appellant built the house in 2017, and that is when he started to complain. Although this ground was raised in the DLHT but the same was not argued which means this court cannot fault the DLHT on a point that was not argued before it see **Hassan**

Bundala Swaga v Republic Criminal Appeal no 416 of 2014 (CAT Unreported). This ground therefore lacks merit and the same is dismissed.

But before getting to the final conclusion of this appeal, it is a principle of law that the second appellate court cannot interfere with two concurrent decisions of the lower courts unless the two courts misapprehended the evidence or they breached some principle of law see **Wankuru Mwita v the Republic**, Criminal Appeal No 219 of 2012, (CAT unreported). In this case there was nothing demonstrated to this court showing that there were any such serious errors of law.

Based on the above reasons this appeal is dismissed with costs; the appellant has a right of appeal to the Court of Appeal of Tanzania after seeking and obtaining a certificate from this court that a point of law is involved in challenging this judgment.

DATED at MUSOMA this 27th November 2020



Z. N. Galeba
JUDGE
27.11.2020