

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 101 OF 2020

NYAMOKONYO NYAHEGA_____ **APPELLANT**

VERSUS

TOMU MAHITI_____ **RESPONDENT**

(Arising from the Decision and Orders of the District Land and Housing Tribunal for Mara at Musoma, Hon. Kitungulu Chairman, in Land Appeal No 25 of 2020 dated 29.05.2020)

JUDGEMENT

2nd & 20th November 2020

GALEBA, J.

The land in dispute in this appeal is located at Mbisso village, Natta ward within the district of Serengeti in Mara region, where both parties maintain their respective residencies. In 2019 the appellant approached Natta ward tribunal (the trial tribunal) and filed civil case no 25 of 2019 claiming that the respondent invaded her land when she went to Mwanza and stayed there for 8 months attending to her child who was admitted in hospital. As to ownership of the land, in response to one member of the trial tribunal she alleged that she acquired it in 1968 but no details were given as to the alleged acquisition. According to the respondent, the land was his because, it was given to him by his father **MAHITI KEBUMBEKO** who bought had it from **MAKURU MAGANYI** in 1987.

The trial tribunal considered the evidence of both parties and at the end of the hearing it dismissed the appellant's case on 06.01.2020 holding that the respondent was the lawful owner of the disputed land. The appellant was dissatisfied with the dismissal of her case so she filed land appeal no 25 of 2020 in the District Land and Housing Tribunal (the DLHT) at Musoma to challenge the decision of the trial tribunal, but like her case, on 29.05.2020, the DLHT dismissed her appeal with costs. The appellant has lodged this second appeal challenging the decision of the DLHT.

Previously she had lodged 4 grounds of appeal, but when this appeal came up for hearing on 02.11.2020 Mr. Daud Mahemba, learned advocate for her prayed to abandon the 3rd and 4th grounds thereby retaining the 1st and 2nd grounds only which he opted to argue together. The complaint in both grounds is that the DLHT erred in law for dismissing her appeal without considering that she had remained in occupation of the land from 1970 and she remained there without any interruptions from any one.

In supporting the above complaint, Mr. Mahemba submitted that the appellant testified that she got the land in 1968 and also another witness called **GEMRAYI SANGI GEMRAYI** testified that the appellant was using the land before 1974. He submitted that the land in dispute was not bought from **MAKURU MAGANYI** because the land that was bought from the latter was being used by the respondent's sisters. Mr. Mahemba submitted that although the appellant

submitted that the land was bought from **MAKURU MAGANYI**, but there was no document evidencing the transaction. The respondent submitted that the land in dispute was bought by his father and the evidence to that effect was tendered by **MKAMI MAGANYI** the wife of **MAKURU MAGANYI** who sold the land to the respondent's father.

The issue is whether; this appeal succeeds or fails based on the grounds raised and argued. Before getting to resolving the issue, 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. In **Wankuru Mwita v the Republic**, Criminal Appeal no 219 of 2012 (unreported) where it was held that;

"...The law is well settled that on second appeal, the court will not readily disturb the concurrent findings of the facts by the trial court and the first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of a complete misapprehension of the substance, nature or non-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of justice."

Other decisions on the same matter include **Salum Mhando v the Republic**, [1993] TLR 170 and **Omari Mohamed China and three others v the Republic**, Criminal Appeal no 230 of 2004 (unreported). In this case Mr. Mahemba cited the case of **Zanzibar Silk Store v Jariwala Zanzibar Hotel** [1980] TLR 31 in supporting the same principle.

However, Mr. Mahemba did not demonstrate how the two or either of the judgments of the tribunals were clearly unreasonable or how they were a result of a complete misapprehension of the substance or nature of the evidence or how they were based on non-direction on the evidence. He did not show that there was any violation of any principle of law or procedure that had the effect of occasioning a miscarriage of justice to any of the parties as per the case of **Wankuru Mwita** (supra). For instance the two courts agreed with the position of the respondent because he called **MKAMI MAGANYI** who testified that the land in dispute was sold to the respondent's father by her husband. In addition, although Mr. Mahemba submitted that there was no documentary evidence to prove ownership of the land by the respondent, but even his own client, who was the plaintiff, did not have any such evidence at the trial. In the circumstances, this court is not warranted to interfere with the two concurrent decisions of the tribunals below. I am therefore satisfied that the 1st and 2nd grounds of appeal, have no merit and the same are dismissed.

Because this appeal was based on the above two grounds, which have been dismissed, this appeal has no merit and like the grounds upon which it was predicated, the same is dismissed with costs.

DATED at MUSOMA this 20th November 2020

Z. N. Galeba
JUDGE
20.11.2020

Judgment delivered this 20th November 2020 in the presence of **Mr. Daud Mahemba**, learned counsel for the appellant and the appellant himself on one hand and **Mr. Tomu Mahiti**, the respondent on the other. The appellant has a right to appeal to the Court of Appeal after seeking and obtaining a certificate from this court that a point of law is involved in challenging this judgment.




Z. N. Galeba
JUDGE
20.11.2020