

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

**MISC. LAND CASE APPEAL No. 2 OF 2020**

*(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 64 of 2018 & Original from Ibuga Ward Tribunal in Civil Case No. 4 of 2018)*

**AMADI KILINDINI ----- APPELLANT**


Versus

**RICHARD KAGORO ----- RESPONDENT**

**JUDGMENT**

26/11/2020 & 30/11/2020

**Mtulya, J.:**

Mr. Amadi Kilindili (the Appellant) was not satisfied by the decision of **District Land and Housing Tribunal for Muleba at Muleba** (the District Tribunal)  **in Land Appeal No. 64 of 2018**. On 30<sup>th</sup> August 2019, he approached and knocked the doors of this court praying for an order to reverse the decision of the District Tribunal and restore the original decision of **Ibuga Ward Tribunal** (the Ward Tribunal) in **Civil Case No. 4 of 2018**. In this court, the Appellant preferred an appeal with three grounds, which are briefly related on the same subject.

However, during the hearing of the appeal, the Appellant joined all grounds of appeal and argued them together as two grounds

complaining on, *viz*: an allegation of forged land sale agreement and failure of the District Tribunal to evaluate evidence on record.

When the appeal was scheduled for hearing 26<sup>th</sup> November 2020, the Appellant and Mr. Richard Kagoro (the Respondent) appeared themselves without any legal representation. As the parties were lay persons, they had very little to state, but at least have shown to understand their grievances on the land. The Appellant briefly stated that the land sale agreement between the Appellant and Kyabusiku Ibrahim is fake as it shows the agreement was entered and signed in 1990 whereas in that year the Appellant was present and was not consulted on the sale. According to the Appellant he bought the disputed land from Mr. Juma Ishonzi and left it to his mother, Kyabusiku Ibrahim for living and in any case she could not have sold it to another person without his consent.

The Appellant submitted further that he left for Moshi area in search of work in 1991 and therefore it was impossible for the land sale agreement to show 1990 when he was around and living in the village. However, the Appellant admitted that he cannot recall the date when he bought the land and that the sale agreement was lost and cannot be found to form part of his evidences in courts of law.

Nevertheless, the Appellant stated that all neighbors to the land were present when he bought the land and are ready to testify in court.

With regard to the size, location, and neighbors, the Appellant submitted that the land is located at Kamachumu in Ibuga Ward Muleba District and sized four (4) acres with boundaries demarcated with: Richard Kagoro (northern part); Apa Kakulya (eastern part); Richard Kagoro (southern part); and Rordwinston Leonard, Buruani Abdu and Mr. Dawson (western part). The Appellant finally submitted that the District Tribunal failed to evaluate evidence registered by his witnesses and that of the Respondent brought in the Ward Tribunal by only witness, Mr. William who testified that the Appellant bought the disputed land in 1985.

Responding the submission of the Appellant, the Respondent submitted that he bought the disputed land from Kyabusiku Ibrahim in 1990 in presence of witnesses and had signed a paper whereas the Appellant has no any document to prove ownership. The Respondent submitted further that during the hearing of the case in the Ward Tribunal he showed the members of the Ward Tribunal the paper, but they refused to register it in the record as exhibit in prove of land sale

agreement. On size, location, value and neighbors, the Respondent did not register any submissions. He preferred to remain mute.

I have perused the record of this appeal and found out that the Appellant registered complaint before the Ibuga Ward Tribunal on 13<sup>th</sup> March 2018 and a month later, on 19<sup>th</sup> April 2018 the complaint was scheduled for hearing in Civil Case No. 4 of 2018. Proceedings of 19<sup>th</sup> April 2018 depicts that the Appellant had summoned three persons, including a northern part neighbor to the disputed land, Mr. Apa Kakulya. However, neither the Appellant nor his witnesses who testified on land size to distinguish it from other lands and even the value to determine jurisdiction of the land tribunals.

The same default is displayed in the testimony of the Respondent and his only witness Mr. William Samwel. Both witnesses did not adduce evidence in the Ward Tribunal to show size, value and neighbors of the disputed land. It is unfortunate the testimony of Mr. William, who was marshalled by the Respondent as defense witness number two (PW2) in the Ward Tribunal, is confusing. At page 5 of the proceedings in the Ward Tribunal, PW2 testified that Kyabusiku sold the disputed land in 1990 and in another instance he testified that Kyabusiku sold the disputed land in 1985. It is from this piece of

evidence where the Appellant also complained that the District Tribunal did not evaluate well the evidences tendered in the Ward Tribunal.

The reasoning of the District Tribunal in deciding in favour of the Respondent is found at page 6 of the judgment in the following text:

*It is settled law that a person whose evidence is heavier than that of the other is the one who must win (see: **Hemedi Saidi v. Mohamed Mbilu** [1984] TLR 113). As per evidence adduced at the trial tribunal it is crystal clear that the appellant's (Respondent's) evidence was heavier than that of the respondent as far as ownership of the suit land is concerned.*

It is this reasoning and evidence of PW2 in the Ward Tribunal which brought the Appellant in this court praying for restoration of the decision of the Ward Tribunal which decided in his favour. However, in court of law, like this one, a party to succeed in land dispute and declared lawful owner of the disputed land, he must register descriptions and details of land on location, size and value, since initiation of the proceedings in lower tribunals. This court

depends entirely on record available in the case file, and not those tendered in an appeal stage.

In the present appeal, the parties and their witnesses were silent on description of location, size and value of the disputed land as per requirement of the law in the provision of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 and precedents of this court 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; **Aron Bimbona v. Alex Kamihanda**, Misc. Land Case Appeal No. 63 of 2018; **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018; and **Simeo Rushuku Kabale v. Athonia Simeo Kabale**, Civil Appeal No. 6 of 2019. Failure to properly identify a land in dispute, renders the appeal incompetent before this court and therefore must be dismissed for want of certainty of the disputed land.

Having said so and considering no any evidence of sale agreement was tendered in both tribunals below to substantiate claims of the parties in buying the land from different people, I have formed an opinion to dismiss this appeal and set aside the judgments

and quash proceedings and any orders emanated from the tribunals below. This will allow, any of the parties, if so interested in the disputed land, to institute a fresh suit in appropriate forum entrusted with mandate to determine land disputes in accordance with the law. However, with regard to costs, I will award no costs to any of the parties in this appeal. Each party will bear his own costs. The reason is straight forward. The rightful owner of the disputed land is yet to be determined.

I therefore hereby order the following:

- i. This Misc. Land Appeal No. 2 of 2020 is hereby dismissed;
- ii. Proceedings of the District Tribunal in Land Appeal No. 64 of 2018 is hereby set aside;
- iii. Judgment of the District Tribunal in Land Appeal No. 64 of 2018 is hereby quashed;
- iv. Any other order or decision emanated from the District Tribunal in Appeal No. 64 of 2018 is hereby quashed;
- v. Proceedings of the Ward Tribunal in Civil Case No. 4 of 2018 is hereby set aside;
- vi. Decision of the Ward Tribunal in Civil Case No. 4 of 2018 is hereby quashed;

vii. Any other order or decision emanated from the Ward Tribunal in Civil Case No. 4 of 2018 is hereby quashed;

viii. This appeal is dismissed without any order as to the costs. Each party to bear his 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. The parties duly informed.

Ordered accordingly.



  
F.H. Mtulya

**Judge**

30.11.2020

This judgment was delivered in Chambers under the seal of this court in the presence of the Appellant, Mr. Amadi Kilindini and in the presence of the Respondent's grandson, Mr. Rordwinston Leonard.



  
F. H. Mtulya

**Judge**

30/11/2020