

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**AT SUMBAWANGA**

**PC CRIMINAL APPEAL NO. 04 OF 2018**

*(Originating from Sumbawanga District Court in Criminal Appeal No. 01 of 2018)*

**HILDA PESAMBILI ..... APPELLANT**

**VERSUS**

**MAHAMUDI MGWENO @ WHITE ..... RESPONDENT**

*Date of last Order: 11/08/2020*

*Date of Judgment: 04/11/2020*

**JUDGMENT**

**C.P. MKEHA, J**

The present appeal traces its origin from Muze Primary Court where the appellant sued the respondent for an offence of criminal trespass c/s 299 of the Penal Code. It would appear that, in the cause of hearing the said criminal case an issue of ownership of the disputed land emerged. The trial primary court proceeded to determine the said issue thereby declaring the respondent victorious. The appellant's first appeal before the District court of Sumbawanga was unsuccessful. She therefore preferred the present appeal with the following grounds of appeal:

1. That, the District Court, like the trial Primary Court erred in determining the civil dispute in lieu of the criminal case.
2. That, the learned Senior Resident Magistrate based on a forged copy of sale agreement to uphold the trial court's decision.

Whereas the appellant appeared in person, the respondent was represented by Mr. Sanga learned advocate in the present appeal. When the appellant was invited to argue the appeal, she merely adopted the grounds of appeal contained in her Petition of Appeal.

Mr. Sanga learned advocate submitted for the respondent in respect of the first ground of appeal that, the decision of the District Court was correct. According to Mr. Sanga learned advocate, there was no evidence that the appellant owns the disputed land and that, with a criminal mind, the respondent entered into the said land.

The learned advocate went on to submit in respect of the second ground of appeal that the trial court did not determine issues of ownership of the disputed land. In view of the learned advocate, the purported sale agreement indicates clearly that it is the appellant who once sold the disputed land to the respondent.

Notwithstanding insistence of the learned advocate that the trial court did not determine issues of ownership of the disputed land, records before the two courts below indicate a different story. At page 5 of the first appellate court's judgment evidence is vivid that the learned Senior Resident Magistrate did nothing but upholding the trial court's decision on ownership issue. The learned Senior Resident Magistrate stated:

**"From the above testimonies this court find (sic) that the appellant never submitted any document to the satisfaction of trial court that she is the legal owner of the said shamba, while the respondent tendered "D1" exhibit (sic) to satisfy the court that he is a legal owner of the said shamba. In my opinion, I find that written document is superior than parol**

evidence. "D" is a sale agreement between the appellant and her daughter Eva Charles against the respondent in respect of the said shamba with a consideration of Tshs. 1,200,000/=, the appellant show (sic) nothing in respect of ownership of trespassed shamba"

Earlier, the trial court had held that: **"Kwa kupitia maelezo haya, Mahakama hii imeridhika ya kuwa mshitakiwa hakutenda kosa hilo, na kwamba kwa kupitia kielelezo alichotoa, eneo lile alilipata kihalali jambo lililoungwa mkono na washauri wa Mahakama hii."** See: Page 4 of the handwritten judgment of the trial court.

From the two paragraphs extracted from judgments of the two courts below, unlike what the learned advocate contended, indeed, as complained in the first ground of appeal, the two courts below ended up determining the civil dispute of land ownership.

The only determinative issue is **whether the trial court was justified to proceed determining land ownership issue via a criminal trespass case.**

Fortunately, the law on the above posed issue is well settled. In the case of **Sylivery Nkangaa Vs. Raphael Alberto (1992) T.L.R 110** it was held that a Criminal Court is not the proper forum for determining the rights of those claiming ownership of land. Only a Civil Court via a civil suit can determine matters of land ownership. And that, a charge of criminal trespass cannot succeed where the matter involves land in dispute whose ownership has not been finally determined by a civil suit in a court of law.

Therefore, from the above settled position of the law, it was wrong for the trial court to determine issues of land ownership via a criminal case. Equally, it was wrong for the first appellate court to bless the trial court's decision which was rendered in contravention of the settled position of the law.

For the foregoing reasons, the decisions and decrees of the two courts below are quashed. It shall be upon the willing party to prefer a civil suit before a competent court of law for determination of land ownership issue. Appeal allowed. No order is made as to costs.

Dated at **SUMBAWANGA** this 04<sup>th</sup> day of November, 2020.

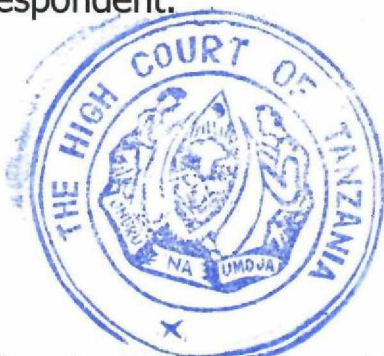


  
**C.P. MKEHA**

**JUDGE**

**04/11/2020**

**Court:** Judgment is delivered in the presence of the appellant in person and in the presence of Mr. Kipesha learned advocate for the respondent.



  
**C.P. MKEHA**

**JUDGE**

**04/11/2020**

**Court:** Right of appeal is fully explained.



  
**C.P. MKEHA**

**JUDGE**

**04/11/2020**