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

MISC. LAND CASE APPEAL NO. 24 OF 2019
(Arising from Karagwe District Land and Housing Tribunal in appeal No. 34/2018 and originating from Rugera Ward Tribunal in Land Case No. 59/2017)

MERICKSEDEKI EDWARD.....APPELLANT

VERSUS

AGNES NECKEMIA.....RESPONDENT

JUDGMENT

Date of last order 04/11/2020
Date of Ruling 11/12/2020

Kilekamajenga, J.

The appellant appeared before this Honourable Court seeking for justice after being aggrieved with the decision of the District Land and Housing Tribunal of Karagwe. The appellant is armed with four grounds to convince the Court that his rights were denied by the District Land and Housing Tribunal. The grounds of appeal are coached thus:

1. *That, the decision of the appellant chairman to strike off the case was not worthy to be the judgment it (sic) never analysed main issues at appeal and replies;*
2. *That, for justice to both parties the question of administrator was vital to find out the rightful claimant whom lawfully inherited thus directing de novo case (sic);*

3. *That, section 23 of Cap. 216 RE 2003 (sic) referred to by of the appellate chairman was not keenly used. The appellant had defended his case in his replies dated 7/5/2018. And defence reply dated 12/09/2018 would have been considered for rightful justice;*
4. *That, the appellate tribunal chairman did not comply with S. 24 of Cap. 2016 RE 2002 (sic) in conjunction with 23(3) cap 216 (sic) showing cause of being agaist (sic) his only asesor (sic) Ruth Chamani.*

When the appeal was fixed for hearing, both the appellant and respondent appeared in person and without representation. The appellant prayed to dispose of the appeal by way of written submission the prayer which was objected by the respondent. However, the Court granted the order and scheduled the dates for filing the written submissions. At the end, only the appellant submitted the written submission and the respondent seemed not to understand the essence of written submission and she still pressed for the matter to be argued orally. So, for the interest of justice, I invited the parties to argue the case orally. However, I wish to consider the appellant's written and oral submissions. In the written submission, the appellant abandoned the 2nd to 4th ground and argued the first ground. In his written submission, the appellant argued that the chairman failed to

compose a reasoned judgment; he reversed the decision of the trial Ward Tribunal on the simple reason that the appellant failed to argue his case.

In the oral submission, the appellant submitted that he got the disputed land from his grandfather called Nekemia in 1984. He further submitted that the grandfather had four daughters called Rutakilana, Julitha, Regina and the respondent. Rutakilana and Regina are alive whereas Julitha died. After the death of his grandfather in 1990, every daughter was given her piece of land. The land which was supposed to be given to the daughter called Rutakilana was allocated to him as a gift. Later, the appellant went to Omurushaka for business and left his grandmother in the house that he built within the land of his grandfather. His grandmother also died in 1996 and the respondent stayed in the house. In 2006, the appellant was informed that the respondent demolished the house and constructed another house within the same plot of land. The appellant took the matter to the Ward Tribunal. At the Ward Tribunal, the case was decided in favour of the appellant, the respondent appealed to the District Land and Housing Tribunal where the appellant lost the case hence this appeal.

On the other hand, the respondent informed the Court that she was one of the daughters of the late Nekemia who died in 1990. When his father died, the respondent stayed with her mother who also died in 2007. She submitted further that her father bequeathed the land to the daughters and one Zakayo Eliakimu was entrusted to take care of the family. Her sister called Rutakilana is still alive and she is the mother of the appellant. The land which was allocated to Rutakilana is there and has no dispute. The appellant later complained that the respondent took his land. The respondent vehemently argued that the disputed land was allocated to her after the death of her father. The respondent is currently occupying the land where the graves of her father and mother are located.

In the rejoinder, the appellant confirmed that the disputed land is where the graves of the respondent's father and mother are located. The appellant insisted that the land that was allocated to the respondent has no dispute but the disputed land was given to him as a gift.

At this juncture, I will address the first ground of appeal and also consider the parties' oral submissions. On the first ground, the appellant argued that the appellant tribunal failed to compose a reasoned judgment. I have read

the whole judgment of the District Land and Housing Tribunal and found out that the chairman ordered the case to be argued by way of written submissions. Unfortunately, the appellant filed the written submission against the order of the court, i.e. he filed the submission out of time. When the chairman was composing the judgment, he simply noted that the appellant failed to argue his case and proceeded to grant justice to the respondent. After considering the submissions, the chairman noted the assessors' opinions and concluded that:

> *'I fail to concur with my one lay assessor for the reasons that the respondent did not argue his appeal so I proceed under S. 23 of Cap. 216 RE 2002 to grant the appeal with cost. It is so ordered.'*

Generally, there is no reason given why the chairman departed from the decision of the Ward Tribunal, neither did he evaluate the submissions nor the evidence adduced before the Ward Tribunal. I do not know why the chairman referred to **section 23 of the Land Disputes Courts Act, Cap. 216 RE 2002**. For clarity, I take the discretion to reproduce the above section thus:

> *'The District Land and Housing Tribunal established under section 22 shall be composed of at least a chairman and not less than two assessors.'*

In my view, this section is irrelevant in this case and does not show the reasons for the decision. As rightly argued by the appellant, the judgment is not worthy to be considered a decision because it is contrary to **Regulation 20(1) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003** which provides that:

> *'The judgment of the tribunal shall always be short, written in simple language and shall consist of:*
>
> *(a) A brief statement of facts;*
>
> *(b) Finding on issues;*
>
> *(c) A decision; and*
>
> *(d)* ***Reasons for the decision.***

In the instant case, the chairman did not analyse the grounds of appeal or the respondent's written submission. In my view, this illegality is fatal. However, I invoke the revisionary powers of this Court in order to determine justice in this matter. As earlier hinted in this case, the disputed land belonged to the father of the respondent. The late Nekemia had four daughters including the respondent. On the other hand, the appellant is the son of one of the daughters. All the daughters inherited the land from their father. The appellant alleged that the disputed land was bequeathed to him by Nekemia before he died in 1990. Furthermore, the respondent

alleged that she has the right to possess her father's land because she is the daughter. Over all, her father and mother's graves are in the disputed land. I have perused the records of the trial tribunal and those of the first appellate tribunal and did not find any information backing-up the allegation that the disputed land was bequeathed to the appellant by Nekemia. Lack of such evidence deprives the appellant's right to inherit the land which belonged to the father of the respondent. In my view, the respondent, being a daughter, still has the right to own land like any other person. The respondent is backed-up with the Constitution of the United Republic of Tanzania on ownership of land because '*all human beings are born free and are all equal.*' See, **Article 12 and 13 of the Constitution of the United Republic of Tanzania.**

Furthermore, I am alive about the old Haya customary law which did not allow women to inherit clan land. However, I have no hesitation whatsoever to declare that this kind of law contravenes the Constitution and other laws of the country. This stance has been taken in a number of judicial decisions, including the cases of **Angelo Bisiki v. Antonia Bisiki and others [1989] TRL 225** and **Bilimbasa Zacharia v. Jarves John [1983] TLR 67**. For instance, this Court was confronted with a similar

dispute in the case of **Leonance Mutalindwa v. Mariadina Edward [1986] TLR 120**, and Hon. Katiti J. stated that:

> *The first issue, whether a female has legal competence to dispose of clan land, is to both professional and lay members of this zone, susceptible to easy answer, an answer that is particularly attractive, covetously and jealously guarded by chauvinistic males but the envy of females from Kagera Region. The answer as expected is that para 20 of the Customary Law Declaration G. N.536, does operate to deprive the first respondent a female the power to sell clan land. The first issue is therefore answered positively. But I would like to add, may be in passing, that at any one time, we may have bad as well as good law, and* ***I venture to say, without qualms, that this piece of customary law is bad, it discriminates against women, encourages expansionist greed on the part of males against female relatives, and deprives females, important resources for self – assistances,*** *when as in this case, they are in serious trouble, while like wild birds of prey, men, greedily look on, or however, either for the woman to expire, or die, or abandon that shamba, - in this case, this case, this ugly position is with clarity put by the appellant's witness, P.W.4 thus: ...So much for the ugly aspects,* ***but what is encouraging is all that the grave for the same is being dug, for the contemptuous burial of the same for the sake of equality, when the Fifth Constitutional Amendment 1984, takes its rightful place, in 1988.***

Also, the case of **Ndewawiosia Ndeamtzo v. Imanuel Malazi (1968) HCD 127** had the similar position when it stated that:

> *'It is quite clear that this traditional custom has outlived its usefulness. The age of discrimination based on sex is long gone and the world is now in the stage of full equality of all human beings irrespective of their sex, creed, race or colour. On grounds of natural justice daughters like sons in every part of Tanzania should be allowed to inherit the property of their deceased fathers whatever its kind or origin, based on equality.'*

In line with the above law, **section 56 of the Law of Marriage Act, Cap. 29 RE 2002** further protects the rights of women on ownership of land thus:

> ***A married woman shall have the same right as has a man to acquire, hold and dispose of property, whether movable or immovable****, and the same right to contract, the same right to sue and the same liability to be sued in contract or in tort or otherwise.*

On the other hand, the **Land Act, Cap. 113 RE 2002 and the Village Land Act, Cap. 114 RE 2002** have provisions which guarantee the right of women to own land. **Section 3(2) of the Land Act** provides:

3(2) The right of every adult woman to acquire, hold, use, and deal with land shall to the same extent and subject to the same restrictions be treated as a right of any man.

Also, **section 3(2) of the Village Land Act** has a similar provision thus:

3(2) The right of every adult woman to acquire, hold, use, deal with and transmit by or obtain land through the operation of a will, shall be to the same extent and subject to the same restrictions as the right of any adult man.

See, also the **Mortgage Financing (Special Provisions) Act of 2008**.

Based on the above provisions of the law, I find no reason to order the respondent to vacate from her father's land on the mere allegation that the disputed land was given to the grandson as a gift. It will be grave injustice for this Court to order the daughter to vacate from the land where her father and mother's grave are located and allow a grandson to occupy the same land. There is no better justification for the disputed land, which with no doubt belonged to the father of the respondent, to be inherited by a grand son and not the daughter of Nekemia (respondent). I have failed to accord weight to the allegation that the appellant got the land from his grandfather as a gift. I therefore find the appeal devoid of merit. The

respondent has the right to own the land which was left by her father. The appellant should vacate from the disputed land as soon as possible. No order as to costs. Order accordingly.

DATED at **BUKOBA** this 11th Day of December, 2020.

Ntemi N. Kilekamajenga.
JUDGE
11/12/2020

Court:

Judgement delivered this 11th December 2020 in the presence of the appellant and respondent present in person. Right of appeal explained to the parties.

Ntemi N. Kilekamajenga.
JUDGE
11/12/2020