

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

LAND APPEAL NO 42 OF 2019

*(Arising from Land Application No 41 of 2018 in the District Land and Housing
Tribunal for Mara at Musoma)*

NYAMUSHA MUNDAAPPELLANT

Versus

EDWARD MUHINGA RESPONDENTS

JUDGMENT

15th April & 12th May, 2020

Kahyoza, J

Edward Muhinga sued **Nyamusha Munda** in the District Land and Housing Tribunal at Musoma (**the tribunal**) claiming for a piece of land measuring 40 X 80 paces located in Kiemba Village in Musoma. **Edward Muhinga** deposed to **the tribunal** that the disputed land belonged to Pius Magati from 1974 to 1979. Later, Pius Magati vacated it. In 1998 **Edward Muhinga** took possession of land and occupied it until 2012 when he applied to the village council for re-allocation. The village re-allocated the disputed land to him. **Edward Muhinga** produced the re-allocation letter as exhibit.

Nyamusha Munda's account was that he bought the disputed land on the 8th October, 2016 from Ms. Seda Maunye. Ms. Seda

Maunye purchased it from one Saasite Magati. **Nyamusha Munda** produced a sale agreement between him and Ms. Seda Maunye. However, he could not exhibit a sale agreement between **Ms. Seda Manuye** and **Saasite Magati**. He contended in those old days, land was disposed without written document. The tribunal found in favour of **Edward Muhinga**, the respondent.

Aggrieved, **Nyamusha Munda** appealed to this Court with eight grounds. He prays the Court to quash the decision of tribunal and declare him a lawful owner of disputed land. The grounds of appeal are summarized as follows.

1. That the trial chairman was biased to admit Application No 41/2018 instead directing the Ward Tribunal hear afresh the dispute as ordered in Land Appeal No 115/2017.
2. That, the tribunal neglected to take cognizance of the fact that there was a decision of the trial tribunal which quashed application No 10/2016 on technical ground and that the respondent neglected to adhere to the observation therein.
3. That, the tribunal erred in law and fact by failure to analyze and evaluate evidence proving ownership.
4. That, the tribunal grossly erred in law and fact to declare the respondent the legal owner of the disputed land without assigning sufficient reasons, notwithstanding the fact that there is pending decision in appeal 115/2017 which left a lot of things undecided.
5. That, the trial chairman grossly erred in law and fact to declare the respondent as a legal owner without considering the sale

agreement.

6. That the trial chairman failed to consider the appellant's evidence.
7. That the trial chairman erred to ignore a fact that the respondent's occupation in 2012 via allocation by village land committee was illegal for non-compliance with laid down procedure.

The issues for determination from the grounds of appeal are

1. Was the application *res judicata* or incompetent for having been previously filed?
2. Was the evidence properly evaluated?
3. Was the re-allocation illegal?

Was the application *res judicata* or incompetent for having been previously filed?

The appellant contended that the tribunal ignored the decision in Land Appeal No. 115/2017 which ordered the matter to be heard afresh by the Ward tribunal. The respondent argued that the appellant's contention was not true. The record has it that the appellant, who was the respondent before the tribunal, raised the issue of the existence of Land Appeal No. 115/2017 in his defence. He failed to substantiate it by annexing the decision he referred to. Further scrutiny of the record shows that the appellant did not argue the issue before the tribunal. Thus, there are no evidence for this Court to ground its findings. It is for that reason this Court finds the first, second and third grounds of appeal meritless. Thus, the issue of

res judicata or the suit being incompetent for having been previously determined cannot arise.

Was the evidence properly evaluated?

I will answer the above issue together with the complaint that the tribunal failed to consider the appellant's (the defence evidence). I must say at the outset that the tribunal properly and adequately considered the evidence on record including the defence evidence. This is shown at page 5 and 6 of the typed judgment of the tribunal. I quote

"I have considered the opinion of the assessors and I agree with them. I have other reason in addition. First, the respondent claimed to have purchased the disputed land from Seda Maunye. Seda Maunye also supported the respondent and stated that she sold to the respondent a land that belonged to his (her) father. There was no convincing proof produced to this tribunal to prove that the disputed land belonged to Seda's father. More so even if there was such a proof, it was not show how then the disputed land devolved to Seda Maunye to enable her to sell it to the respondent."

Given the above quoted excerpt, there is no doubt that the appellant's (the respondent before the tribunal) evidence was considered but found not convincing. This Court, being the first appellate Court, is entitled to review the evidence on record. See **Siza Ptrice V. R Cr. Appeal No 19/2010**, where the Court of Appeal observed that *"We understand that it is settled law that a first*

appeal is in the form of a rehearing. The first appellate court has a duty to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary”.

The evidence on record has it that the owner of the disputed land was Pius Magati. Both parties agree to that. This fact was also established from the village records as testified by **Pw2 Patricanus** and **Pw4 Gredson**. **Pw2 Patricanus** and **Pw4 Gredson** were the village social welfare committee secretaries. **Pw4 Gredson** took over from **Pw2 Patricanus**. They deposed that they kept the village's land ownership records. The respondent's evidence was to the extent that Pius Magati left the land unattended in 1979. In 1998, the respondent put the vacated land to use. Later in 2012, he applied to the village authority to be allocated the disputed land. According to **Pw3 Roketi Rukiko**, the hamlet chairman, the village council advertised its intention to allocate the disputed land to the respondent for 8 to 9 months. As there was no objection, the village social welfare committee allocated the land to the respondent the decision, which was approved by the village council.

Pw3 Roketi Rukiko deposed that the respondent occupied the vacated land for 15 years before he applied for re-allocation.

Pw3 Roketi Rukiko further deposed that he cautioned the appellant that the land he wanted to buy did not belong to Dw2 Seda Maunye and that the appellant did listen to him.

There was yet another piece of evidence, that is the documentary evidence, Exhibit P. 1 and 2. Exhibit P. 1 and 2 were

the letter of occupancy issued by the village council in 2012 and the minutes of the village land dispute committee convened in 2016 to consider the parties dispute. Both show that the respondent was the owner of the disputed land.

Another piece of evidence was that, the land in dispute was allocated to Pius Magati by the village authority according to the village records. **Pw4 Gredson** a secretary of the village social welfare committee deposed that the records showed that the land was first allocated in to Pius Magati. And later, on the 10th June, 2012 the village authority re-allocated the disputed land to the respondent. **Pw4 Gredson** did not find any record that the disputed land was at any time owned by **Dw2 Seda Maunye**.

The defence evidence was that the land in dispute was first owned by Pius Magati. **Dw2 Seda Maunye** deposed that the land belonged to her father and that her father purchased it from Jumanne Magati. **Dw1 Nyamusha** contended that he purchased the land from **Dw2 Seda Maunye**.

I passionately considered the evidence of both sides. I must say at the outset that I am in agreement with the tribunal' s finding that the disputed and belongs to the respondent. **Dw2 Seda Maunye** does not dispute the fact that the land in question belonged to Pius Magati. She deposed that her father purchased it. She contended that her father purchased it from **Jumanne Magati**. There is no evidence substantiate that contention. **Dw2 Seda Maunye** did not It accounted how Jumanne Magati took possession of the disputed land from Pius Magati. It is not clear whether

Jumanne Magati bequeathed the disputed land by inheritance or otherwise. There is also no explanation how **Dw2 Seda Maunye** got the land from her father. Furthermore, none of the above transfers of the disputed land was registered with the village authorities. The village record shows the original owner who was Pius Magati.

The appellant only tendered a sale agreement between the him and **Dw2 Seda Maunye**. I have no scintilla of doubt in my mind that alleged sale was not authentic. **One, Dw2 Seda Maunye's** title to the disputed land is distrustful. **Two,** the alleged sale was not witnessed by the hamlet chairman. The hamlet chairman **Pw3 Roketi Rukiko** warned the appellant that the land he wanted to buy was not the property of **Dw2 Seda Maunye**. Despite the warning, the appellant went ahead and purchased the disputed land.

The defence evidence was not free from contradictions. The seller of the disputed land **Dw2 Seda Maunye** deposed that her father purchased the land from **Jumanne Magati**. **Dw3 Juma John** and **Dw4 Goro Athanas** deposed that **Dw2 Seda Maunye's** father Maunye Butiti purchased the said land from **Saasita Magati**. I find the above contradictions or discrepancies material rendering the defence evidence incredible.

There is ample evidence the disputed land was allocated by the village council to Pius Magati. The village council has power to allocate land subject to section 142 (3) of the **Local Government (District Authority) Act**, Cap. 287 which provides as follows.

142(3) For the purposes of this Part, a village council shall have the power to do all such acts and things as appear to it

to be necessary, advantageous or convenient for or in connection with the carrying out of its functions or to be incidental or conducive to their proper discharge.

I find that the evidence was properly analyzed and there was ample evidence to support the tribunal's conclusion. Thus, the fourth, six and seventh grounds of appeal are meritless. And I so find.

Was the re-allocation illegal?

The appellant contended that tribunal ought to have found that the respondent's occupation of the disputed land from 2012 was illegal and fraudulent. He added that the re-allocation of the disputed land by the village land committee was illegal. The records show that some of the respondent's witnesses took part in the allocation of the land to the respondent. **Pw3 Roketi Rukiko** deposed that he was hamlet chairman at the time the disputed land was reallocated. He added that after the respondent applied for re-allocation of the land that belonged to Pius Magati, they published the intention to re-allocate the land to the respondent to invite people to object to the re-allocation. He deposed that the publication was made for eight to nine months. There was no objection. Then, they allocated the land to the respondent. **Pw3 Roketi Rukiko** testified that

"..village council announced on (sic) plot No. 15 which had been vacant for more that 17 years. The announcement was for eight to nine months and no one objected"

The law empowers the village council to allocate land on two conditions; **One**, the land to be allocated must not be on use and **two**, the land should not have incumbent claimant or otherwise

there must be an advertisement on the land intended to be allocated.

In the case at hand the land belonged to Piusi Magati. Magati vacated it and left it unoccupied for more than 15 years. The respondent applied to be allocated the disputed land. The village council published its intention to re-allocate the land to the respondent and no one objected. The village re-allocate it. I see no procedures which were violated. See the procedures as provided under section 145(4) of the village Land Act Cap 114 R.E 2002 which is as follows:

“145.- (1) N/A;

(2)N/A;

(3)N/A;

(4) *Where a village council considers that any village land held for a customary right of occupancy has been abandoned, it shall publish a notice in the prescribed form at the offices of the village council and affix a copy of the notice in a prominent place on that land–*

(a) Stating that the question of whether that land has been abandoned will be considered by the village council at a time which shall be not less than thirty days from the date of the publication of the notice;

(b) Inviting any person in the village with an interest in that land to show cause as to why that land should not be declared to be abandoned.”

In the instant case **Pw3 Roketi Rukiko** deposed that the

advertisement was made for eight to nine months. I am unable to find the law that was violated to render the decision of the village council to re-allocate the disputed land to the respondent, illegal. Thus, I find the eighth ground of appeal without merit and dismiss it.

Eventually, I find the appeal meritless and uphold the decision of the tribunal. Consequently, I dismiss the appeal with costs.

It is ordered accordingly.




J. R. Kahyoza

JUDGE

12/5/2020

Court: Judgment delivered in the absence of the parties with leave of absence due to COVID-19 outbreak. **Copies to be supplied to parties on the 18th/5/2020.** B/C Catherine present.



J. R. Kahyoza

JUDGE

12/5/2020