IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISCELLANEOUS LAND CASE APPEAL NO. 55 OF 2019

(Originating from Land Case No. 9/2018 of Nyampulukano Ward Tribunal and Land Appeal No. 84 of 2018 before Geita District Land and Housing Tribunal)

LAURENT ERNEST ..... APPELLANT

VERSUS

ALFRED KAMULI ..... RESPONDENT

JUDGMENT

05 & 20/05/2020

RUMANYIKA, J.:

The 2nd appeal is against judgment and decree of 08/11/2019 of the District and Housing Tribunal for Geita (the DLHT). In which in favor of Alfred Kamuli (the present respondent) the DLHT reversed decision of 26/10/2018 of Nyampulukano ward tribunal (the w/t).

The grounds of appeal essentially revolve around (rephrased) one points: - **that the DLHT improperly considered and evaluated the evidence on record.**

Like Laurent Ernest (the appellant), the respondent appeared in person.

When the appeal was called on 05/05/2020 for hearing, following global outbreak of the Coronavirus pandemic and pursuant to my order of

24/03/2020 the parties were present online (mobile nos. 0762769450 and 0768105961) respectively, by way of Audio Teleconferencing they were heard.

None of them, additional to contents of the memorandum of appeal or reply thereon respectively had something material to submit. In fact both of them relied on their documents respectively.

The evidence on record but in a nutshell reads thus:-

Together with his witnesses, the appellant (not an administrator of the estate or something) stated that historically the disputed land belonged to the elderly Tebuka (his grandfather) who sometimes during the 1974 Operation Vijiji and therefore land policy had been removed that at times part of it was occupied by a local witchdoctor one Malosha. Then he (the appellant) occupied it to date. That is all.

Equally briefly the respondent and witnesses are on record having testified that he purchased the disputed land from an elderly Tebuka in 1979, he built a temporary house and rented it to Muhoja Matogoro and Lena Thobias, and then he planted and grew some trees. Also the respondent he said that the said Mhoja Matogolo guarded the disputed the tree plot against grazing heads of cattle until at the harvesting time for all these years not interrupted. But at the very stage through vendor the appellant claimed title and he cut down two trees for charcoal and timber. Hence his (respondent) claim of shs. 650,000/=. That is all.

The issue is whether or not the appellant lawfully owned the disputed land.

In her conclusion the learned chair was of the opinion as follows:-

> "..... I have considered the arguments from both parties so far as grounds of appeal are concerned. In consideration to opinion of assessors with I proceed to declare appellant (now respondent) is legal owner of the suit land .....he is entitle to payment of Tshs. 650,000/= as decided by the ward tribunal..... It is proved that the parties are neighbors' boured by trees i.e. dispute trees. Because one of the issue to be determined is to whom the trees in dispute belong. From the physical circumstances this tribunal observed on visitation day is that the appellants bare trees of the same type, age and size to the suit trees. **It is therefore proved that the suit trees belong to the appellant (now respondent) and he is entitled to payment of his destroyed cut trees as per ward tribunals decision. Not only that the appellant is entitle to the suit trees which ended where the suit trees are".**

With difficulties though if I understood her correctly, from the quotation above the learned chair meant that as, among others the trees so cut down were proved to be the appellant's property, naturally so it was the plot.

The appellant may have inherited or assumed inheritance of the disputed land from the elderly Mrs. Malocha or Tebuka (who, as far as the respondents' evidence is concerned) in his favor turned out to be the vendor) yes! When was it? One may wish to tell! But the respondents' evidence that he purchased the plot in 1979, he planted and grew the disputed trees it was not sufficiently disproved by the appellant.

Now that correctly so in my considered opinion with reasons the DLHT found the respondent the lawful owner, from the word go the latter had proved his case on the balance of probabilities for three main reasons; **(1)** the appellant did not sufficiently disputed the fact that the respondent was the one who planted and grew the disputed trees **(2)** the appellant did not claim title until the trees were ripe for harvest. Perennial and permanent as the trees were, the land therefore belonged to the respondent. It is very unfortunate that age of the trees was not established by the parties but this court shall take a judicial notice that the trespassing appellant harvested the trees beyond limit of twelve (12) years prescribed by the Law of Limitation Act Cap 89 R.E. 2002.

The DLHT's decision and orders are upheld. The devoid of merits appeal is dismissed with costs. The disputed land belonged to the respondent. It is ordered accordingly.

Right of appeal explained.

THE HIGH COURT OF TANZANIA
UHURU NA UMOJA
MWANZA

S. M. RUMANYIKA
JUDGE
14/05/2020

It is delivered under my hand and seal of the court in chambers in absence of the parties (copies to be supplied immediately).

S. M. RUMANYIKA
JUDGE
20/05/2020