



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

MISCELLANEOUS LAND APPEAL NO. 50 OF 2018

(Arising from District Land and Housing Tribunal of Bukoba in appeal No. 66/2017 and original case in civil case No. 09/2017 from Kishogo Ward Tribunal)

BURUHANI OMARI.....APPELLANT

VERSUS

VICTORIA REVELIAN.....RESPONDENT

JUDGMENT

Date of last order 26/05/2020

Date of judgment 29/05/2020

N.N. Kilekamajenga, J.

The appellant lodged this appeal challenging the decision of the District Land and Housing Tribunal of Bukoba in appeal No. 66 of 2017. The case originated from the decision of Kishogo Ward Tribunal in civil case No. 09 of 2017. Before this Court, the appellant advanced five grounds of appeal thus:

- 1. That, the Hon. Chairman and assessors erred in law for the reasons of being one sided by refusing to take into consideration the evidence adduced on my side by relying on mere say of the respondents the act which is bad in law and against the interests of justice for the parties in dispute.*

2. *That, the Hon. Chairman and assessors further erred in law by mediating the case in favour of the respondent depending on mere say of the respondent concerning ownership of the area in dispute which was allocated to me by the village council in 1999 when I started to make developments without any complaints made by anybody till the after thoughts made by the respondent who alleged to have purchased the area in 1996 without giving reasons why no complaints were raised by the respondent when I was making developments of the area form 199 till when the case was opened at Kishogo ward tribunal by the respondent against me and without joining the village council who allocated the area to me as allowed by law.*
3. *That, the reasons of refusing to consider the facts all was made purposely by the appellant tribunal for the reasons of being one sided the act which is bad in law and without giving the reasons why complaints were made if at all the area owned by private owner and not the village council as alleged.*
4. *That, if that was true the ward tribunal wrote me a letter requiring me to return my copy of judgment to be amended I refused copy is attached to prove the facts and /7/2007 they wrote another letter for change of judgment all that was given a naked eye why they wanted to change the judgment making two judgments against section 14(i) of land act No. 2/2002 which was not followed all copies are attached judgment and copies of letters.*
5. *That, the Hon. Chairman erred in law by delivering judgment in favour of the respondent when it was proved that the value of the area in dispute is over the powers of the tribunal instead of quashing the trial tribunal judgment the act which is bad in law and against the interests of justice. It*

is for that reasons that one member of the tribunal Charles Kalfani refused to sign the judgment because the value of the area in dispute was over the amount allowed to the trial tribunal being one sided. Having 2 houses Banana plantation and eucalyptus trees Mihumba, pine tree (sic) as such that is the judgment I was given and not otherwise I attach the judgment together with two letters with different dates which required me to return the judgment for amended (sic) which I refused.

The case was finally called for hearing. Both the appellant and the respondent appeared in person and without representation. During the oral submission the appellant informed the court that the land was allocated to him by the village council in 1999. He continued to use the land since then until now. The appellant shifted the burden to the respondent by blaming her that she failed to summon the leaders of the village council to show that the land was allocated to the appellant. He further argued that he tendered a receipt from the village council which showed that he was allocated the disputed land. On the second point, he argued that the value of the disputed land is higher than the pecuniary jurisdiction of the Ward Tribunal. He further submitted that one of members of the Ward Tribunal never signed the judgment though he was present during the hearing.

On the other hand, the respondent informed the Court that her husband one Reverian Kamhangile bought the disputed land from Alphonse Karokola. Though

Alphonse Karokola died but his wife (widow) is present and appeared to testify before the Ward Tribunal on the fact that her husband sold the land to the respondent's husband. Before, the trial tribunal, the respondent tendered the sale agreement dated 1996. The respondent further informed the Court that the appellant alleged before the trial tribunal that he was allocated the land by the village council but the leaders of the village council refused. Also, when the respondent realised that one of the tribunal members did not sign, the appellant was summoned so that that member may sign the judgment but the appellant wilfully refused to attend before the Ward Tribunal. The respondent insisted that she won the case in the Ward Tribunal and District Land and Housing Tribunal but the appellant appealed to this Court.

When rejoining, the appellant admitted that he never summoned any witness before the Ward Tribunal though the land was allocated to him by the village council. He further informed the Court that the land was allocated to him during the leadership of the village chairman called Francis Tibangayuka. Still he did not summon him to testify before the Ward Tribunal.

I have closely considered the grounds of appeal and oral submission given by the appellant and I am of the view that there are two grounds which worthy to be considered in the discussion. **First**, the appellant, both during the oral submission and on the fifth ground, argued that the value of the land exceeded

the pecuniary jurisdiction of the Ward Tribunal. In his view, the Ward Tribunal exercised jurisdiction over the land which had higher value than three million. However, the appellant failed to indicate the actual value of the disputed land than simply alleging that the value of the land was higher than the pecuniary jurisdiction of the Ward Tribunal.

On the other hand, I carefully perused the records of the Ward Tribunal and discovered that the value of the land was stated in the Ward Tribunal's proceedings at page 3 to be Tshs. 2,500,000/=. This is the only value of the disputed land so far stated in the Ward Tribunal. In my view, the appellant's allegation is merely vexatious and devoid of merit. On this point, I find that the Ward Tribunal was vested with jurisdiction to determine the disputed land.

Second, on the fifth ground of appeal, the appellant further alleged that one of the Ward Tribunal member did not sign the judgment. He however admitted before this Court that Charles Kalfan attended the tribunal though he did not sign on the judgment. I carefully, perused the record of the Ward Tribunal and found that Charles Kalfan was listed as one of the members of the tribunal. On the other hand, the respondent argued that she discovered the anomaly and tried to rectify where the appellant was invited to witness the member signing but he wilfully refused.

The question whether Charles Kalfan attended the Ward Tribunal as one of the members is undisputed because both the appellant and the respondent confirmed that he attended. It is certain that he attended the meeting of the tribunal but did not sign on the judgment. There are no reasons given why Charles Kalfan never signed the judgment of the tribunal. In my view, as long as he attended as one of the tribunal members, the tribunal was full constituted and therefore vested with authority to determine the dispute. There are two things here; attendance and signing. As long as he attended, then the fact that he did not sign is another issue for discussion.

I am mindful, the decision of the Ward tribunal is based on majority vote. See, **section 4(4) of the Ward Tribunals Act, Cap. 206 RE 2002** and **section 14 of the Land Disputes Courts Act, Cap. 216 RE 2002**. Then if that is the case, three members out of four have unanimous decision concerning the decision of the Ward Tribunal. If Charles Kalfan had dissenting opinion against the three other members, the decision of the Ward Tribunal is still not affected. In my view, the appellant's argument is also devoid of merit.

Apart from the two points discussed above, I have taken the holistic consideration on the ownership of the disputed land. The appellant argued that he was allocated the land by the village council. However, he never summoned even a single witness to support his allegation. The appellant further told the

Court that the land was allocated to him during the leadership of the village Chairman called Francis Tibangayuka; he further admitted that the said chairman is still alive. Again, he failed to summon the same chairman to confirm that the land was allocated to him. Instead, the appellant shifted the burden of proof to the respondent and the Ward Tribunal something which is contrary to the law. The appellant was of the view that the respondent was obliged to summon the leaders of the village council to confirm that the land was allocated to the appellant. In my view, this is an awkward argument because a person who alleges a certain fact must prove it. See, **section 110 of the Evidence Act, Cap. 6 RE 2002**. The appellant has the onus of proving that the disputed land was allocated to him by the village council. He further blamed the Ward Tribunal for failure to summon the leaders of the village council to prove that the land was allocated to him. This argument is devoid of merit.

On the other hand, the respondent informed the Court that the land was purchased by her husband in 1996. After the death of her husband in 1998, the respondent was left with young child; she relocated to Mwanza in search for means to foot her children's school expenses. When she came back in 2003, she realised that the appellant encroached into the land. The respondent took steps to possess the land but her fight ended in vain. To prove her case before the Ward Tribunal, she tendered several documents showing how she struggled to

recover the land through administrative authorities since 2000s. Also, before the tribunal, she summoned witnesses to prove that the land was purchased in 1996 by her husband. When the Ward Tribunal visited the land, many people were of the view that the appellant encroached into the respondent's land. Finally, the Ward Tribunal decided in favour of the respondent. The appellant appealed to the District Land and Housing Tribunal where he also lost the case. It is an established principle of law that unless there are justifiable grounds, this Court cannot alter the decisions of the lower two courts. In the **Maulid Makama Ali v. Kesi Khamis Vuai, Civil Appeal No. 100 of 2004, CAT at Zanzibar (unreported)** the court observed that:

'a higher court will not normally interfere with a concurrent finding of fact of the courts below unless there are sufficient grounds.'

On my side, I am fully convinced that there are no better reasons to set aside the decision of the Ward Tribunal and that of the District Land and Housing Tribunal. I hereby dismiss the appeal with costs and confirm the decision of the Ward Tribunal and that of the District Land and Housing Tribunal. The appellant should immediately vacate the disputed land. Order accordingly.

Dated at Bukoba this 29th May 2020.


Ntemi N. Kilekamajenga
Judge
29th May 2020

Court:

Judgment delivered in the presence of the appellant and respondent present in person.



Ntemi N. Kilekamajenga
Judge
29th May 2020