IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

MISC. LAND CASE APPEAL NO 01 OF 2020

(Originating from the District Land and Housing Tribunal of Korogwe at Korogwe in Land Case Appeal no 89 of 2018 and Land Complaint No 37 of 2018 of Kangáta Ward Tribunal)

SAIDI ADAMU MJUGO.....APPELLANT

VERSUS

BARAKA NAMUNU.....RESPONDENT

JUDGMENT

MRUMA,J.

Said Adamu Mjugo, the Appellant herein instituted a matter in Kangáta Ward Tribunal complaining of trespass to his piece of land by Baraka Namunu, the Respondent. The case was heard and after a visit in locus quo the Ward tribunal decided in favour of the Respondent. The appellant was aggrieved and he appealed to the District Land and Housing Tribunal for Korogwe District where the Ward Tribunal's decision was upheld. The Appellant still aggrieved has approached this court with the following grounds:-

1. That the trial Chairman erred in law and fact by upholding the decision of the ward tribunal without considering the respondent had no locus standi in this matter
2. That the trial Chairman erred in law and fact by upholding the decision of the ward tribunal based on the weak evidence adduced by the respondent herein
3. That the trial Chairman erred in law and fact by upholding the decision of the ward tribunal without considering the issue of forgery that ward tribunal was issued two different judgments to parties herein
4. That the trial Chairman erred in law and fact by upholding the decision of the ward tribunal without considering the issue of coram
5. That the trial Chairman erred in law and fact by upholding the decision of the ward tribunal without considering the concrete evidence which proves the appellant's ownership on the alleged suit land.

Both parties of this appeal enjoyed legal representation. The Appellant was represented by Mr. Obediodom Chanjarika, learned advocate and the Respondent was represented by Ms. Linda Lugano also learned advocate. On 20th April 2021 parties agreed that the matter be disposed of by way of written submissions.

While submitting in support of the appeal, Mr. Chanjarika opted to withdraw ground NO. 3 of the Appeal and submitted on the rest of the grounds.

On the ground NO. 1 that the respondent had no *locus standi* to be a party in the ward tribunal, he quoted the wording of the Ward Tribunal's decision that;-

> *".....eneo hilo amepimiwa Abasi Saidi Kibewa na Halmashauri ya Kijiji cha Madebe Handeni tangu tarehe 24/05/2016 na kumuuzia shamba hilo* ***Namunu Rerunya"***

It is in this sense that he claims that the Respondent Baraka Namunu who is the son of Namunu Rerunya had no locus standi in the matter. As for the 2nd and 5th grounds of appeal, it is the Appellant's submission that the evidence of the Respondent was weak comparing to his. He further intimated that he, (the Appellant) has been in the use of the suit land since 1990 contrary to Namunu Rerunya who got it in 2016 and that he fits for the protection under The Law of Limitation Act, Cap 89 R.E 2019.

Lastly on ground 4 the learned counsel submitted that Section 4(a) of the Ward Tribunal Act, Cap 206 R.E 2019 provides that the Ward Tribunal shall consist of not less than four nor more than eight members. However, in this matter the proceedings of the Ward tribunal do not reflect the names or number of members of the tribunal on each day.

In reply, Ms Linda Lugano for the Respondent contested all the grounds for being baseless. With regard to ground No. 1 she averred that the Respondent appeared in the ward tribunal as a care taker of his family's property and that he had a power of attorney authorizing him to do so. Further to that she said that Section 18 (2) of the Land Disputes Courts Act Cap 218(sic) R.E 2019 authorises him to defend the suit on behalf of a member of household. Concerning the second and fifth ground on the weakness of evidence, she prayed that this court turns a blind eye as the Appellant has not stated what evidence was adduced that he considers weak. On the issue of adverse possession as chipped in by the Appellant, the learned counsel stated that the conditions set by numerous cases are not met. She cited the cases of *Registered Trustees of Holy Spirit Sisters Tanzania Vs January Kamili Shayo & 136 Others, Civil Appeal No 193/2016,* CAT at Arusha (Unreported) also a Kenyan case of *Mbira Gachuhi (2002) 1*

a party to this case), was using the suit land and planted "misufi" in it. The third witness, Athumani Saidi Mkomwa cemented that the Appellant and his father used to occupy the suit land.

On his side, the respondent stated that he bought 50 acres from one Abasi Saidi Kubewa. He brought that Abasi Saidi Kubewa as among his witnesses. There is also evidence of Salimu H. Mwamjeni, katibu kamati ya upimaji' who stated that originally the suit land used to be occupied by Fadhili Muya who was later removed from it after disobeying some traditional rites. After Fadhili Muya was driven away, the land of about 50 acres was allocated by the village to Abasi Saidi Kibewa who later sold the same to the Respondent. A sale agreement witnessed by the village leadership was tendered in the tribunal and was not challenged by the Appellant. Mwenjuma Musa the kitongoji chairman also testified that Abasi Saidi Kubewa had a farm measuring 50 acres in his kitongoji.

Now putting the two versions of evidence on a scale, in my view the most sensible probability is that the suit land belongs to the Respondent. This is so because the Respondent's evidence when put together creates a meaningful narration of how the land passed on to him. Unlike the Appellant who states that he cleared a virgin land and does not know exactly how

EA 137 (HCK) and the case of *Attorney General vs Mwahezi Mohamed & 03 Others Civil Appeal No 391/2019.*

With regards the fourth ground, she submitted that the fact that the names of members were not indicated in each proceeding together with their signatures can be cured by the principle of overriding objective and the authority of *Yakobo Magoiga Kichere vs Peninah Yusuph, Civil Appeal No 55/2017 CAT.*

There was no rejoinder filed by the Appellant so it was taken that the appellant waived his right to rejoin.

This is a second appeal. The second appellate Court is confined to the evidence on record. The lower tribunals arrived to a similar conclusion on this matter. This court therefore will only see to it whether that conclusion was rightly arrived or not.

The first ground of appeal concerns the issue of locus standi. I have read the submissions by the parties and also glanced at the record available. It is this very Appellant who initiated this matter at the Ward tribunal and cited the very Respondent as his perpetrator in the land. How comes he now comes to complain about the person he sued of having no locus standi at an appellate stage? It is common that a complainant cannot be forced on who

many acres he owns whether 60 or 70. The 2nd and 5th grounds therefore fails.

The fourth ground is about coram of members in the ward tribunal. This is a new ground at this second appellate court. It was not raised at the first appellate tribunal. Since this court is sitting as an appellate court of the decision of the DLHT, it does not have jurisdiction on a matter which was not raised and determined by the previous court. Therefore, the court has no option but to struck this ground out. (See **Abdul Athuman v. Republic [2004J T.L.R. 151,** and **Samwel Sawe v. Republic, Criminal Appeal No, 135 of 2004, CAT and Luma Manjano v. Republic, Criminal Appeal No. 211 of 2009, CAT (both unreported**), among others. Conversely, rules of procedure should not tie up courts in dispensation of substantive justice. Yet again, this ground has no merit.

It is a settled law that, he who alleges must prove his allegation. It was the duty of the appellant to prove his ownership of the suit land on the balance of probabilities. In **Paulina Samson Ndawanya v. Theresia Thomas Madaha,** Civil Appeal No. 45 of 2017 (unreported), this Court stated that;

> *"It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of*

probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved"

In the case of **Hemedi Saidi vs Mohamed Mbilu (1984) T.L.R. 113** this court (Sisya J, as he then was), observed that according to the law both parties to a suit cannot tie but the person whose evidence is heavier than that of the other is the one who must win.

In my view ~~in~~ and in comparing the totality of the Appellant's evidence vis-a-vis that of the Respondent, the Respondent's evidence turns out to be heavier and credible than that of the Appellant. In the result therefore this appeal has no merits and is hereby dismissed with costs here and below.

THE HIGH COURT OF TANZANIA

A. R. Mruma

Judge

30/11/2021