IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

LAND APPEAL NO. 5 OF 2021

(Arising from Land Application No. 43 OF 2019 of the District Land and Housing Tribunal for Kigoma)

GERADA ZACHARIA (The administratix of the estate of the late **ZAKARIA LUSAMBO**).....**APPELLANT**

VERSUS

NICODEMUS LUSAMBO (The administrator of the estate of the late **JULIUS LUSAMBO**).....**RESPONDENT**

JUDGMENT

4th June & 30th July, 2021

A. MATUMA, J

The appellant was sued by the respondent in the District Land and Housing Tribunal for Kigoma at Kigoma. The respondent's claim was that the dispute land belongs to the estate of his deceased father one Julius Lusambo but that the appellant has entered in it and carry on various activities.

The appellant on her party maintained that the Suitland was owned by her deceased father one Zacharia Lusambo. She maintained that the Suitland is adjacent to that of the respondent's sister one Maria Noela.

After a full trial, the trial tribunal held that the sutland was not the property of the late Zacharia Lusambo but one Julius Lusambo subject to be administered by the respondent herein.

The appellant became aggrieved of such decision hence this appeal with six grounds. The grounds shall be determined together as all of them tend to complain that the trial tribunal erred to rule in favour of the respondent while the dispute land belonged to the late Zacharia Lusambo.

At the hearing of this appeal, the Appellant was present in person while the respondent was represented by Mr. Thomas Msasa learned advocate.

The appellant submitted that her father owned the dispute shamba since 1955 and they have been in use of it since then up to 2016 when the dispute arose which is a period of 61 years ago.

In his response, the learned advocate for the respondent contended that it is the respondent's family who are in use of the dispute land and not the appellant's family. He averred that in the year 1992 the District Council demarcated the dispute land into three pieces measuring 150 x 50 each

and it was the respondent's family who intervened the illegal demarcations as they were not consulted.

He further argued that even in the year 2014 some youth for Spencon Company trespassed the Suitland and it was the respondent's family who complained to the District Commissioner against the trespass. To him, that is a clear indication that such land belongs to the respondent's family. He questioned that if at all the appellant's family owned such land, why didn't they complain of the trespass herein stated.

The learned advocate argued that it was in 2016, when the appellant and her family trespassed into the dispute land hence this dispute between the parties.

He further argued that even on record, the appellant concede that the respondent's sister one Maria Noela owned $2^1/_2$ acres adjacent to her land. In that regard such area is exactly what the respondent complained of as Maria Noela had no shamba thereof but such shamba belonged to the late Julius Lusambo.

In her rejoinder, the appellant submitted that in 1992 when the District Council came to make demarcations in the dispute land, the indigenous were not involved.

It joined the shamba of both parties into its measurements and no body knew it until when the quarrel arose.

On the issue of spencon Company, she contended that it was her own son who was extracting stones in the dispute land since 2004 to 2014 and that when Spencon came and needed the area offered some money which led to some youth to emerge but they failed.

She was of the further argument that the whole area is more than 5 acres and if the respondent takes 2 ½ acres which she knew to belong to Maria Noela, she shall still remain with her area.

The claim of the respondent in the dispute land in only 2 $^{1}/_{2}$ acres. The appellant didn't know that the respondent's family owned such 2 ½ acres at the dispute area. She however knew that the respondent's sister owned a piece of land adjacent to her land which she approximated to be 2 ½ acres. In their respective evidence and even submissions at the hearing of this appeal, it is clearly stated that Maria Noela did not own any piece of land in the locality but used to cultivate the family land.

In that respect the area the appellant thought it belonged to Maria Noela, it is the same which the respondent claimed. The appellant is not having any dispute over such area nor claim any interest in it.

Also going by the Demarcation map and the respondent's submission the whole area having been demarcated, three pieces measuring 150 x 50 were born out. That means the whole area is measuring 450 x 150 which by whatever imagination exceeds 2 ½ acres as a normal hector is measured only 70x70.

In that respect, it is obvious that both parties owned some parcels at the dispute area in which for the appellant she was her who was in use and for the respondent it was Maria Noela who was in use.

That is even born out from the records as on the part of the respondent, the appellant herself conceded that there is an area approximately 2 ½ acres which she knew to have been owned by Maria Noela but which the respondent clams to belong to the family.

On the party of the appellant, the respondent's own witness PW4 Umande Mrisho who testified at page 17 that the father of the appellant owned a land at a distance of about 2 acres from the Suitland. That indicates at list that the appellant also owns a land nearby even if PW4 purports to put it that the same is not adjacent to that claimed by the respondent.

DW2 Solomoni Chibago also testified to the effect that both parties owned land thereat.

"What I know both parties have their lands and they are neighbours".

During the visit on the locus in quo, the trial tribunal observed that there was an area planted with cassava, had palm oil trees and a mango tree which was said to belong to Maria Noela the sister of the Respondent and which had no dispute. The respondent thereat informed the tribunal that the whole area belonged to his family and that Maria Noela was only allowed to cultivate thereof.

If that is the case, then it is for the area to be measured including that which was mistakenly identified by the appellant as belonging to Maria Noela and thereat 2 ½ acres which the respondent claims to be given to him and the remaining be owned by the appellant.

For clarity since, the measurements by each party are only approximations as no body measured it exactly, I order and decree that the area which is not in dispute and which was said to be owned by Maria Noela was among what was complained to form part of 2 ½ acres allegedly owned by the respondent's family. In that respect, the respondent's right is that area and he should take it if at all do not belong to Maria Noela or else she must take legal actions against Maria Noela to have her evicted.

This appeal is therefore allowed and the decision of the trial tribunal set aside.

The appellant is the lawful owner of the dispute land. it is so ordered.

Right of appeal explained

A. Matuma

Judge

30/7/2021

Court: This Judgment delivered in chambers in the presence of...

Sgd: A. Matuma

Judge

30/7/2021