

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

(LAND DIVISION)

AT KIGOMA

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 20 OF 2020

(Arising from the decision of District and Housing Tribunal for Kigoma at Kigoma in a Land Appeal No. 76/2019 Before F. Chinuku – Chair person, Originating from the Decision of Igalula Ward Tribunal in a Land Dispute No. 18/2019).

NIMBO YUSUFU @ KEBUMBA.....APPELLANT

VERSUS

NGUSA SAMBAI.....RESPONDENT

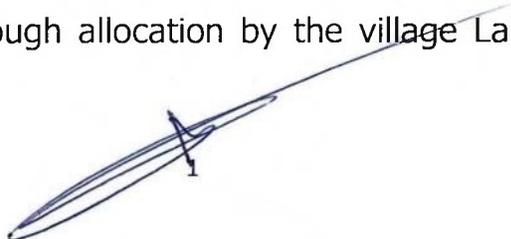
JUDGMENT

03/02/2021 & 04/02/2021

A. MATUMA, J

Initially the Appellant Nimbo Yusufu Kebumba sued the Respondent Ngusa Sambai in the Ward Tribunal of Igalula for trespass in land.

In the course of hearing, the dispute shamba was realized by the trial tribunal to be in two categories. **One**, some acres allegedly by each party to have been obtained through allocation by the village Land Authority and



two, the some other acres allegedly by the Respondent to have been purchased from one Shabani Fredinaa.

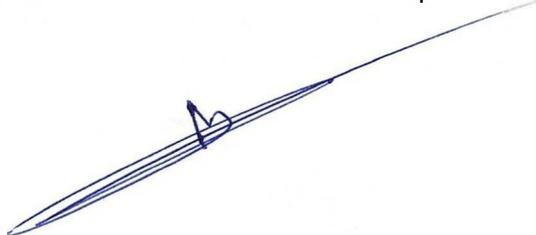
When the trial tribunal visited the dispute shamba it realized that the shamba allegedly bought by the Respondent from shabani Fredinaa was out of the boundary of the dispute shamba. It thus declared it the lawful property of the respondent.

The remaining dispute shamba was declared the lawful property of the Appellant and his fellows who were allocated by the village Land Authority.

The Respondent was aggrieved with such findings of the trial tribunal and thus appealed to the District land and Housing tribunal for Kigoma which overturned the decision of the Ward Tribunal and declared the Respondent as the lawful owner of the whole shamba in dispute including that allegedly bought from shabani Fredinaa.

The appellant was aggrieved hence this appeal with three grounds of appeal which shall be dealt one after another herein below.

At the hearing of this appeal, the Appellant was present and had the service of Mr. Michael Mwangati learned advocate. The Respondent was present in person.



Addressing on the first ground of appeal which reads;

"That, the Appellate tribunal erred in law and fact by declaring the Respondent as the lawful owner of the suit property while there was non-joinder of necessary parties to wit Shaban Fredinaa (seller) and village Council of Mgambazi",

Mr. Michael Mwangati citing the case of ***Juma Kadal versus Laurent Mkanda, (1983) TLR 103*** submitted that the Mgambazi village Council and Shabani Fredinaa ought to have been joined in the suit as necessary parties because part of the dispute shamba was allegedly purchased by the respondent from Shabani Fredinaa and another party was alleged by each party to have been allocated by the Village Authority of Mgambazi. He was thus of the view that the District Land and Housing Tribunal erred to rule out in favour of the Respondent without considering the fact that necessary parties were not joined.

In response thereof Mr. Ngusa Sambai the Respondent, submitted that It was the appellant himself who sued him in the Ward Tribunal and therefore had he considered the importance and necessity of those parties, he should have joined them himself. He further argued that he had raised such a ground or complaint in the first appeal but the appellant himself disputed it with all efforts. He ended calling me to dismiss this ground.

Without much dwelling into this ground, I find it to have been brought as an afterthought as rightly argued by the respondent and accordingly dismiss it. This is because it was the appellant who initially commenced the suit and had in knowledge that Shabani Fredinaa was the seller (vendor). This fact according to the proceedings of the trial tribunal was disclosed to him by the respondent even before he commenced the suit at the trial tribunal.

Again, when the trial tribunal held that the shamba bought by the Respondent from Shabani Fredinaa was not within the boundary of the dispute shamba and declared it as the lawful property of the respondent, the appellant never appealed and even on appeal by the respondent, the appellant stood firm defending the decision of the Ward tribunal as a good, just and sound decision. This is reflected in his own reply to the Appeal (Majibu ya sababu za Rufaa) in which under paragraph 5 it is clear that; ***"Kwamba, muomba rufaa hana sababu za msingi za kulifanya baraza hili litengue uamuzi halali wa baraza la ardhi Kata ya Igalula"***.

Likewise, about none-joining of the village Council of Mgambazi. On his appeal to the District Land and Housing Tribunal, the Respondent as he had

argued, had raised the ground that the village Council of Mgambazi should have been joined;

*" Kwamba baraza la Kata lilikosea kisheria na kimantiki kwa kuwa Mjibu Rufaa na Muomba Rufaa wote walidai kuwa eneo la mgogoro wamegawiwa na kamati ya Uzalishaji ya Kijiji, hivyo haikuwa sahihi kuendelea kusikiliza mgogoro bila kuwaunganisha wahusika muhimu kama **Serikali ya Kijiji cha Mgambazi** pamoja na **Shabani Fredinaa** aliyemuuzia Muomba Rufaa hekali 6 ambazo nazo ni sehemu ya mgogoro".*

The Appellant stood firm against such ground when he replied that there was no need to have joined the village Council as its members were summoned and gave evidence at the trial; ***"kwamba, hapakuwa na haja ya kuwaunganisha wajumbe wa kamati ya uzalishaji ya Kijiji cha Mgambazi kwani wajumbe wa kamati hiyo na mjumbe wa baraza la ardhi la Kijiji waliitwa kutoa Ushahidi wao kwenye baraza la kata kuhusiana na kesi hii"***.

In the circumstances, issues of non-joinder of parties have been raised by the appellant as an afterthought.

I reiterate what I held in the case of ***Salehe Moshi Balilula versus Hamdu Moshi Balilula and 3 others, PC Probate Appeal No. 5 of 2020*** that;

" It is not accepted for one to completely ignore the legal process as they did the respondents and later in an afterthought manner rush to the same Court to have the process which is complete, disturbed. That is an abuse of Court process which is not accepted at whatever costs".

In fact, this Court and the Court of Appeal have always been discouraging matters instigated by afterthoughts. One of the Court of Appeal decision to that effect is that of ***East African Development Bank versus Blueline Enterprises Tanzania Limited, Civil Application No. 47 of 2010***. The first ground thus fails.

I will then address the third ground of appeal before I resume to the second ground of appeal as it was argued by the parties. In the third ground of appeal, the Appellant laments;

"That the Appellate tribunal erred in law and in fact in deciding the dispute without due regard to the longtime chronological history of the Appellant's ownership of the land in dispute".

On this ground, Mr. Mwangati learned advocate for the Appellant argued that the appellant was on the dispute shamba since 2003 when he was allocated the same up to 2018 when the dispute arose. The District Land

and Housing Tribunal should have thus considered such longtime possession.

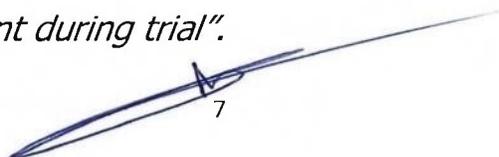
In response thereof, the Respondent argued that it was not true that the Appellant had stayed in the Land since 2003.

On my party, I find again this ground to have been raised as an afterthought because it was not raised in the first appellate Court. It did not feature in the appeal documents nor in the arguments of the parties during the hearing of the appeal at the Appellate Tribunal.

Both this Court and the Court of Appeal have always been refusing to determine matters on appeal which were not initially raised and determined by the lower Courts. See ***Kigoma/Ujiji Municipal Council versus Kigoma Cinema***, Land Appeal No. 14 of 2017, High Court of Tabora, and the Court of Appeal decision in the case of ***East African Development Bank*** supra. The ground thus fails.

Now back to the second ground of appeal, the appellant complains;

"That, the Appellate Tribunal grossly erred in law and fact for failure to scrutinize the cogent evidence as it was adduced by the Appellant which shows that the Appellant is the lawful owner of the suit property. Hence relied upon the weak and flimsy evidence that was adduced by the Respondent during trial".



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On this ground, Mr. Mwangati learned advocate submitted that the appellant brought witnesses from the village authority who established that the dispute shamba belongs to him but such evidence was not considered at all. The respondent on his party argued that the village authority members came at the trial tribunal and testified on how they heard and determined the dispute between him and the appellant but not on ownership of the dispute shamba. When I asked him about Rajabu Gwatila who gave evidence at the trial in favour of the Appellant to the effect that he was the chairman of the Village Land allocating committee and that his committee allocated the dispute shamba to the appellant and some other people and not to him the respondent, the respondent submitted that he know Rajabu Gwatila whom in other names they used to call him "**Kasogota**". He was their chairman "**Mwenyekiti wa Ugawaji Ardhi Kijijini**". He however contended that the said chairman did not appear in the Ward Tribunal nor testified as a witness. He further argued that if it is reflected in the proceeding that he gave evidence at the trial tribunal, that is not true.

As I have said earlier on, the shamba allegedly bought by the Respondent from Shabani Fredinaa, was declared by the trial tribunal to be the lawful property of the Respondent after the trial tribunal visited the locus in quo and the parties shown the area they were fighting for in which the trial

tribunal observed that the same was outside the boundaries of the dispute shamba. The appellant did not appeal nor cross appeal against such decision. Instead he stood firm defending the decision as good, just and sound. To that extent, the issue of scrutiny of evidence cannot arise. I therefore, take it as having been properly decided.

The appellate tribunal in addition to that decree, declared the Respondent as the lawful owner of the other dispute shamba allegedly being allocated to the parties by the village Authority.

I would therefore scrutinize whether the appellate tribunal properly scrutinized the evidence on record to justify its nullification of the findings of the trial tribunal on the shamba which each party alleged to have been allocated by the Village Land Authority.

As both parties alleged at the trial to have been allocated the dispute shamba by the village Authority, the vital evidence was therefore from the village authority itself be it documentary or otherwise.

The appellant on his party brought during trial four witnesses from the village authority who corroborated his claim that he was allocated the dispute shamba along with his fellows who were not present during trial. They also testified that even when the dispute between the parties arose, the Village Land Council determined it in favour of the Appellant. Among the

witnesses was Mr. Rajabu Gwatila whom the Respondent identified as Kasogota. That witness testified positively that he was the Chairman of the Village Land allocating Committee and that his committee allocated the dispute shamba to the appellant and not to the respondent. The appellant's witnesses disputed the documents tendered by the respondent. The Ward Tribunal trusted the witnesses and adjudged for the appellant.

The appellate tribunal overturned the judgment of the trial tribunal without saying anything on the evidence of the appellant's witnesses from the village authority who confirmed the dispute shamba to belong to the appellant and his fellows and not the respondent. It did not even reason on the evidence of the respondent as to how any why should it be believed than that of the appellant.

I find that the Ward tribunal well analyzed the evidence on record and made reasoning on the evidence of both parties as against the decision of the appellate tribunal. It is the principle of the law that every witness is entitled to credence and have his evidence accepted unless there is good and cogent reason for not believing him (***Goodluck Kyando versus Republic (2006) TLR 363***), thus it was wrong for the appellate tribunal to arbitrarily overturn the well-reasoned decision of the trial tribunal without assigning good reason by explaining why should the witnesses of the appellant who came from the

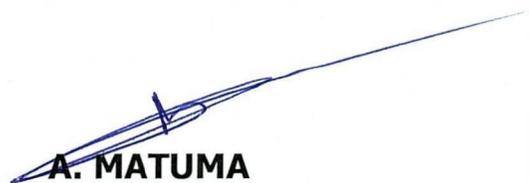
relevant Village Authority be disbelieved and discredited. The respondent did not bring any witness from the village authority to corroborate him if at all he was allocated such shamba by the village authority. His documents apart from being disputed by the witnesses of the appellant, they are not original documents.

In the circumstances, I find this second ground of appeal with merit and I accordingly allow it.

Having so said, this appeal is allowed on the strength of the 2nd ground of appeal. The judgment of the District Land and Housing Tribunal is hereby quashed and the Decree thereof set aside. The judgment and decree of the trial Ward Tribunal is hereby restored. The respondent is condemned costs of this matter to the Appellant. Whoever aggrieved with this decision has the right of further appeal subject to the guideline of the relevant laws governing third appeals to the Court of Appeal of Tanzania.

It is so ordered.




A. MATUMA

JUDGE

4/2/2021

Court: Judgment delivered in chambers this 4th day of February, 2021 in the presence of both parties in person Mr. Michael Mwangati learned Advocate for the Appellant.

Sgd. A. MATUMA

JUDGE

4/2/2021