

IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA
LAND APPEAL NO 120 OF 2020

BETWEEN

OMINDE SWETA _____ **APPELLANT**

VERSUS

ROBERT MANYAMA _____ **RESPONDENT**

(Arising from the decision and orders of the District Land and Housing Tribunal for Musoma at Musoma Hon. Kitungulu, Chairman, in Land Appeal no 24 of 2019 dated 14.01.2020).

JUDGEMENT

29th January & 5th February 2021

GALEBA, J.

This appeal is in respect of a piece of land located at Seka village in Nyamrandirira ward within Musoma district. The land was subject of civil case no 03 of 2018 in the Seka Village Land Council (the VLC). Before the VLC, **Mr. Robert Manyama** was declared the lawful owner of the land but **Mr. Ominde Sweta** was aggrieved and he filed land appeal no 32 of 2018 in Nyamrandirira ward tribunal (the WT) contesting **Mr. Manyama's** victory in the VLC. The Ward Tribunal called the file from the VLC but the file was not brought up, therefore a decision was made to hear the matter afresh after which **Mr. Sweta** won. **Mr. Manyama** was dissatisfied with the decision of the Ward Tribunal so he filed land appeal no 24 of 2019 in the District Land and Housing Tribunal (the DLHT). Like the VLC, the DLHT

declared **Mr. Manyama** the lawful owner of the land. This decision aggrieved **Mr. Sweta**, and to address his grievance he filed this appeal.

When this appeal came up for hearing on 14.01.2021, **Mr. Sweta** appeared unrepresented whereas **Mr. Manyama** was represented by **Ms. Tumaini Mkongi**, learned advocate. **Mr. Sweta** prayed to abandon the 2nd and 4th grounds of appeal and argued the remaining; the 1st and the 3rd. This court adjourned the appeal to 22.01.2021 for judgment.

However, when I was composing judgment it came out clearly that although what was presented to the WT was an appeal in which **Mr. Sweta** was challenging the decision of the VLC, but the same was not determined instead fresh evidence was called and the case was reheard. Finally, unlike the VLC which had declared **Mr. Manyama** the lawful owner of the land, the WT declared **Mr. Sweta** owner of the same land. Therefore from the time the WT delivered its judgment there started being in existence two competing decisions, one of the VLC and that of any other tribunal or court above it in respect of the same land.

After noting the above status I halted composing the judgment and when parties appeared before me for judgment on 22.01.2021, I required

them to address me on the above matters; specifically whether the proceedings and decision in the WT were lawful in the circumstances.

Mr. Sweta submitted first. His view was that before the WT was to handle his appeal it was supposed to procure the records of the VLC and consider them when determining his appeal. **Mr Sweta**, not being a lawyer, did not provide any way forward. For the respondent this time was Mr. Baraka Makowe, learned advocate. His position was that in terms of **sections 62, 167 and 2 of the Village Land Act [Cap 114 RE 2002]** (the VLA), **the Land Act [Cap 113 RE 2002]** (the LA) and the **Land Disputes Courts Act [Cap 216 RE 2019]** (the LDCA) respectively, the VLC is a land court and its decisions need to be deemed to be competent decisions from which appeals may be preferred to the WT, although there is no procedure provided for handling matters neither in the VLC nor in the WT. He was of the view that because Mr. Sweta's appeal to the WT was supposed to be heard and decided, but because it was not heard, all that the WT and the DLHT did were a nullity.

According to the records of the WT dated 27.12.2018 and 05.01.2019, when the appeal went to the WT, it tried to procure the records of civil case no 03 of 2018 from Seka VLC but the latter arrogantly

(according to the WT) refused to forward the records to Nyamrandirira WT. According to the same records, with consent of the parties, the matter was tried afresh, evidence taken and the tribunal reached to its independent decision without considering the merits of the decision that was passed by the VLC.

According to sections **167(1)(e)** of the LA, section **62(2)(e)** of the VLA and section **3(1)(a)** of the LDCA, a **Village Land Council** is one of the land **courts** for purposes of land dispute resolution, and it is the court of the lowest grade in land matters. All the three sections are a replica of each other but I will pick and reproduce section 62(2)(e) of the VLA for purposes of appreciation of the fact that the VLC is a court with competent and full jurisdiction as a court. It provides;

"62. References of disputes from Council to Court

(2) The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of Part XIII of the Land Act, 1999, to hear and determine all manner of disputes, actions and proceedings concerning land, that is to say–

- (a) the Court of Appeal;***
- (b) the Land Division of the High Court;***
- (c) the District Land and Housing Tribunal;***
- (d) the Ward Tribunal; and***
- (e) the Village Land Council."***

That section confirms to this court that indeed the VLC is a court with exclusive jurisdiction to adjudicate land disputes. The appellate body of the VLC is the Ward Tribunal established in a ward for all villages composing it. Section 9 of the LDCA, provides that;

'9. Where the parties to the dispute before the Village Land Council are not satisfied with the decision of the Council the dispute in question shall be referred to the Ward Tribunal in accordance with section 62 of the Village Land Act.'

This means the VCL makes **a decision** capable of being appealed from so that a party aggrieved may appeal or refer his grievance to the WT. In this case **Mr. Sweta** lost in Seka VLC and appealed to Nyamrandirira WT but the latter did not hear the appeal but tried the matter again. Mr. Makowe submitted that it was illegal for WT to fail to consider the appeal and jump to rehearing of the matter. Likewise **Mr. Sweta** complained that his appeal was not heard. The problem to me is that there is in existence of a valid decision of the VLC to date.

In Seka VLC, **Mr. Manyama** gave his evidence and did not call any more witness. As for **Mr. Sweta**, he gave his evidence and called **Rebeka Ominde Sweta** as a witness to support his case. So the case was heard in the VLC. As indicated above Mr. Sweta lost in a decision dated 19.12.2019.

There are a few observations that I wish to make before we wind up. **First** this am aware that to date, there are no rules of procedure regulating proceedings in the VLC or in the WT. **Secondly**, although the two decision making bodies are not manned by lawyers, but still they have to observe basics of decision making like **one**, affording parties a right to be heard, **two**, hearing matters presented to them and not otherwise and **three** to follow laws.

For instance, what was presented to the WT was an appeal, but it treated the matter like it had never been heard by any land court and tried it afresh instead of insisting to call the record of the VLC till such time the record was to be brought and consider it when hearing parties.

Based on the above discussed, this court shall not determine any grounds of appeal presented because the complaint in the appeal arose from an unlawful judgment of the DLHT. Therefore this court makes the following orders;

1. This appeal is struck out.
2. The decisions of Nyamrandirira ward tribunal in land appeal no 32 of 2018 and that of the District Land and Housing Tribunal in Land Appeal no. 24 of 2019 are hereby set aside.

3. Seka Village Land Council is directed to deliver the whole record in land case no 03 of 2018 between the parties to Nyamrandirira ward tribunal for the latter tribunal to determination land appeal no. 32 of 2018 presented to it by Mr. Ominde Sweta.
4. After receipt of all records in land case no 03 of 2018 from Seka Village Land Council, Nyamrandirira ward tribunal shall hear the reasons why Mr. Sweta is challenging the decision of the Village Land Council, but if it shall be necessary to hear any witnesses, it may permit parties to call them.

DATED at MUSOMA this 5th February 2021



Z. N. Galeba
JUDGE
05.02.2021

(Tafsiri ya amri ziliyotolewa katika rufaa hii)

Kwa sababu zilizojadiliwa katika hukumu hii, mahakama hii haitashughulika na sababu za rufaa kwa sababu zinatokana na hukumu batili ya baraza la ardhi na nyumba la wilaya. Kwa hiyo mahakama hii inaamuru ifuatavyo.

1. Rufaa hii imeondolewa.

2. Hukumu za baraza la kata ya Nyamrandirira katika rufaa na. 32 ya 2018 na ile ya Baraza la Ardhi na Nyumba la wilaya katika rufaa na. 24 ya 2019 zimebatilishwa.
3. Baraza la Ardhi la Kijiji cha Seka linaelekezwa kuwasilisha kumbukumbu zote za shauri 03 la 2018 kati ya pande mbili katika rufaa hii kwa baraza la kata ya Nyamrandirira ili baraza hilo liweze kusikiliza rufaa namba 32 ya 2018 iliyowasilishwa kwake na ndugu Ominde Sweta.
4. Baada ya kupokea kumbukumbu za mwenendo wa Baraza la Ardhi la Kijiji cha Seka, Baraza la kata ya Nyamrandirira litamsikiliza ndugu Ominde Sweta akiwasilisha sababu zake za kwa nini anapinga uamuzi wa Baraza la Ardhi la Kijiji, na katika kufanya hivyo kama Baraza la Kata litaona kuna ulazima wa yeyote kati ya wadaawa kuita shahidi basi litafanya hivyo na baadae kutoa hukumu yake.

IMETOLEWA hapa MUSOMA MJINI leo tarehe 5 Februari 2021



Z. N. Galeba
JAJI
05.02.2021