

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. LAND APPEAL NO. 23 of 2020

(Arising from Land Appeal No. 60/2014 Kigoma District Land and Housing Tribunal,
before Waziri, M.H - Chairman, original Land Case No. 2 of 2012 of Mahembe Ward
Tribunal)

KHALID IBRAHIM KABAKAAPPELLANT

VERSUS

ATHUMANI RASHIDI MKUMBA..... RESPONDENT

J U D G M E N T

15/2/2021 & 02/3/2021

I.C. MUGETA, J.

The appellant via land dispute No. 2/2012 at Mahembe Ward Tribunal successfully sued the respondent for recovery of the land of his late father Ibrahim Kabaka who died intestate in the year 1960. Being aggrieved by such a decision, the respondent successfully appealed to the District Land and Housing Tribunal at Kigoma via land appeal No. 60/2014. Appellant was dissatisfied with that decision, hence, this appeal with five grounds of appeal as follows: -



1. *That, the district land and housing tribunal grossly erred in law and in fact in entertaining the respondent's appeal that had been instituted out of time.*
2. *That, the District Land and Housing Tribunal grossly erred in law and in fact in disposing off (sic) the respondent's appeal on point(s) of law raised suo motto without give the part the right to be heard in respect thereof hence viciating (sic) the decision.*
3. *That the district land and housing tribunal grossly erred in law and in fact in the holding that the case at Ward Tribunal had been instituted by one Samson Ntimbo with no locus standi instead of the appellant himself as the judgment itself reveals while the said Ntimbo as appellant's relative had only represented the appellant during sickness and stopped upon appellant's health recovery.*
4. *That, having found the case has been wrongly instituted without locus standi i.e without there being an administrator rendering the ward tribunal's proceedings a nullity then that District Land Tribunal, grossly erred in law and in fact conferring usufructual (sic) rights and possession of the suit land (2.5 acres with several houses and Mosque) unto the respondent over annulled proceedings.*
5. *That, the District Land and Housing Tribunal grossly erred in law and in fact in the manner it re evaluated and analyzed the evidence particularly by ignoring the strong and cogent evidence adduced by the Respondent's blood relatives including Yadunia*

Rashid Mkumba and Yunusu Rashid Mkumba who denied the suit land as being/belonging to their deceased father (Rashid Mkumba) and of neighbors who supported the appellant's ownership coupled with the presence of two tombs thereon including that of the appellant's father IBRAHIM KABAKA and younger brother.

During the hearing, both the appellant and the respondent appeared in person unrepresented. In his submission the appellant gave narration on how he filed a case at the Ward Tribunal and won. He submitted further that the appeal against his victory was out of time, therefore, the order of the District Land and Housing Tribunal that the case should start afresh at the Ward Tribunal is invalid as he has spent six years litigating.

In reply, the respondent submitted that the appeal lacks merit on the ground that the land in dispute is not in his possession but it is the property of his wife and children who bought it, hence, the appellant sued him wrongly.

In rejoinder the appellant submitted that the land belongs to his late mother who entrusted it to her brother who is the respondent's father. He finally prays the appeal to be allowed.

As it can be noticed from the parties above submissions, they did not address their minds to the grounds of appeal. At most the appellant spoke, without

details, about time limitation in the first ground of appeal in relation to the appeal at the District Land and Housing Tribunal.

I have examined his argument on limitation in light of contents of the District Land and Housing Tribunal record, I find that the judgment of the Ward Tribunal was pronounced on 1/4/2014 and the appeal to the District Land and Housing Tribunal was filed on 14/5/2014. Section 20 of the Land Disputes Courts Act [Cap 216 R.E 2019] provides for time limit to appeal from the Ward Tribunal to the District Land and Housing Tribunal to be forty five days from the date of the decision or order. On the basis of the above law, 45 days elapse on 14/5/2014 at midnight and, therefore, the appeal filed on 14/5/2014 was within time. There is no merit in this ground.

The second ground is about the right to be heard. That the District Land and Housing Tribunal raised issues upon which the appeal was determined and never accorded the parties the right to be heard on those issues. Since the appellant did not explain which issues were raised and determined without hearing the parties, I have failed to understand the nature of the complaint. If he refers to the additional witnesses called by the District Land and Housing Tribunal, each party was given a right to cross examine them. I find no merits in the complaint. I accordingly dismiss it.

Regarding the fourth ground, indeed, the District Land and Housing Tribunal held that Samson Ntimbo instituted this case without *locus standi* as he is not administrator of the estate of the late Ibrahim Kabaka. I agree with the complaint that the Chairman grossly erred. The record of the Ward Tribunal is clear that the case was instituted by the appellant and the said Samson Ntimbo appeared as a witness. It was also an error on part of the learned Chairman to declare the respondent as owner of the suit land while there is no evidence that the land belongs to him. In terms of section 34(1), (b) and (c) of the Land Disputes Courts Act [Cap.216 R.E. 2002] the District Land and Housing Tribunal called for additional evidence which proved that the land belongs to the respondent's wife one Rukia. I, therefore, allow this ground of appeal to the extend of setting aside the declaration that the dispute land belongs to the respondent.

The last complaint in the fifth ground is that the District Land and Housing Tribunal ignored the evidence of the appellant which was stronger than that of the respondent. Due to centrality of this complaint in the determination of this case, I shall give a brief facts of this case before analyzing the evidence in its totality.

The appellant is a son of Ibrahim Kabaka who died in 1960 when the appellant was still a young boy. The said Ibrahim lived on the clan land which constitutes the dispute land with Rashid Mkumba who is the father of the respondent. On the death of Ibrahim, Rashid raised the appellant who on becoming of age moved away from the village upon being employed by JWTZ. There is no evidence if Ibrahim lived on the land as owner or licensee. What is clear is that upon death of Ibrahim, Rashid acquired title over the suit land as a whole since the wife of Ibrahim either remarried or went back to her family (the evidence is not clear on this issue). The appellant, upon being employed never came back until when he retired. This is when he started to litigate to recover his father's land.

The evidence on record at the Ward Tribunal and the District Land and Housing Tribunal from one Hussein Ally Makorokocho who at one time was the village Chairman is that at undisclosed year Rashid Mkumba sold the whole land to his daughter in law one Rukia Rashid Bilali who is the wife of the respondent. It seems, for undisclosed reasons most likely by suppressing Rukia, the respondent gained access to the land and disposed it to different people who occupies part of the land to date. Since it is public knowledge that it is the respondent who disposed of the land, even if Rukia also testified

that part of the land was sold by her children, the appellant sued him without even involving the current occupiers. The Ward Tribunal found for him but made the following orders: -

'Lakini walionunua viwanja wasisumbuliwe kwa gharama ya aina yoyote gharama zote ztazingharamia aliyewatapeli wanunuzi hai'.

I have reviewed the evidence there is no dispute that the wife of the respondent acquired the land on purchase for value. The sale agreement is on record. This was in 2003. She is a bonafide purchaser for value and she cannot be dispossessed as by that time it was known to all people including Makorokocho that the land belongs to Rashid Mkumba, the seller. In **Stanley Kalama Masaki V w/o Chihyo Nderingo Ngomuo** [1981] TLR

143 it was held: -

'... where an innocent purchaser for value has gone into occupation and effected substantial development on land the courts should be slow to disturb such a purchaser and would desist from reviving stale claim'.

It is my view that the claim by the appellant for inheritance of his father's land who died in 1960 is one of the stale claims. Upon sale of the land to

Rukia, nobody can claim right over that land through inheritance from the original owners. While I agree that the District Land and Housing Tribunal erred to declare the responded as owner of the dispute land, I am also satisfied that the appellant has no claim of right over the land. As the situation is todate neither the children of Ibrahim Kabaka nor Rashid Mkumba can claim right to the land through inheritance. That land belongs to whoever has purchased any piece thereof for value.

In the event, I dismiss the appeal. As the parties are relatives, I give no orders as to costs.



I.C. Mugeta

I.C. Mugeta

Judge

2/3/2021

Court: Judgment delivered in presence of both parties.

Sgd I.C. Mugeta

Judge

2/3/2021