

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(APPELLATE JURISDICTION)

MISC. LAND APPEAL NO. 8 OF 2021

(Arising from Kigoma District Land and Housing Tribunal, Land Appeal No. 136 of 2019 Before: F. Chinuku, Chairperson, Originating from Murusi Ward Tribunal Land Case No. 5/2019)

MBINGO RAMADHANI APPELLANT

VERSUS

MADUNA KAFUNKE.....RESPONDENT

JUDGMENT

8th March. 2021 & 8th March.2021

A. MATUMA, J

The appellant ***Mbingo Ramadhani*** successfully sued the Respondent **Maduna Kafunke** for trespass in land at Murusi Ward Tribunal. The respondent was aggrieved hence successfully appealed to the District Land and Housing Tribunal for Kigoma which quashed the decision of the trial tribunal on the ground that the 1st defendant at the trial who sold the dispute land to the respondent was not summoned and also that the

respondent has been in long possession of the dispute plot without any disturbances.

Before me the appellant is armed with four rounds of appeal from which the complaints are;

- i. That his developments to the suit property prior to the respondent's trespass was not considered.*
- ii. That his evidence and exhibits of ownership of the dispute property was not considered.*
- iii. That the respondent did not exercise due diligence before he bought the suit land from the 1st respondent.*
- iv. That the 1st defendant at the trial had no good title to pass to the 2nd Defendant now the respondent in this appeal.*

At the hearing of this appeal, the appellant appeared in person and had no legal representation. The respondent defaulted appearance and thus ordered the appeal to proceed exparte. The Appellant being a lay person did not have much to argue rather than adopting his grounds of appeal. He finally called this court to allow his appeal and declare him as the lawful owner of the dispute land.

The brief facts of this matter can be summarized as follows; The appellant alleged to have bought the suit land from one Antoni Chakupewa in 2002. Thereafter he built a foundation of two rooms and fixed a water tape. Soon thereafter, he was informed by the ten-cell leader in the locality that one Anthony Kana has trespassed in his land (the dispute land).

Later on, in 2006 the said Anthony Kana sold such dispute land to the respondent who took possession up to 2017 when the appellant arose hence the dispute between the parties herein.

Now back to the grounds of appeal, on the 1st ground of appeal the appellant is complaining that the appellate tribunal erred to have not considered that he had developed the dispute land before the respondent had trespassed in it, and that there was some sort of agreement that the respondent would refund the appellant. Instead, the respondent built the house on the dispute land. I find that the first ground of appeal does not hold water as a mere development on the dispute land does not confer ownership thereof to the developer. What is more important is the better title on such land. Development would only support the better title and no more. I therefore dismiss this ground.

In the second ground the appellant is lamenting that his evidence and exhibits were not considered which had it been considered the same proved that they proved his ownership of the dispute land. Further, that the respondent had no any proof of ownership of the dispute land.

Since each of the two parties herein did not claim original ownership but that they each bought the dispute land from other people (third parties), their title on the dispute land was subject to proof of a better title of the original owners (their respective vendors). And in this case since it was

the appellant who alleged better title, had a duty to establish the better title of his vendor to have it properly passed to him. At the same time, he had a duty to distinguish the title of Anthony Kana (1st defendant at the trial) who sold the dispute land to the respondent. By doing so he was duty bound to effect service to the said Anthony Kana for him to be accorded opportunity to be heard.

One cannot successfully argue that Anthony Kana had no good title to pass to the respondent without according him opportunity to be heard.

After all, the appellant got informed very early after his alleged purchase of the dispute land that Anthony Kana has trespassed his land.

He did not take any action against him until the said Anthony Kana built a house thereon and later sold the same to the respondent. Why did he waited Anthony Kana to sale the dispute land to the respondent and come to complain against him (the respondent) and without summoning the said Anthony Kana to defend his title.

It is from this observation, I agree with the learned chairperson of the District Land and Housing Tribunal who held;

"The respondent who was the complainant at the Ward Tribunal had a duty to serve the other respondent Anthony Kana. However, the Ward Tribunal did not bother even to serve him as there is no any proof of service to the said person".

Even the alleged documentary exhibits by the appellant which are only photocopies on record (there is no original documents) are not documents proving his ownership of the dispute Land. A copy of the sale agreement by Anthony Lutabila to the appellant does not specify exactly the shamba which he sold. Such document by itself does not speak of the dispute shamba. The same is very short;

*"Mimi Antony Lutabila nimemuuzia shamba Mbingo
Ramadhani kwa Tshs. 50,000/= keshi Elfu Hamsini
tu. Mbele ya Mashahidid wafuatao..."*

Such sale agreement does not state which shamba was sold to the appellant by Anthony Lutabila. The appellant was thus duty bound to prove not only that he bought a land from the said Anthony Lutabila but also that it was the dispute land which was specifically sold to him.

The other documents which are again copies of documents were initiated by the appellant himself. One is a letter asking the **"Mkurugenzi wa Mji"** to survey **Plot No. 4520 Block "U"** introducing it to be his lawful property, the rest of the documents are receipt for payment of the survey and stamp duty and rent. All are dated the year 2013. First of all, as I have said, they are not proof of ownership. They were only initiated by the appellant to have the dispute land surveyed in his name. there is yet a title of such land to him.

Secondly, all the receipts were procured in 2013, after the respondent had already been in occupation of the dispute land since way back in 2006.

Therefore, the appellant initiated a process in bad faith as he should have first sorted out the dispute before calling the Municipal Council to survey a land which was in occupation and development of another. More so, when he had knowledge that the respondent who was in occupation of the same bought it from another person.

Therefore, the documents were procured in bad faith for them to be used as a weapon or shield against the respondent.

That being said, the 2nd and 4th grounds of appeal are hereby dismissed in their entirety.

The third ground of appeal blames the respondent to have not exercised due diligence before he purchased the dispute shamba. This ground is as well without any merit. This ground could only be determined had it been proved that the respondent's vendor Anthon Kana had no better title to pass to the respondent. And that could have only done if the said vendor had been called and accorded opportunity to establish his title on the property before he passed it to the respondent. He was not however summoned despite the fact that he was sued. The question of due diligence by the respondent does not thus arise. Having so observed, the third ground of appeal is hereby dismissed.

As that was the last complaint and none of the grounds of appeal has been successful, this appeal is hereby dismissed. In the circumstances that the respondent did not turn up, I award no costs. Right of further appeal to the Court of Appeal of Tanzania subject to the relevant laws governing appeals to the Court of Appeal is fully explained.

It is so ordered.



A. MATUMA

JUDGE

8/3/2021

Court: Judgment delivered in Chambers this 8th day of March, 2021 in the presence of the Appellant in person and in the absence of the Respondent.

Sgd. A. MATUMA

JUDGE

8/3/2021