

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

(APPELLATE JURISDICTION)

MISC. LAND APPEAL NO. 3 OF 2021

Arising from Land Appeal No. 201B of 2017 of the District Land and Housing Tribunal
Kigoma, Original Land Dispute No. 5 of 2017 Kagongo Ward Tribunal

RAMADHAN S/O FADHILI KITUMBO..... APPELLANT

VERSUS

HAMIDU S/O IDRISA RESPONDENT

JUDGMENT

03rd & 03rd March, 2021

A. MATUMA, J.

At the Ward Tribunal of Kigoma the appellant sued the Respondent unsuccessfully over a dispute of land.

He also lost the appeal in the District Land and Housing Tribunal for Kigoma hence this appeal. The appellant has a total number of four grounds of appeal.

At the hearing of this appeal both parties were present in person, each unrepresented. The parties did not argue the appeal in lines of the grounds of appeal but each started to explain how he is entitled to the dispute property as if they were giving evidence afresh.

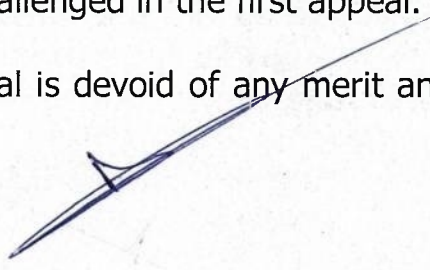
I know that they are laymen and I will therefore consider the grounds of appeal and a Reply thereof along with their submission before me to determine this appeal.

In the first ground of appeal, the appellant laments that the respondent had no locus standi to sue or be sued on the property of the Late Mustafa Ntabalizo.

The Respondent in his reply stated that he had locus standi in the matter as he stood for the widow of his deceased grandfather one Mustafa s/o Ntabalizo, land that the said widow is sick and very weak.

My finding on this ground is that the same has been brought as an afterthought. This is because it is clear on the face of record that the appellant complained against Sabrina Mustafa but the trial tribunal allowed the respondent to stand and defend the suit for the family. Under the provisions of section 18 (2) of the Land District Disputes Courts Act, Cap. 216 R.E. 2019, the Ward Tribunal is empowered to allow a relative or any member of the family/household to appear and defend the suit.

Even though, that was not challenged in the first appeal. I therefore find that this first ground of appeal is devoid of any merit and I accordingly dismiss it.



In the second ground of appeal the complaint is that the coram at the trial tribunal was improper and therefore the District Land and Housing Tribunal erred to determine the appeal in favour of the respondent.

This ground as well was not subject to the first appeal. Generally, it is a settled principle that a complaint not raised and determined in the first appeal can not be raised and be determined in the second appellate court. Therefore, this ground was bound to fail on this account alone. Even though, the respondent counter argued the ground by stating that the trial tribunal was properly constituted.

In that respect, I have visited the records of the trial court and found out that the coram in each sitting of the trial tribunal was above four members which is in compliance with section 4 (1) (a) and (3) of the Ward Tribunals Act, Cap. 206 R.E. 2002. Also, the decision was reached by seven members of the tribunal, three of whom were women. I can see therefore, no problem at all with the coram of the trial tribunal even if such complaint would have been raised in the first appellate tribunal. I therefore dismiss the second ground of appeal as well.

In the third ground of appeal, the appellant laments that there was misjoinder of a necessary party; the village government allegedly to have allocated the dispute land to him.

This ground is as well unfounded. This is because there was no positive evidence that the village Government allocated the dispute land to him. This is because all what the appellant stated at the trial tribunal is that he was allocated the dispute property by one Mnyonge (hamlet chairman). The Hamlet chairman is not the village Government.

Even though, it was the appellant's duty to join the alleged village Government to the suit and not the Respondent because it is him who commenced the suit against the respondent. If he was aware of the necessity of the village Government, he ought to have not ignored the same and after loosing the suit rose up with such complaint. In the case of ***Salehe Moshi Balihula versus Hamdu Moshi Balilula and 3 others, PC Probate Appeal No. 5 of 2020*** which I quoted in the case of ***Nimbo Yusuf @ Kebumba versus Ngusa Sambai, Misc. Land Appeal No. 20 of 2020*** both of the High Court at Kigoma I had time to deal with a matter of a similar nature.

In the two cases I rejected to act on complaints occasioned by the appellant himself. I held for instance;

"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."

I reiterate the same holding in the instant appeal, and dismiss the third ground of appeal as well.

In the fourth and last ground of appeal, the appellant is complaining that the evidence on record was not analysed well to his detriment.

On his party the Respondent maintained in his Reply that the evidence was well analysed by both tribunals below.

I have as well gone through the proceedings of the trial tribunal, the judgment thereof and also the records of the District Land and Housing Tribunal, and my finding is that both the two lower tribunals in its concurrent findings considered that the dispute shamba/plot was originally owned by the Respondent's grandfather who after his death left his widow leaving in it to date. The respondent is merely a representative of the family of his deceased grandfather.

On the other hand, the appellant claimed to have been allocated that land in 2006 by Village Government (Hamlet chairman) so to speak as a deserted area (mahame ya watu). It is not in dispute that even if it was a '**hame**' then it was originally owned by the Respondent's grandfather. The trial tribunal as well the District Land and Housing Tribunal observed that the dispute area was not abandoned (hame) as even within the family

of the Respondent themselves at a time litigated on the same in 1989. The trial tribunal further on its visit to the locus in quo observed that the respondent's family is living there and it is not an abandoned property;

*'Mmiliki wa eneo lenye mgogoro toka zamani ni marehemu
Mustafa Ntabalizo na familia yake. Baraza limeshuhudia
kuwepo kwa makazi ya familia hawa ndani ya heka lenye
mgogoro'*

It is from that background the District Land and Housing Tribunal refused to accept the allegations of the appellant that the dispute area was abandoned.

Then both the two lower tribunals observed that even if it would have to be taken that the appellant was allocated the dispute land by the village Government then the allocation was unlawful. The trial court for instance held;

'Upimaji hakuzingatia taratibu za kisheria'

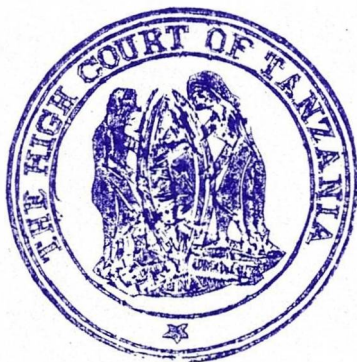
The District Land and Housing Tribunal also relying on the authority in the case of ***Village Chairman KCU Mateka versus Anthony Hyera (1988) TLR 188***, held that the village Government have no powers to allocate land which is under occupation and development of others without prior consultation to the owners.

I find no good reason to disturb the analysis made by the two lower tribunals and their concurrent findings that the appellant has no what soever rights over the dispute land. I therefore dismiss the fourth ground of appeal.

In the circumstances, the Appellant's appeal is hereby dismissed in its entirety with costs.

Right of further appeal to the Court of Appeal of Tanzania subject to the requirements of the law governing third appeals thereto is explained.

It is so ordered.




A. Matuma

Judge

03.03.2021