IN THE HIGH COURT OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

MISC. LAND APPEAL 44 OF 2020

(Arising from Land Appeal No. 43 of 2019 of the District Land and Housing Tribunal for Geita at Geita, originating from Application No. 02 of 2019 from Mwabaluhi Ward Tribunal)

SAMSON NZANZURWINO..... APPELLANT

VERSUS

BETICIA SAMSON ..... RESPONDENT

JUDGMENT

Date of Last order: 11.03.2021

Date of Judgment: 12.03.2021

A.Z.MGEYEKWA, J

This is the second appeal. At the centre of controversy between the parties to this appeal is a parcel of land described as Plot No. 78, Block Y (LD) Sengerema, Mwanza. The decision from which this appeal stems is the judgment of the Ward Tribunal in Application No. 2 of 2019.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: the appellant and the respondent are father and daughter respectively. The appellant once gifted her daughter a piece of plot which is in dispute. The respondent filed a suit at Mwabaluhi Ward Tribunal for, *inter alia*, land ownership. The respondent claimed that she is the lawful owner of Plot No.78 Block Y (LD) located in Sengerema District. The Mwabaluhi Ward Tribunal decided in favour of the respondent. Dissatisfied, the appellant filed an appeal to the District Land and Housing Tribunal for Geita at Geita in Land Application No.43 of 2019. His appeal was unsuccessful.

Believing the decision of the District Land and Housing Tribunal for Geita was not correct, the appellant lodged this second appeal on three grounds of complaint seeking to assail the decision of this court. The grounds are as follows:-

1. *That, the learned Chairman erred in law and fact in ignoring the evidence (including documentary evidence) that the suit land belongs to the appellant.*
2. *That, the Chairperson erred in law and in fact to decide for the respondent without proof of transfer of the suit land to the respondent.*

3. *That the Chairperson erred in law and in fact in accepting the respondent's evidence of offer of the plot in dispute without proof of how she obtained ownership of the same.*

When the appeal was placed before me for hearing on 11th March, 2021, both parties were duly served, however, the respondent did not enter appearance. In prosecuting this application Mr. Mhingo learned counsel represented the appellant.

Following the prayer by the appellant's Advocate to proceed ex-parte succeeding the absence of the respondent regardless of being served and as such it was revealed that the respondent denied signing the summons, this court granted the prayer for the applicant to proceed *exparte*.

Mr. Mhingo started his onslaught by seeking to consolidate all three grounds. He argued that the appellant and the respondent have a father and daughter relationship. Mr. Mhingo contended that the dispute is grounded on the respondent's claims that the appellant gave her the disputed plot located at Uwahi No.78 located in Sengerema. Mr. Mhingo argued that the respondent did not tender any document before the trial Tribunal to prove her allegation. The learned counsel went on to submit that the disputed Plot belonged to the appellant and the appellant tendered documents to prove his ownership over the disputed land. He

added that the appellant acquired the disputed land in 1990 and later the plot was divided and surveyed and registered as Plot No. 76 Uwahi and the other Plot was surveyed and registered as Plot No. 78 Uwahi.

On the strength of the above submission, the appellant's Advocate beckoned upon this court to quash the decision of the appellate tribunal and allow the appeal.

After a careful perusal of the record of the case and the final submissions submitted by both parties, I should state at the outset that, in the course of determining this case I will be guided by the principle set forth in the case of **Hemedi Said v Mohamedi Mbilu** *(1984) TLR 113*, which requires, "*the person whose evidence is heavier than that of the other is the one who must win".* In determining the appeal, the central issue is whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Geita.

I am fully aware that this is a second appeal. I am therefore supposed to deal with questions of law only. It is a settled principle that the second appellate court can only interfere where there was a misapprehension of the substance or quality of the evidence. This has been the position of the law in this country, see **Salum Mhando v Republic** [1993] TLR 170. See

also the decision of the Court of Appeal of Tanzania in **Nurdin Mohamed @ Mkula v Republic**, Criminal Appeal No. 112 of 2013, Court of Appeal of Tanzania at Iringa (unreported).

However, this approach rests on the premise that findings of facts are based on a correct appreciation of the evidence. In the case of **Amratlal D.M t/a Zanzibar Hotel** [1980] TLR 31, it was held that:-

> *" An appellate court should not disturb concurrent findings of fact unless it is clearly shown that there has been a misapprehension of the evidence, miscarriage of justice or a violation of some principle of law or practice."*

In my determination, I will consolidate all grounds because they are intertwined. The appellant is complaining that the first appellate court did not consider the evidence on the record as a result he decided in favour of the respondent and the respondent was declared the lawful owner of Plot N0.78 Y.

The circumstance of the case, facts, and evidence will lead this court to determine the matter before it. It is in the record that the dispute between the parties originated from Mwabaluhi Ward Tribunal where both

parties had an opportunity to summon witnesses to testify before the trial tribunal.

The District Land and Housing Tribunal in its findings stated that the respondent and his witnesses proved that the appellant gave the respondent the suit plot and the respondent later surveyed the said Plot No. 78 Y. The records reveal that during the hearing of the case, the respondent who was the complainant testified to the effect that she planted trees in 2019 in a plot that was surveyed. Then the appellant uprooted the trees and sisals along the border. The respondent claimed that the appellant gave her the said plot.

At the trial tribunal, the appellant testified to the effect that the disputed Plot No. 78 Y belongs to him. The record reveals that both parties produced documents to prove their ownership. There is a copy of offer in respect to Plot 76 Y (LD) located in Sengerema District bearing the name of Samson Nsanzurwimo Bavuma, the appellant. The same was admitted by the trial tribunal on 7th June, 2019 as exhibit 1. Other documents tendered by the appellant were various receipts which did not prove his ownership over the Plot No.78 Block Y (LD). There is another copy of offer in respect to Plot No.78 Block Y (LD) located in Sengerema District which was issued to Beticia Samson. The same was admitted by the trial tribunal

on 04th June, 2019 and was marked as exhibit 1. Both offers were issued by the District Council of Sengerema.

The respondent summoned two witnesses one was Masele Mukungu, the Stress Chairman of Mwabaluhi Ward who testified to the effect that Beticia, the respondent, and Samson, the appellant approached him in his office and the office surveyed their plots whereby Plot No. 78 was located to Beticia and Plot No. 76 and Plot No. 90 Block Y was located to Samson. The appellant was duty bound to prove his ownership by submitting valid oral and documentary evidence showing his title over the same. The records show that the appellant was unable to prove his ownership by tendering in court a letter of offer or original certificate of occupancy in respect to Plot No. 76 Block Y (LD) or signifying his interests over the disputed land. Having failed to prove his ownership, both tribunal were justified to dismiss his claims.

For the reasons given above and as stated earlier, one of the canon principles of civil justice is for the person who alleges to prove his allegation. The same was held in the case of **Abdul Karim Haji v Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2004 (unreported) the Court of Appeal of Tanzania held that:-

"...it is an elementary principle that he who alleges is the one responsible to prove his allegations."

Applying the above authority of the law, I have to say that I do not think the appellant proved this allegation to the required standard; a standard higher than the balance of probabilities - not even on the balance of probabilities. Thus, I do not have any flicker of doubt that the evidence of the appellant was considered to the hilt. I find no iota of truth in the appellant's complaint.

In consequence, I find that there is no merit in these grounds of grievance. That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with both tribunals findings. Therefore, I proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Mwanza this date 12th March, 2020.

A.Z.MGEYEKWA

JUDGE

12.03.2021

Judgment delivered on 12th March, 2020 in the presence of Mr. Mhingo, learned counsel.

A.Z.MGEYEKWA

JUDGE

12.03.2021

Right of Appeal fully explained.