

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

MISC LAND APPEAL NO. 41 OF 2020

(Arising from the Decision of the District Land and Housing Tribunal of Geita District at Geita in Land Case Appeal No. 10 of 2019 Ward in Application Ward Tribunal of Nyankumbu No. 19/2019)

EVELINE ALPHONCE ODONGO APPELLANT

VERSUS

MICHAEL MABULA RESPONDENT

JUDGMENT

22/03/2021 & 25/03/2021

W. R. MASHAURI, J;

Being dissatisfied with the decision of the district Land and Housing tribunal for Geita and Nyankumbu Ward tribunal the appellant Eveline Alphonce Odongo has come to this court with the following grounds of Appeal.

1. That, the chairman erred in law and fact for pronouncing that the plot in dispute belongs to the respondent without any supporting evidence.
2. That, the trial chairman erred in law and fact for failure to determine other grounds of appeal.
3. That, the trial chairman erred in law and fact in reaching decision by not taking into consideration the appellant's in record.

4. That, the trial chairperson erred in law and fact for failure to consider ground No. 3 of the petition of Appeal that the ward Tribunal erred in law and fact for not according the appellant right to be heard.

All parties appeared in person in support of her appeal the appellant told the court that she bought the Plot in dispute which is located at Nyankumbu Geita Mwembeni street in 2014 on 9/10/2014 from one person called Michael Daud and that upon bought that plot she built there with a sitting room is same year 2014 and lived there from 2014 to 2018 when Michael Mabula emerged from nowhere and said the plot was sold to him fraudulently (ametapeliwa) he therefore urged the appellant to re-sell the plot so that they would devide the usufructs. The appellant however refused the request of Mabula Michael to re-sale the plot and devide the usufructs because she did not know him. She also told the tribunal that she bought the plot for living there with her family and she told him to report the matter to police station. Where the person who told the plot to her was also called and when the matter was in the tribunal, he came in the tribunal with a new sale agreement dispute the fact that he had produced another sale agreement at police station and he failed to call any witness in the tribunal to support his case.

On 03/04/2019, the judgment of the tribunal was pronounced against her favour. She did not appeal to this court earlier as she was not given copy of the judgment in time.

That, she is a widow. She therefore prayed the court to assist her and allow her appeal.

On his part, the respondent Michael Mabula, upon heard the appellant's submission he told the court that, the appellant did buy another plot and not that in dispute which is his plot and when he made a follow-up the appellant said would give the money to him but she did not do so. She opened a case in the ward tribunal and he won the case. And after a lapse of time, he opened in court an application for execution and was granted. He was therefore given the plot in dispute.

In rejoinder, the appellant told the court that, the respondent was not given the plot by the District court as he allergies. He did not attend her case a single day of which was heard exparte. The respondent said lies in court. That the respondent took her stones and built there and she did not complain.

In the trial ward tribunal, the complainant Michael Mabula complained against Eveline Alphonse respondent for trespassing into his pot and build a hose thereon his part, the respondent. Said that, the plot in dispute is his property and he bought it from Maiko Daudi of Nyamtorotoro "A" and when Maiko Daudi was called by the tribunal he agreed to have sold the plot to the respondent to Eveline but he said the plot he sold to Eveline was not that now in dispute on which she built a house. They were urged by the tribunal to produce their respective documents in respect of the plot together with their witnesses. The complainant Michael Mabula produced in the tribunal a buying agreement in respect of the plot. The respondent Eveline Alphonse Odongo also produced in court a sale agreement with names of witnesses showing that, the plot was sold to her by Michael Daud.

Having heard the witnesses listed on a sale agreement produced by Eveline the witness Maiko Daud said the plot he sold to Evelien was too small and was a triangle in shape and there were six trips of stones which he was refrained from buying them as the stones were property of another person.

Another witness Festo Wambura said he went to the place of sale but he found them had finished the sale transaction and he was told to sign the sale agreement as witness to the transaction. He did not know even the amount of money was paid by the purchaser.

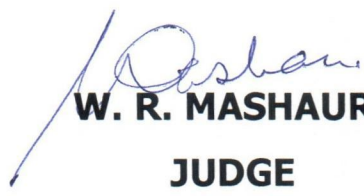
The 3rd witness whose name was not mentioned said that on the material day was called at the plot of triangle in shape which was being sold and was a small plot. The cell leader of that area was asked on the sale agreement of Zagaraza Runyabwa but the cell leader was not available he had shifted to another village. The current cell leader of that area was called by the trial tribunal to witness the sale but he refused. When the tribunal asked other witnesses to go to the transaction place, the respondent showed the area he was complaining for. Thereafter the respondent showed the area she bought but was big combining two plots. The trial tribunal did go to the locus in quo where the complainant showed the area he was complaining for when the tribunal asked Maiko Daud to show the plot she sold to him he showed a plot with a Triangle shape.

The respondent was asked of the stones where at the plot was sold to her she agreed that there were stones on the plot was sold to her in the course of hearing the dispute the tribunal gathered that, the respondent had sold the plot which was sold to her and built her house in a plot of another

who also conceded to have sold the plot to the appellant is more reliable than the evidence adduced in support of the respondent's evidence.

The respondent has in fact failed to establish on how he came by the plot his evidence on how he came by the plot in dispute is weak to support his case.

This appeal is allowed and the order given by the trial tribunal requesting the appellant to remove her home in the plot as well as returning the stones she used to build her house are quashed and set aside. The appeal is allowed with costs.


W. R. MASHAURI
JUDGE
25/03/2021

Date: 25/03/2021

Coram: Hon. W. R. Mashauri, J

Appellant: Present


Respondent: Absent

B/c: Elizabeth Kayamba

Court: Judgment delivered in court in presence of the appellant and absence of the appellant and absence of the respondent on line this 25th day of March, 2021.

Right of appeal to be explained to respondent.




W. R. MASHAURI
JUDGE
25/03/2021