

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(LAND DIVISION)

APPELLATE JURISDICTION

MISC. LAND APPEAL NO. 16 OF 2021

(Arising from the decision of District Land and Housing Tribunal for Kigoma at Kigoma in a Land Appeal No. 23/2020 Before F. Chinuku – Chair person, Originating from the Decision of Buhigwe Ward Tribunal in a Land Dispute No. 2/2019).

BUNDA MBONALIBA HWANYA.....APPELLANT

VERSUS

FABIAN RAPHAEL DOMBAGU.....RESPONDENT

JUDGMENT

08/03/2021 & 23/03/2021

A. MATUMA, J

On behalf of one Elina Yosia, the appellant instituted a land suit for trespass at the Ward Tribunal of Buhigwe against the Respondent. At all times he was accompanied by the said Elina Yosia. Unfortunately, they lost a suit and unsuccessfully appealed to the District Land and Housing Tribunal for Kigoma hence this appeal.

Initially the appellant had lodged three grounds of appeal but at the hearing of the appeal Mr. Kabuguzi learned ~~advocate~~ advocate for the appellant

abandoned the last two grounds and argued the first ground alone which had two sub-grounds to the effect that;

- i. The case had been entertained and determined between the appellant and the respondent while the appellant had no locus standi in the matter since the actual claimant of the suit was one Elina Josia who had not been made a party to the same.*
- ii. One Maliselina Kabhalila who was alleged to have sold the suit land to the respondent was not joined to the case as a necessary party.*

At the hearing of this appeal, the Appellant was present and had the service of Mr. Kabuguzi learned advocate. The Respondent was present in person.

Mr. Kabuguzi learned advocate argued the first ground condemning the first appellate tribunal to have condoned the proceedings and judgment of the trial ward tribunal despite the fact that it was satisfied that indeed the appellant had no locus standi. That leaving the impugned judgment intact will hinder Elina Yosia to claim over the matter.

The respondent disputed the first ground arguing that the said Elina Yosia was fully involved in the suit at the trial and thus the impugned judgment not a nullity.

It is true that the appellant instituted the suit at the trial tribunal on behalf of Elina Yosia as indicated on the records of the trial tribunal;

"Huyu bwana namshtaki kwa kuvamia sehemu aliyokuwa amepewa Elina Yosia tangu alipoolewa na marehemu Tobias Dombagu... tumefanya kila juhudi kulikomboa bila mafanikio..... tumeamua kutekeleza ushauri tuliopewa na mwanasheria kwamba swala hili tulilete hapa kwenye baraza la ardhi la kata".

Elina Yosia also entered appearance at the trial to join hand with the appellant;

"Mimi ni mali yangu, hiyo mali aliniachia mme wangu. Nilipokwenda kulima huyu naye alikwenda kupanda... kwa hiyo sasa nimefikia mwisho nimeonesha mwizi wangu. Kwa hiyo aliniibia shamba".

From the herein reflection, it is obvious that the Appellant did not on his own motion institute the suit. At all times was accompanying Elina Yosia to claim for the dispute shamba and at last they were advised to commence a suit in the tribunal. Elina also was involved in the suit as she entered appearance as a claimant but mistakenly, she was recorded as a witness.

My finding on this ground is that the same has been brought as an afterthought. This is because 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 in representation of either party.

Despite the fact that the real parties ought to have taken the title of the case, I find that the recording of the appellant as the plaintiff and Elina Yosia as a witness was a mere error or omission which did not cause any miscarriage of justice provided that Elina Yosia was fully heard and a substantive decision made thereof. The proceedings and judgment of the trial Ward Tribunal is thus protected under the provisions of section 45 of the Land Disputes Courts Act supra. Even if I was to allow this ground still the appellant won't benefit anyhow. It is like he has raised objection against himself and struggle to have it sustained against himself. I am aware that Mr. Kabuguzi learned advocate has submitted that if the proceedings and impugned judgment is left to stand, Elina Yosia shall be hindered to claim over the matter. Allowing such argument would be bad in law as the said Elina Yosia is not party to this appeal nor has complained against the impugned judgment. I therefore find that this first ground of appeal is devoid of any merit and I accordingly dismiss it.

Mr. Kabuguzi then argued the second part of the ground in that one Maliselina Kabhalila who sold the dispute shamba to the Respondent was not joined in the suit as a necessary party. He ~~was~~ of the view that the

proceedings at the trial were thus a nullity and the first appellate tribunal ought to have nullified them.

The respondent as he did in the first complaint, maintained that the proceedings thereat were not a nullity as the seller Maliselina Kabhalila was called and testified in the suit. Mr. Kabuguzi learned advocate was of the view that it was not enough for the said Maliselina and even Elina to appear as witnesses in the suit, but rather they ought to have been parties to the suit.

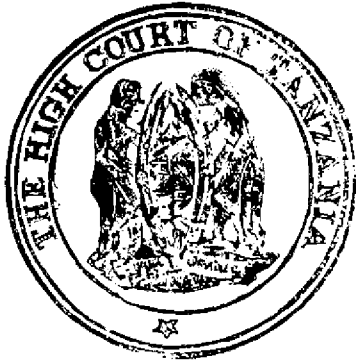
It is my firm finding that the essence of making one a Party to the suit is just to accord him or her opportunity to hear the claims against him or her and have opportunity to present the defence in a suit which is likely to affect his/her interest in the dispute property. When the matter tends to affect title on land allegedly purchased from a third party, it is when the seller/vendor becomes a necessary party as it was held in the case of ***Juma B. Kadala versus Laurent Mkanda, (1983) TLR 103.*** But the essence is again for him or her to be accorded opportunity to justify his or her selling in protection of the purchaser's rights. In other words, to establish his or her good title on land and that the same properly passed to the buyer. In the circumstances I find no miscarriage of justice if such a vendor was not joined with the buyer as co-defendants but came as a witness and gave evidence justifying his/her selling of the property in dispute. In the instant matter Maliselina was brought as a witness and

gave her evidence in support of the respondent. It would have brought no difference if she would have given the same evidence as a co-defendant. After all it was not the respondent who was necessitated to sue the said Maliselina. It was the Appellant who instituted the suit and thus had he considered that Maliselina was a necessary party he should have joined her. His failure so to do cannot be taken against the respondent provided that the respondent exercised his discretion to bring her as his witness.

I find the appeal by the appellant to have been motivated by afterthoughts after he lost the suit. Had he won the suit, I am not positioned to believe that he would appeal against his victory on the grounds he has raised herein. This Court and the Court of Appeal have always been discouraging matters instigated by afterthoughts. One of the Court of Appeal decision to that effect is that of **East African Development Bank versus Blueline Enterprises Tanzania Limited**, Civil Application No. 47 of 2010. This ground also fails.

Since the merits or otherwise of the decisions of both the Ward Tribunal and the District Land and Housing Tribunal was not argued before me on the strength or otherwise of the evidence on record, I have nothing left for determination. This appeal is therefore dismissed with costs. Whoever aggrieved with this decision has the right of further appeal subject to the

guidelines of the relevant laws governing third appeals to the Court of Appeal of Tanzania. It is so ordered.



~~A. MATUMA~~

JUDGE

23/03/2021

Court: Judgement delivered today 23rd day of March, 2021 in the presence of both parties in person and Mr. Method R.G. Kabuguzi Learned Advocate for the Appellant.

Sgd: A. MATUMA

JUDGE

23/03/2021