

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. 6 OF 2021

(Arising from Land Appeal No. 133/2019 of the District Land and Housing Tribunal – Kigoma before F. Chinuku - Chairperson, Original Land Case No. 18/2018 from Kakonko Ward Tribunal)

JONAS DOGO KASHANA..... APPELLANT

VERSUS

PAULINA NDALIGUMIYE..... RESPONDENT

J U D G M E N T

25th Feb. & 17th March, 2021

I.C. MUGETA, J.

The dispute between the parties was adjudicated upon by the Kakonko Ward Tribunal. The respondent sued in her capacity as administrator of the estate of the late Masigo Matali Ndalugumie. This fact is not reflected on the citation of the parties. Since the deficiency, in my view, did not occasion any failure of justice, the irregularity is curable in terms of section 45 of the Land Disputed Court Act [Cap. 216 R.E. 2019].

The dispute centres on ownership of the land formerly owned by deceased Masigo Matali. While the appellant alleges he initially worked on that land as caretaker up to 1996 when he bought it, the respondent is of the view that the deceased did not sale his land. The Ward Tribunal found as a fact that the deceased did not sale the land but since the appellant had taken care of it for a long time and finally constructed a house thereon, he deserved part of the land as compensation. It awarded the appellant part of the land measuring 70 x 30 metres for that purpose. The respondent appealed to the District Land and Housing Tribunal which reversed the decision of the Ward Tribunal. The first appellate tribunal held: -

- i. The issue of sale was not proved.*
- ii. The Ward Tribunal wrongly decided to devide the suit land instead of deciding who the lawful owner is.*
- iii. The evidence on record proves that the suit land is part of the estate of the late Masingo Matari.*

The appellant was aggrieved, hence, this appeal on the following grounds: -

- i. That the District Land and Housing Tribunal of Kigoma erred in law and fact for disregarding the evidence adduced at the Ward Tribunal of Kakonko by the Appellant that the piece of the suit land was purchased by the Appellant from the late Masigo*

Mchigumwe Matari before he was alive (sic). The copy of the said contract for sale is annexed as annexure "A".

- ii. That the District Land and Housing Tribunal of Kigoma erred in law and fact for the Chairperson to differ the opinion of the both assessors who were correct that the Appellant was no longer the care taker of the suit land in lieu the Appellant was owner of it.*

Before this court the appellant submitted that he bought the suit land in 1996 at Tshs. 35,000/= and has been in peaceful enjoyment of the land until death of the seller in 2017 when his relative started to meddle with that land. The respondent argued that the idea of sale is an afterthought because neither the sale agreement nor a witness thereto testified at the Ward Tribunal.

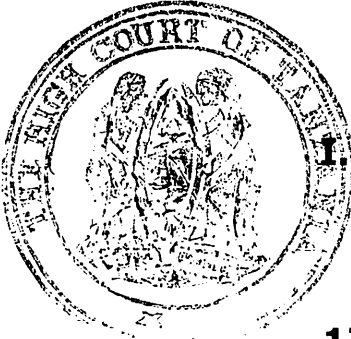
The issue for my determination is whether the appellant bought the land. It was upon the appellant to prove this fact. Even if not properly reflected on record, the appellant tendered a sale agreement which the Ward Tribunal ignored. The reason for that state of affairs is firstly, that one of the witnesses to the alleged agreement disowned it. This is Lobati Faida Balushimana who testified on the appellant's side. Initially, he said he was just present at the signing and advised the parties to attach photograph on the sale agreement. On cross examination when shown the alleged sale

agreement he said he signed it but he was too drunkard. In his evidence the appellant had testified that the said Lobati was just present and he just gave the advice to have photographs of the parties to the agreement affixed on the sale agreement. Therefore, Lobati Faida was just present. He did not sign on the contract. The Ward Tribunal erred to make the contradictions in his evidence as one of the reasons to reject the contract. However, his evidence is unliable because a court of law cannot act on evidence of a drunkard witness.

The second reason for rejecting the sale agreement was that it was not genuine for indicating to have been prepared in 2011 suggesting there was modification on the initial agreement. It is my view that this was a valid reason for rejecting it. This left the evidence of the appellant on purchase of the land unsupported. It was important that the sale agreement should have been tendered or there ought to have been evidence from those who witnessed to it. No witness to the agreement testified at the Ward Tribunal. Here on appeal the appellant attached a sale agreement executed in 1996. A turn around from what was shown to the Ward Tribunal. However, an appellate court cannot admit and act on an annexure to the petition of appeal as evidence. It is my view that where the other party to a contract

has passed on, the only proof that he executed any sale agreement is that agreement which in this case is not on record. For these reasons, the appellant did not sufficiently establish that he turned from being caretaker of the land to owner by purchase. The District Land and Housing Tribunal was right to hold that the Ward Tribunal erred to divide the land. I uphold the decision of the District Land and Housing Tribunal.

In the event, I dismiss the appeal with costs.

 *I.C. Mugeta*
I.C. Mugeta
Judge
17/3/2021

Court: Judgment delivered in chambers in the presence of both parties.

Sgd: I.C. Mugeta

Judge

17/3/2021