

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. 24 OF 2020

(Arising from Land Appeal No.31/2019 Kigoma District Land and Housing Tribunal,
before F. Chinuku - Chairperson, Original Land Case no. 11/2018 of
Buhoro Ward Tribunal)

RULASHITSE SAMAJE..... APPELLANT

VERSUS

JONAS KAPERA..... RESPONDENT

JUDGMENT

8th March & 27th April 2021

I.C. MUGETA, J.

The respondent sued the appellant at the Ward Tribunal of Buhoro claiming for vacant possession of the suit land. Historical background of the incident dates back to the year 1974 when Mr. Mtuku migrated to Kitema from Buhoro Village. In the year 2018 the dispute over use of the land between appellant and respondent started. The respondent claimed that the area was given to him by his grandmother in December, 1997 before she died in 1998. As a result, the respondent filed the dispute with the Ward Tribunal of



Buhoro where he lost the case. He appealed to the District Land and Housing Tribunal of Kigoma and won on ground that:-

*"he has been in actual use of the land since 1997
thus his long stay at the land should not be
disturbed".*

The appellant was aggrieved by and dissatisfied with the decision of District Land and Housing Tribunal of Kigoma, hence, this appeal with three grounds of appeal summarized as follow: -

Firstly, that the District Land and Housing Tribunal erred in law and facts by failing to consider the evidence of the original owner who adduced the evidence in favor of the appellant. Secondly, that the respondent's evidence of ownership was contradictory on whether the land was clan land or his grandmother bought it from Mutuku. Thirdly, that all respondent's witnesses were lessees who could not testify on ownership.

During the hearing of the appeal both parties were present, appellant unrepresented while the respondent enjoyed the legal service of Daniel Rumenyela, learned advocate.

In his brief submissions the appellant adopted his grounds of appeal and added that the original owner of the land Mr. Mtuku's son gave evidence in

his favor, therefore, on the strength of such evidence this court ought to restore the decision of the Ward Tribunal.

Replying, advocate for the respondent submitted that the District Land and Housing Tribunal was right to say that the appellant's father was entrusted the land by Mtuka as a caretaker, and it was not shown how the right was transferred from the appellant's father to the appellant. He further submitted that the respondent got the land from his grandmother and he used to lease the land for 21 years up to 2018 when this dispute broke.

In rejoinder, the appellant submitted that it is not true that the respondent has been in use of land since 1997. He prayed this court to examine well the record to decide justly as the respondent gave contradictory evidence about his right of ownership.

Simply put, the issue for determination is who is the rightful occupier of the suitland?

The respondent claimed right to land by grant from his grandmother who gave it to him in 1997. He, however, did not adduce evidence on how his grandmother acquired that land. This lacuna, presumably, led to this question from one of the members of the Ward Tribunal: -

Question: *Hame hilo mpaka ugaiwe na bibi yako, bibi huyo alikuwa mzaliwa wa hame hilo na babu yako alikuwa wapi, babu yako alikuwa hana mamlaka nalo?*

Answer: *Babu alikuwepo ila hakuwa na mamlaka.*

This answer suggest that the grandmother owned the dispute land exclusive of her husband. This makes it necessary to prove by evidence how she acquired that land which evidence is lacking.

On his part, the appellant gave coherent historical background on ownership of the dispute land. His evidence is supported by three independent witnesses. These are Volikodi Mtuku, Mikael Gwimbugwa and Jonas Samaje.

According to the appellant, the respondent is his nephew. He told the Ward Tribunal that the dispute land belongs to one Mtuku who relocate from Murubera, Buhoro, where the dispute land is located, to Kitema in the year 1974. On such departure, Mtuku entrusted his land, part of which forms the dispute land to the appellant's father. When the father died the appellant's son Revokatus cultivated that land. Later, the respondent asked for a land for use and the appellant gave him which land the respondent finally disposed of.

Valikodi Mtuku is the son of Mtuku. He gave evidence that when his father Mtuku died, he again entrusted the suit land to the appellant and his father

for their use. He testified further that in 2018, when a dispute on use of the dispute land between the appellant and the respondent broke out, Volikadi travelled to Buhoro to have the dispute resolved. On 29/9/2018 the parties met before the Village Chairman and the respondent was unable to defend his rights into the land except for filing this case. Mikael Gwimbungwa gave evidence similar to that of Volikadi. That when they relocated to Kitema, they entrusted their land to Samaje, the appellant's father, and upon his death the land was entrusted to the appellant. Jonas Samaje is a brother of the appellant. He confirmed that the respondent is their nephew who cannot claim right to land from the maternal side unless it is through his mother.

As I said earlier the Ward Tribunal decided in favour of the appellant which decision was reversed by the District Land and Housing Tribunal. In reaching the decision, the learned Chairperson differed with the gentlemen assessor who opined for confirmation of the decision of the Ward Tribunal. In her judgment the learned Chairperson discredited the appellant's evidence in the following terms: -

"It is evident that the respondent is not the owner of the suit land as he himself admits that the land was just entrusted to his late father by Mtuku. The person who testified from Mtuku family one Volikadi Mtuku is not the one who who handled (sic) the land to the

respondent's father thus his evidence cannot be said to be valid evidence".

With respect the learned Chairperson misapprehended the evidence. According to the evidence on record, the Mtuku family has lost interest in the suit land which, by necessary implication, means ownership has been automatically transferred to those entrusted with the land. The uncontroverted evidence of the appellant is that when they met before the Village Chairman on 29/9/2018 Volikadi Mtuku said if the appellant have failed to take care of the land it should revert to the Village council. This is what appears on record: -

"Akasema tangu leo mwenye hame ni Rulashite. Akarudia kumuuliza kuwa sisi wenyewe hatukuuza, sasa wewe uliua kama nani? Huyu mtu wa Kitema akaniambia kuwa kama wewe Rulashite umeshindwa kupamiliki basi naomba eneo liwe mikononi mwa serikali si vinginevyo".

This evidence is uncontradicted. That is why Volikadi testified in support of the appellant and never asserted for his ownership rights.

On the holding that Volikadi Mtuku did not hand over the land to the appellant's father, the Chaiperson also misinterpreted the evidence. Volikadi testified: -

"Siku zikawa zimepita baba akafariki. Nikaendelea kumwambia Samaje na Rulashite kuwa nyie muendeleo kulilima na kulitunza shamba hili".

It follows, therefore, that from the family of Mtuku the land has passed over into the hands of the appellant following death of his father. The respondent did not prove how his grandmother acquire the dispute land. Considering the evidence on record as a whole, his evidence that he has used the land since 1997 is doubtful. The evidence of the appellant that he gave the dispute land to the respondent for use as his nephew is reliable and credible under the circumstances of this case. Therefore, his right to that land is not established. In the event, I allow the appeal. The decision of the District Land and Housing Tribunal is hereby quashed. The decision of the Ward Tribunal is restored. Costs are awarded to the appellant.




I.C. Mugeta

Judge

27/4/2021

Court: Judgment delivered in chambers in presence of the appellant and in the presence of the respondent and his advocate Mr. Daniel Rumenyela.

Sgd: I.C. Mugeta

Judge

27/4/2021