

**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. 17 OF 2021

(Arising from Land Appeal No. 167/2019 of the District Land and Housing Tribunal – Kigoma before F. Chinuku – Chairperson, Original Land Case No. 11/2019 of Murubona Ward Tribunal)

MARIAMU KEDIMILI APPELLANT

VERSUS

EVERINA WILISON 1ST RESPONDENT

LAURENT JAMES 2ND RESPONDENT

J U D G M E N T

27th April & 10th May, 2021.

I.C. MUGETA, J.

This appeal is founded on five grounds of appeal. As some of them are not clearly articulated, I shall try to summarize them as follows: -

- i. That the evidence of the appellant was heavier than that of the respondent as the respondents are neither owners nor sellers of the dispute land.*
- ii. The District Land and Housing Tribunal erred to ignore the opinion of accessors.*

The appeal is against the concurrent finding of the Ward Tribunal and District Land and Housing Tribunal that the suit land belongs to the 2nd respondent. Both parties appeared in person at the hearing of the appeal. Without referring to or stating any specific piece of evidence the appellant submitted that her evidence at the Ward Tribunal was heavier than that of the respondents. She complained about the handling of the proceedings at the Ward Tribunal in that she had sued one Leonadi Wilison but the Ward Tribunal substituted him with Everina Wilison. She also complained that when the Ward Tribunal visited the locus in quo they did not allow witnesses to give evidence.

In reply, the 1st respondent submitted that Leonadi is his brother who is of unsound mind. She supported the decision of the lower tribunals because the appellant failed to prove either her purchase of the dispute land or that the land belong to those who allegedly sold it to her. To the contrary, she submitted, the first respondent proved her family title to the land and how they sold it to the 2nd respondent. On his part the 2nd respondent refuted the allegation that witnesses were prevented to testify at the locus in quo. He submitted that it was agreed that no evidence shall be taken thereat except going through exhibits and confirmation of evidence already tendered.

Briefly, the facts of the case are that the dispute land is located at Kigombani area, Murubona Ward, Kasulu District. The appellant testified that she bought the dispute land from Tatu Maiko who sold it through her sister Anna Maiko. Neither Tatu Michael nor Anna Maiko testified to support the appellant on the purchase deal. The respondents evidence is that the dispute land belongs to Wilison Balashishwa, who is the father of the 1st respondent. That, the family of Wilison Balashishwa sold the dispute land to the 2nd respondent. The sale was executed by Vitus Wilison on behalf of the family and the sale agreement was admitted as exhibit D3. In 2015 the Village Council divided the Village area into plots. The land of Wilison Balashishwa produced two plots and the family paid for them Tshs. 20,000/=. They were issued with two receipts Number 529 and 530 which were admitted as exhibits D1 and D2 respectively. The payment was made by Leonadi Wilison on behalf of the family. It is one of these plots which was sold to the 2nd respondent. The Ward Tribunal relied on the sale agreement and the payment receipts as evidence of ownership on part of the respondents. On appeal, the District Land and Housing Tribunal held: -

"... it is noted that the appellant who was the complainant at the Ward Tribunal failed to prove her

case. The appellant says that she was showed the suit land by one Japhet Nayigo and his fellow who was not mentioned by his name. That the one who is the owner of the land is Tatu Maiko but the one who participated to the sale is Anna Maiko as the said Tatu Maiko was on journey. It is trite that the said Anna Maiko had no good title to dispose off the suit land...".

I agree with the learned Chairperson of the District Land and Housing Tribunal. There is no evidence on record that Tatu Maiko had any rights over the dispute land capable of being transferred to the appellant. The complaint that the appellant's evidence was heavier is unjustified. It is dismissed.

The gentlemen assessors at the District Land and Housing Tribunal were of the opinion that the case should be retried because Tatu Maiko, as necessary party, was not joined. The learned Chairperson differed with them and ruled that appellant had not proved her case hence the complaint in the second ground of appeal above stated. I agree with the learned Chairperson. Since it is the appellant who filed the suit, he ought to have known who the necessary parties to the suit are. To order a retrial in order to cure mistakes made by the aggrieved party to the case would amount to assisting a party to prosecute its case. Since the right of action of the appellant lies against

Tatu Maiko and not the respondent it was fair and just for the District Land and Housing Tribunal to decide that the case against the respondents was not proved.

On the substitution of Leonadi Wilison with Everina Wilison the Ward Tribunal record, indeed, reflects the substitution. In the judgment the Ward Tribunal explained that when Leonadi appeared before the Tribunal he informed that it is the 1st respondent who was responsible with this case and the appellant conceded to the substitution. According to judgment, as these facts does not feature in the proceedings, this happened on 26/7/2019. It was well before the appellant opened her case on 2/8/2019. I have considered the irregularity of such fact appearing in the judgment instead of the proceedings, I have come to the conclusion that in terms of section 45 of the Land Disputes Courts Act [Cap. 216 R.E. 2019] none of the parties was prejudiced. It does not matter who defended the suit on part of the Wilison Balashishwa's family where the appellant failed to prove her title to the land.

The complaint on what happened at the locus in quo is not supported by the proceedings. The Ward Tribunal proceedings ends with an order that the Ward Tribunal would visit the locus in quo on 4/9/2019. The proceedings on what transpired thereat are missing. This supports what the 2nd defendant



alleged that they agreed to take no more evidence. Consequently, so long as the decision of the Ward Tribunal was not based on anything that transpired at the locus in quo no party was prejudiced. I find the complaint lacking in merits too.

In the event, I hold that the whole appeal has no merits. I dismiss it with costs.




I.C. Mugeta

Judge

10/5/2021

Court: Judgment delivered in chambers in the absence of the appellant and in the presence of both respondents.

Sgd: I.C. Mugeta

Judge

10/5/2021