

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

LAND APPEAL NO. 11 OF 2020

**(Originating from the Decision of the District Land Housing Tribunal of
Songea at Songea in Land Case No. 214 of 2018)**

YASSIN KOMBA..... APPEALANT

Versus

ALLY AHAMAD KOMBA..... 1ST RESPONDENT

AHMAD MAULID KOMBA..... 2ND RESPONDENT

JUDGMENT

Date of Last Order: 20/03/2021.

Date of Judgment: 06/05/2021.

BEFORE: S.C. MOSHI, J.

Before the District Land and Housing Tribunal for Ruvuma at Songea, the appellant sued the respondents inter alia for the following orders: -

- (i) Declaration that the applicant is the lawful owner of the land in dispute.*
- (ii) Declaration that the act of the respondent is unlawful and amount to trespass on land.*
- (iii) An order for the respondent to demolish or remove the houses built in the disputed land.*

The District Land and Housing Tribunal drew three issues thus:-

- (i) *Whether the applicant is the lawful owner of the disputed land.*
- (ii) *Whether the respondents are trespassers.*
- (iii) *To what reliefs the parties are entitled to.*

The matter was heard interparties. At the end of the trial the District and Housing Tribunal found for the respondents; it declared the second respondent to be the lawful owner of the suit land . consequently, the application was dismissed in its totality. Being dissatisfied by the decision, the appellant preferred this appeal on two points as reproduced hereunder: -

- (i) That the trial tribunal erred in law and fact to decide the case contrary to the evidence.
- (ii) That the trial tribunal erred in law and fact to dismiss the application which was proven to the standard required as the evidence of the applicant was heavier than the respondent.

At the hearing of the appeal the appellant was represented by Mr. Ndunguru whereas the respondent appeared in person.

Mr. Dickson Ndunguru argued the two points of appeal together as they basically revolve around analysis of evidence. Henceforth, I will also discuss the two points together.

Invariably, the standard of proof in civil cases is on the preponderances of evidence, see section 3(2) (b) of the Tanzanian Evidence Act, Cap. 6 R.E 2019. Also see the case of **Mkindi vs. Duschaker** [1971] H.C.D 96. It is also imperative to point out that the duty of proof is on whoever desires any court to give judgment as to any legal right or liability on the existence of facts which he asserts, see section 110 and 111 of the Tanzania Evidence Act, Cap. 6 R.E 2019. In the case at hand therefore, it was appellant's duty to prove his case on the required standard.

In essence, Mr. Dickson Ndunguru's submission shows that there was sufficient evidence to prove the claim. In that regard, he pointed out the testimonies of PW1, PW2 and PW3. Generally, the appellant's evidence is to the effect that, the second respondent did exchange the suit land with the appellant and that the appellant did not dispute this fact. However, after having given the land to the appellant, the respondent built houses therein. On the other side the respondent maintained that the suit land is family land. That the second respondent has been in continuous occupation and later he allowed first respondent to build a house therein.

Upon diligent consideration of the claim as presented in the application form; the claim was for a piece of land measuring twenty acres. The appellant asserted that the land was allotted to him by the family. However, in evidence, as seen in his testimony, he stated that the

respondents trespassed onto four acres of land which they had exchanged per exhibit P.6. His witnesses did not witness the land exchange between the parties. Despite the fact that the appellant testified at length about winning other various cases but the cases are not related to the suit land. Besides, the appellant's pleading shows that the land was given to him by the family whilst the evidence varies from the pleadings as he said that he exchanged it with second respondent; it is worthy to point out that parties are bound by their pleadings, they cannot depart from them, see **Barclays Bank Tanzania Ltd vs. Jacob Muro**, Civil Appeal No. 357/2017, Court of Appeal of Tanzania.

Even if the version that they exchanged the land was pleaded, yet his witnesses' evidence did not support this fact; PW3, his wife stated that the land was allotted to the appellant by the clan, she said that she was told so by the appellant, so her evidence is hearsay. PW2 stated that he was informed of exchange, he did not witness the transaction.

Definitely, there is no plausible evidence to prove the claim. The appellant failed to discharge his duty of proof. Basing on the aforesaid, I find that the appeal lacks merits. In the event, it is dismissed in its entirety with costs.

Right of Appeal Explained.




S.C. MOSHI

JUDGE

6/5/2021