IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

APPELLATE JURISDICTION

LAND APPEAL NO. 18 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for Kigoma at Kigoma in Land Case No. 23 of 2019) Before M. Nyaruka, Chairman)

NYARUBANDA VILLAGE COUNCIL.....APPELLANT

VERSUS

IMELDA MORIS NKORONKO *(the administratix*

of the estate of the late Moris Nkoronko).....**RESPONDENT**

JUDGMENT

23rd April,2021 & 31st May, 2021

A. MATUMA, J.

In the District Land and Housing Tribunal for Kigoma at Kigoma, the Respondent successfully sued the appellant for the dispute over ownership of Land within Nyarubanda Village.

The appellant was aggrieved hence this appeal with a total of five grounds of appeal which were however argued into four major complaints as shall be seen in discussing them hereunder.

At the hearing of this appeal, Mr. Daniel Rumenyela learned advocate represented the appellant while the respondent was represented by Mr. Sadiki Aliki learned advocate.

Mr. Daniel Rumenyela argued the first and second grounds of appeal in that;

> *'The trial chairman erred in law and facts by reaching to her decision on assumption that the respondent's family had long stayed in the dispute land in total disregard to the social facilities on that area which was designated for Social Welfare and Economic activities of the village'.*

Submitting on this ground, the learned advocate for the appellant argued that a long stay in the dispute land should have not been the basis for the decision by the trial tribunal because it is in evidence that both parties were there for long. Instead, the trial tribunal ought to have considered the social facilities on the dispute land such as Nyarubanda Primary School, Nyarubanda Secondary School, CCM Office, CCM houses, TAG Church, eleven residential houses for Dispensary staffs and planted trees.

On his party, Mr. Sadiki Aliki learned advocate for the respondent, responding to this ground submitted that the long stay is a crucial issue for determination of a land dispute. That it was the respondent's father who started to live on the dispute land way back prior to operation Vijiji. That he built there and lived in since then. That Public facilities are out of the dispute land and that the trees on the dispute land were planted by the deceased father of the respondent.

I would determine this first and second ground together that they have no any merit at all as rightly submitted by advocate Sadiki Aliki. This is due to the fact that the trial tribunal visited the locus in quo and observed that all those Public facilities are out of the exact dispute land. Even when I ordered for further evidence in which both parties got opportunity to show their respective claimed land, the drawn **sketch map "A"** in which the respondent shown the area she claims, it is indicated that the area she claimed to belong to her deceased father does not cover that with public facilities. Rather it is **sketch map "B"** by the appellant which indicate to enclose the whole area including that claimed by the respondent. In other word, by sketch map "A" all public facilities are survived by the dispute at hand, but by sketch map "B", the respondent has no land whatsoever on the dispute land even by a one feet step.

I therefore find out that the appellant had fabricated evidence as rightly observed by the trial tribunal at page 4 of its judgment that;

> *'The respondent witnesses claimed that in the land there is a Primary and Secondary Schools, houses of CCM, football playing ground, 11 houses for workers, trees of Village government, a church building PAG Church;* ***but this court had an opportunity of visiting the disputed premises and in the land claimed there was nothing other than destructed houses of Applicant's family, trees (mikaratusi) and some crops of the Applicant's family.***
>
> *The two schools both primary and secondary and football ground was outside the disputed premises shown by the applicant. She did not even claim the land where the Dispensary is built nor CCM building.* ***We did not even see the 11 houses claimed to have been in the disputed premises built for workers...'***

I therefore find that the appellant gave false evidence to mislead not only the court below but also this court, in that; granting the claims of the respondent would amount to the demolish of all those public facilities. That is a very bad behavior which should stop at once. Even if that would be the case, is the appellant empowered to claim the dispute land for CCM or for PAG church? Does the village own those other public facilities such as schools, football

ground and dispensary? There is no evidence on record for the appellant to have claimed ownership of any of those facilities and therefore is estopped to claim land in their behalf.

The issue therefore is whether the dispute land which is free of those public facilities belong to the respondent or to the appellant. The trial tribunal found that it belonged to the respondent as he stayed there for over 50 years;

> *'As the evidence show that the Applicant's family stayed peacefully on the disputed land since 1968 almost 50 years, then one cannot be removed today'.*

I agree with this finding of the trial chairman and the authority relied, that of ***Pius Seleman versus Simon Kapwepwe Mahwera***, *Misc. Land Appeal No. 60 of 2012* in which Songoro J, held that courts are always reluctant to disturb a person who has been in occupation of the land for long period of time. The one who has stayed in land for more than 12 years.

In the instant matter it is undisputed fact that the respondent's father lived in the dispute land prior to operation Vijiji and was actually the owner of that land.

The appellant's evidence is only to the effect that when it came operation vijiji, the respondent's father was removed from the dispute land just like other villagers and allocated another plot on the designed area for villagization. But it is in evidence of the respondent that at all time they lived in the dispute land until when this dispute arose. Such evidence was even corroborated by the appellant's own witnesses DW1 and DW3. DW3 Damas Kabonya Rutu for instance testified that when people were shifted from their areas for the villagization during operation vijiji, the respondent's father did not shift. He remained on that dispute plot;

> *'In 1974 he was moved out like other people* ***but he remained in the land'.***

During cross examination at page 98 of the proceedings, this witness confirmed that the respondent's father started to live in the dispute land before operation vijiji. He never shifted from there until when he died and buried there. His family continued to live there until when this dispute arose;

> *'I know Moris Nkoronko* ***he started to live in the dispute land before villagization.*** *In 1974 the land was set aside for social welfare...*
>
> ***When the house of Moris was demolished, the family of the Applicant was living therein...'***

> ***Moris was not removed in the dispute land,*** *Moris was gaidi, alikaidi amri ya serikali kuu ya moving out'.*

With this evidence of the appellant's own witness, it is obvious that prior operation vijiji up to the time this dispute arose the respondent's family was peacefully living on the dispute land which was estimated to be over 50 years.

DW1, Method Logasiano Hobhili as well corroborated the respondent's case that up to 2016 when he was the village chairman, the Applicant's family house now the respondent was there but demolished by villagers and that the dispute land has many tombs of the applicant's family (now the respondent);

> *'I was serving when the house of the Applicant's family was demolished in 2016. ... There are many tombs of the family of the applicant'.*

There is also evidence of the respondent that they had family trees on the dispute land which they used to sale to various people including PW2 and PW3 who bought and cut the trees in 2014 and 2015 respectively with no any problem. The appellant did not stop them that the trees were on her land or that the same belonged to her. There is undisputed evidence that even when TANROAD took part of the dispute land for the road construction, it was the applicant's family (Respondent) which was given

compensation by being recommended by village leaders to be lawful owner of the acquired area for the road construction.

With all these, it is without any doubt that the respondent is the lawful owner of the dispute land and the fact of long stay in the suit land cannot be ignored as purported by Mr. Daniel Rumenyela learned advocate for the appellant.

In the third ground of appeal, the appellant laments that;

> *'The trial chairman of the tribunal erred in law when he failed to consider in depths the testimony of the appellant that the respondent's father refused to vacate from the suit land because he was the village chairman during operation vijiji hence used his position to overstay in the suit land unlawfully'.*

Submitting on this ground Mr. Daniel Rumenyela learned advocate argued that the respondent's father took advantage of being the village chairman to remain on the dispute land during operation vijiji. He added that, the said Respondent's father was given another plot to vacate and cannot thus be allowed to possess two different plots.

Responding on this ground Mr. Sadiki Aliki learned advocate submitted that the allegations that the respondent's father refused to vacate from the dispute land during operation vijiji and that he was given another plot

are all unfounded nor substantiated. He argued that during operation vijiji the respondent's father was not yet a village chairman but a normal villager. He added that even after the retirement of the respondent's father, eight other successor village chairmen came into power and none of them took any action to remove him from the dispute land.

On my side, I think this ground should not detain me much. It is undisputed fact by both parties as per the evidence of PW1 and DW2 that the respondent's father became the village chairman in 1982. In the circumstances during operation vijiji in 1974 he was yet a village chairman and therefore the allegations that he used his position as a village chairman to remain in the land is a blatant lie which is unfounded. I also agree with Mr. Sadiki learned advocate that even if it would have been observed that the late Moris refused to vacate by using his position, still the question would be; why didn't they remove him after his retirement in 1992? I therefore dismiss this ground of appeal.

Mr. Daniel Rumenyela learned advocate then argued the fourth ground of appeal to the effect that in the village each villager was allocated a land not more than 70 x 70 and therefore even if the respondent's father could have any right in the dispute land, the same would not exceed the measurement of 70 x 70.

Mr. Sadiki Aliki learned advocate on his party was of the argument that it was the respondent's father who developed the dispute land.

It is my firm finding that this ground is misconceived. The question here is not allocation and the size of land allocated to each villager. It is the question of ownership of the whole dispute land. The appellant did not allege to have allocated the respondent's father an area in the dispute land measuring 70 x 70 nor the respondent alleges as such. On the other hand, the respondent through PW4 who is the deceased's widow testified that the dispute land as a whole was given to her husband by her father in law in the year 1968. By that time, she had five years married to that family by the respondent's father. They then lived in their given land until his husband died there in 1993 and she continued to live there with her other family until when the current dispute arose. In that regard the 4th ground is without any merit and it is accordingly dismissed.

Mr. Rumenyela learned advocate argued the last ground that the respondent's case at the trial tribunal was not proved to the required standard on the balance of probabilities. Mr. Sadiki learned advocate counter argued that, the respondent's case at the trial was sufficiently proved. Need not dwell into this ground because it is less similar to the first ground of appeal which was argued along with the second ground.

In the two grounds, I have already determined that the respondent had good evidence on the ownership of the dispute land than that of the appellant. I thus reiterate my observations in the first and second grounds and rule out that the respondent's case was proved on the balance of probabilities. The respondent is the lawful owner of the dispute land as per sketch map A. to that end, the last ground of appeal is dismissed as well.

In the final analysis, this appeal is dismissed with costs. Right of further appeal to the Court of Appeal of Tanzania subject to the guiding laws thereat is fully explained.

It is so ordered.

A. Matuma

Judge

31/05/2021

Court: Judgement delivered in presence of Mr. Khalufani Rutale Mbetelo Village Chairman for the appellant and in the presence of the Respondent and his advocate Mr. Sadiki Aliki.

Sgd: A. Matuma

Judge

31/05/2021