

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA

LAND CASE APPEAL No. 99 OF 2020

*(Arising from the District Land and Housing Tribunal for Kagera at Bukoba in Land
Appeal No. 14 of 2019 & Ruzinga Ward Tribunal in Civil Case No. 146 of 2019)*

JOSEPH KAMALA ----- APPELANT

Versus

STELIA EMILI ----- RESPONDENT

JUDGMENT

18.06.2021 & 18/06/2021

Mtulya, J.:

This is an appeal emanated from a land dispute which was determined by **Ruzinga Ward Tribunal** (the Ward Tribunal) in **Civil Case No. 146 of 2019** (the case) where Ms. Stelia Emili (the Respondent) had sued Mr. Joseph Kamala (the Respondent) for a piece of land located at Ruzinga Ward in Missenyi District of Kagera Region. After full hearing of the case, the Ward Tribunal decided in favor of the Respondent. The reasoning of the Ward Tribunal as displayed in its last page of the decision is to the effect that:

*Mlalamikiwa aliuziwa ardhi ile kinyume na sheria bila
idhini ya watoto wa Emily kuhusishwa ambao ndio wenye
ardhi ile inayomilikiwa na watoto wa Emily Mbalila*

The Appellant was not satisfied with the decision of the Ward Tribunal hence preferred **Land Appeal No. 14 of 2019** (the land appeal) before the **District Land and Housing Tribunal for Kagera at Bukoba** (the District Tribunal). After full hearing of the land appeal at the District Tribunal, it was again decided in favor of the Respondent and the reasoning of the District Tribunal is found at page 11 of the typed judgment.

Nestory Kashabuni had no good title to pass to the appellant as he sold the property which is not his.

This reasoning irritated Appellant who approached this court and preferred the present appeal in **Land Case Appeal No. 14 of 2019** (the land case appeal) to protest the decision of the District Tribunal in the land appeal. When the land appeal case was scheduled in Civil Session Cases hearing yesterday, this court *suo moto* noted that the proceedings in the Ward Tribunal displays the evidence of the vendor of the land, Mr. Nestory Bakateo Kashabuni, sold the land to the Appellant of his father.

When the parties were called to state on the position of the law on the subject, they decided to invite the legal services of learned counsels Mr. Eliphazi Bengesi for the Appellant and Mr. Zeddy Ally, for the Respondent, who after a short consultation

prayed to adjourn the hearing in favor of consultation of legal authorities. Today morning the two (2) learned counsels had registered three (3) precedents of this court.

In brief Mr. Ally preferred the decision of **Farah Mohamed v. Fatuma Abdallah** [1992] TLR 205 which held that: *he who does not have legal tittle to land cannot pass good tittle over the same to another*. To his opinion, Mr. Nestory Bakateo Kashabuni had no good tittle to pass to the Appellant hence no claim of right in land can be raised by the Appellant.

However, this thinking was protested by Mr. Bengesi who argued that the land which was sold to the Appellant by Nestory Bakateo Kashabuni was a clan land and was authorized by a clan leader Mzee Edward Kampanju, who witnessed and consented the sale as depicted in the land sale agreement entered by Mr. Nestory Bakateo Kashabuni and the Appellant on 2nd May 2010. To justify his submission Mr. Bengesi cited authorities delivered by this court in **Leonance Mutalindwa v. Mariadina Edward** [1986] TLR 120 and **Hosea William v. Edward Mushenga & Another**, Land Case Appeal No. 22 of 2011.

In a brief rejoinder, Mr. Zeddy Ally argued that the said Mzee Edward Kampanju appeared in the Ward Tribunal and testified for

the Respondent and said the land belongs to Emily Mbalila, the father of the Respondent and that the Respondent holds the administration letter of her deceased father.

On my part, I think, the law in civil matters is certain and settled that a person whose evidence is heavier than that of the other is the one who must win (see: **Hemedi Saidi v. Mohamedi Mbilu** [1984] TLR 113). The evidences tendered in the Ward Tribunal show that the Appellant bought the land from Nestory Bakateo Kashabuni who had no legal title to the land and Mr. Nestory Bakateo Kashabuni testified before the Ward Tribunal that the land belongs to his father.

It is unfortunate that his father was not marshalled to testify the same in the Ward Tribunal. The law in that regard is: *where, for undisclosed reasons, a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witnesses were called they would have given evidence contrary to the party's interests* (see: **Hemedi Saidi v. Mohamedi Mbilu** (supra)).

In any case, the question then remains on whether a person can transfer a land which he has no good title. The reply is found in the precedents of **Farah Mohamed v. Fatuma Abdallah** (supra)

and **The Attorney General v. Mwahezi Mohamed & Others**, Civil Appeal No. 391 of 2019.

I understand Mr. Bengesi cited the precedents in **Leonance Mutalindwa v. Mariadina Edward** (supra) and **Hosea William v. Edward Mushenga & Another** (supra) arguing that there was consent on sale of clan land by the clan leader Mzee Edward Kampanju. However, the record of this appeal does support that position. The record shows that Mr. Nestory Bakateo Kashabuni claimed to have sold land of his father, who was not called to contest the claim of the Respondent, and in any case Mr. Nestory Bakateo Kashabuni had no mandate sale the disputed land.

Having said so, and considering the seller of the land had no good tittle to pass to the Appellant, I have formed an opinion to dismiss this appeal with costs borne by the Appellant.

It is so ordered.



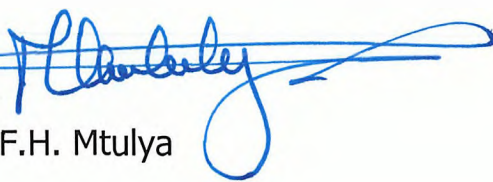

F.H. Mtulya

Judge

18.06.2021

This judgment was delivered in chambers under the seal of this court in presence of the Appellant Mr. Joseph Kamala with his learned counsel, Mr. Eliphazi Bengesi and in the presence of the Respondent, Ms. Stelia Emili with his learned counsel, Mr. Zeddy Ally.




F.H. Mtulya

Judge

18.06.2021