

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO 59 OF 2020

GAUDENSIA GERVAS.....APPELLANT

VERSUS

TRYPHONE SELESTINE.....1ST RESPONDENT

EDITHA GERVAS.....2ND RESPONDENT

**(Appeal from the decision of the District Land and Housing
Tribunal at Bukoba in Application No. 154 of 2012)**

JUDGMENT

22 & 26 July, 2021

MGETTA, J.

Aggrieved by the decision made on 16/4/2020 by the District Land and Housing Tribunal at Bukoba (henceforth the district tribunal), Gaudensia Gervas, the appellant, on 3/6/2020, did file the appeal against Tryphone Selestine and Editha Gervas (henceforth the 1st and 2nd respondent respectively). She lodged memorandum after she has obtained copies of decree and judgment which were certified ready for collection on 8/5/2020. Her memorandum of appeal contains five grounds of appeal as follows:

1. That, the district tribunal erred in law and fact for failure to consider the evidence adduced by the appellant and her witness.

2. That, the district tribunal erred in law and in fact for considering forged agreement, while the appellant contested against it.
3. That, the district tribunal erred in law and fact for considering the disputed land as the clan land.

When the appeal was called on for hearing, the appellant appeared in person unrepresented; and, the 2nd respondent, who appeared to be her daughter, fended for oneself. Mr. Lameck John Erasto, the learned advocate was representing the 1st respondent. The bane of the dispute is a piece of land situates at Nsiisha Village, Kagoma ward, Muleba district (henceforth the suit land).

In her submission, she complained that she did not know how to write or read but she was shown a paper that had her thumb print indicating that she consented to her husband to sell the suit land.

The 2nd respondent, her daughter wondered why the signature of her mother appeared on the sale agreement showing that she consented to the sale of the suit land while she did not know how to write and write and read. She averred that the suit land is a clan land and was being used by the family. It was wrong for her father to sell it without involving the neighbours, the appellant and the village/sub

village leaders. She supported the appeal and asked this court to allow it.

Mr. Lameck vehemently opposed the appeal and prayed the same to be dismissed. He submitted that the complaint of the appellant that exhibit D1 is forged is not founded. Exhibit D1 bears her signature, by way of thumb print. She was not forced to put her thumb print. She was there and people present at that time witnessed her putting her thumb print on exhibit D1 which was also signed by the seller, her late husband, Gervas Kemondo who on 20/11/2005 sold it to the 2nd respondent at a purchase price of Tzs 180,000/= cash. Not only that but also clan members witnessed the sale. The chairman Mr. Maliceli Muchunguzi Mukaru (Dw2) of Abasimba clan attended and signed exhibit D1. Other witnesses who knew how to write and read also put their respective signatures.

Mr. Lameck asserted that the appellant was fully involved in the sale transaction when the deceased was selling the suit land which was at that time unused for a longtime. This was confirmed by the deceased himself and respondent witness No. 3 that the suit land remained idle for long period of time. Neither the appellant nor the deceased or both were seen cultivating it.

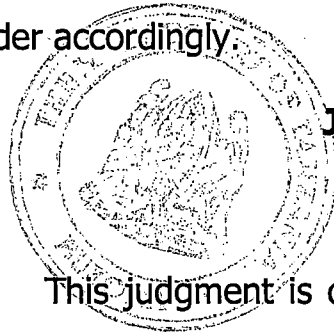
In her submission, the 2nd respondent who seemed to support the appellant said the suit land was not clan land, but family land. In her 3rd ground of appeal, the appellant complained that the district tribunal erred to find that the suit land was clan land. Here, I find the two contracting each other. The district tribunal found that it was clan land, the clan of Abasimba. Neither, it was matrimonial land. The family owned it under the umbrella of the clan. That's why at the time the deceased was selling it, clan members were invited to witness. I find that the appellant by virtue of being one of the family members and Maliceli Mukaru being a clan leader consented by putting thumb print and signature respectively.

The record shows that before exhibit D1 was admitted in evidence, the same was taken to police for investigation. The police never brought back a report confirming that it was forged. As a result, the sale agreement was tendered as exhibit D1. Moreover, the 2nd respondent could not be able to tell precisely that exhibit D1 was forged as she did not witness the sale transaction as she was in Mwanza.

For lack of contrary explanation, with much respect, I agree with the finding of the District tribunal that exhibit D1 is valid. It was not forged and the suit land was legally sold to the 1st respondent who is declared a lawful owner.

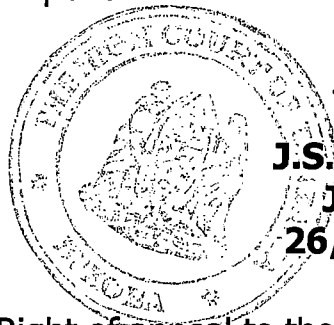
In the event, I find that the appellant had not adduced strong evidence to move this court to overturn the district tribunal decision and decide the appeal in her favour. In the upshot, I find this appeal without merit. I do hereby dismiss it. Under the circumstances, each part has to bear its own cost.

Order accordingly.




J.S. MGETTA
JUDGE
26/7/2021

COURT: This judgment is delivered today this 26th July, 2021 in the presence of the appellant in person, and in the presence of Ms Erieth Barnabas, the learned advocate for the 1st respondent. The 2nd respondent is absent without notice.




J.S. MGETTA
JUDGE
26/7/2021

COURT: Right of appeal to the Court of Appeal is fully explained.


J.S. MGETTA
JUDGE
26/7/2021

