

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO. 27 OF 2020

JASPA ABRAHAM.....APPELLANT

Versus

RUBENI KAFUKU..... RESPONDENT

*(Appeal from the decision of District land and Housing Tribunal
at Karagwe in Appeal No. 23 Of 2016)*

JUDGMENT

14 & 16 July, 2021

MGETTA, J:

At Rwabwere Ward Tribunal, Kyerwa District (henceforth the trial tribunal), Rubeni Kafuku, the complainant (henceforth the respondent) successfully sued one Jaspar Abrahamu (henceforth the appellant) over a claim of a suit land situated at Nyakanoni, chanya village (henceforth the suit land). At the trial tribunal, the respondent said that in 2009, he entrusted the suit land to the appellant for purposes of keeping and cultivating, where by the product thereof be shared by both, but when he demanded it back he refused. He wrote a letter to him on 11/2/2013 claiming for the same, he again refused. He claimed that it belongs to him after he had purchased it from the respondent in the year 2008 at the purchase price of Tshs. 1,600,000/=.

Upon hearing the case and analyzing the evidence tendered before it, the trial tribunal on 19/2/2016 decided the case in favour of the respondent. Dissatisfied with that decision, the appellant appealed to the District Land and Housing Tribunal at Karagwe (henceforth the District Tribunal) complaining against the decision of the trial tribunal. In its decision delivered on 4/10/2016, the district tribunal upheld the trial tribunal decision. He was aggrieved by the district tribunal decision; hence he approached this court equipped with eight grounds of appeal:

1. That, both Tribunals grossly erred in law and in fact in failure to take into account his purchase agreement dated 8/2/2008 which gave him legal title over the suit land.
2. That, both tribunals erred in law and in facts for failure to understand that the respondent was estopped by deed to deny the facts he asserted in the purchase agreement dated 08/2/2008.
3. That, district tribunal erred in law and fact to depart from opinion of assessors without giving any reason for differing from such opinions.

4. That, both Tribunal erred in law and in fact in deciding in favour of the respondent without considering that the appellant owns the suit land and is enjoying the fruits there from excluding others from interference.
5. That, both tribunals erred in law and in fact in delivering the judgments in favour of the respondent without scrutinizing false information given by the respondent which led to his failure to prove his claim on balance of probability.
6. That, both tribunals erred in law and in fact for failure to know that the appellant is the legal owner of the suit land as he clearly showed all original boundaries.
7. That, the district tribunal erred in law and in fact for not considering watertight evidence he adduced proving his case on balance of probability against each evidence adduced by the respondent.

When the appeal was called on for hearing, both parties appeared before this court in person, unrepresented. Each one prayed this court to adopt the contents of petition of appeal and reply to petition of appeal respectively.

I went through the records, decisions and the proceedings of the tribunals below and found that grounds of appeal advanced by the appellant should be argued together. Weighing the evidence of the tribunals below and their concurrent decisions, I found that the measurement to be used here as properly used by the district tribunal is who, between the parties, had given heavier evidence as regards to the ownership of the suit land, as both parties to the suit cannot tie but the person whose evidence is heavier than that of the other is the one who must win.

Assuming there was sale transaction between the parties, what was special reason to have the sale transaction conducted at Bugene village where the respondent resides and not at Chanya village where the suit land situates? In his testimony, Dominic said he accompanied the appellant who was going to Bugene with one bag of maize and four tins of beans to pay the respondent as part of sale transaction of the suit land. The appellant told him that he purchased the suit land from respondent for Tshs. 1,600,000/=. But he did not witness the money being paid to the respondent, apart from only 4 tin of beans and one bag of maize. He

however signed on a paper as if he witnessed the sale without seeing the purchase.

It is a practice nowadays, that in order both parties to a sale transaction of unsurveyed land within a village to valid, there must be village leaders as witnesses. In this case the leadership at Chanya village were deprived of the right to witness the sale as the purported sale was conducted in Bugene village. It is legal practice that leaders within the vicinity should witness and endorse any sale transaction conducted within their leadership. **Two**, neighbours surrounding the suit land if at all there was such sale transaction were not involved and therefore were also deprived of the opportunity to witness that sale being carried out so that none should interfere with their respective land or to sell a land that does not belong to the seller. It was only the respondent who brought neighbours at the ward tribunal to testify that the suit land belonged to him. For example Ashiraf Mohamed, Costancia Muhozi and Nuru Mwandege, said the suit land belonged to the respondent. They did not recognize the appellant as owner of the suit land as they had never saw him over there. The appellant did call neither neighbor to testify on his part nor to witness the purported sale transaction. **Three**, he who purported to

have signed on the sale agreement, did not see the land to be sold as he never visited it and he did not see purchase price being paid to the seller, the respondent. What he saw was only one bag of maize and four tins of beans being handed to the respondent. But the respondent said the beans and maize that the appellant took and handed over to him were products from his suit land. All three points I have explained here in are sufficient to invalidate the purported sale of the suit land which took place on 8/2/2008 at Bugene village.

It is evident that the respondent purchased the suit land from Paulo Mathiasi in the year 1986 for Tshs. 13,000/= as asserted by Costancia Muhozi. He left the suit land in the hands of appellant as he himself lived in Bugene village. Deusdedit Mathayo stated that the appellant worked on the suit land as labourer. The appellant was entrusted to keep the suit land as the respondent was staying at Bugene.

Similarly, considering all that in totality I find that the evidence given on the respondent side is heavier than that of the appellant. I don't see any strong evidence on the appellant side convincing me to depart from the concurrent decisions of the two tribunals below. It is very rare for the appellate court to interfere with concurrent decisions of the two lower

tribunals. The appellate court can only interfere with such concurrent decisions where there is misdirection or non-direction of evidence apparent on the face of the record

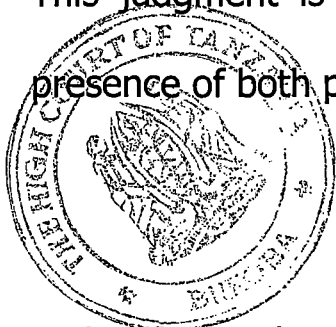
For reasons stated herein above, I hereby uphold the concurrent decisions of the two tribunals bellow and proceed to dismiss the appeal with costs.

It is so ordered.



J. S. MGETTA
JUDGE
16/7/2021

COURT: This judgment is delivered today this 16th July, 2021 in the presence of both parties in persons.



J. S. MGETTA
JUDGE
16/7/2021

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



J. S. MGETTA
JUDGE
16/7/2021