

IN THE HIGH COURT OF TANZANIA

AT BUKOBA

LAND CASE APPEAL NO. 116 OF 2020

JEORAM JOHN MBETA (Administrator of the estate of
the late Athumani Kigoye)..... **APPELLANT**
VERSUS

GODFREY KAJUNA.....**1ST RESPONDENT**
IBRAHIM MGENGI.....**2ND RESPONDENT**
(Appeal from the decision of District Land and Housing Tribunal
for Kagera at Bukoba in Application No. 192 of 2014)

JUDGMENT

8 & 16 July, 2021

MGETTA, J:

This appeal emanates from the decision handed down on 29/9/2020 by the District Land and Housing Tribunal for Kagera, hereinafter referred to as the District Tribunal, in the exercise of its original jurisdiction. The appellant, one Joeram John Mbeta suing as administrator of the estate of the late Athuman Kigoye, lost the case at the District Tribunal, and hence this appeal.

In his Petition of appeal, he brought five grounds of appeal complaining against the decision of the District Tribunal. The five grounds of appeal are summarized into two grounds as hereunder:

- 1. That, District Tribunal erred in law and fact for failure to find that the suit land was clan land owned by the late Athuman Kigoye and not purchased one and there was no purchase contract was tendered in evidence.*
- 2. That, the District Tribunal erred in law and in fact in ignoring the decision of Gera Primary Court which declared John Mbeta as heir of the suit land in accordance to the WILL of John Mbeta's father Athuman Kgoye. John Mbeta is the father of the appellant who is the administrator of the estate of his grandfather, the late Athumani Kihoye.*

When the appeal was called on for hearing, the appellant and 1st respondent, Godfrey Kajuna appeared in person. The 2nd respondent did not appear for reasons as he was bereaved, but he filed a reply to petition of appeal, the reply which I took into consideration.

When the appeal was called for hearing, I first take up resolving the preliminary objection by the 1st respondent that the appeal was time barred. I allowed them to address on that objection. The 1st respondent rose and readily submitted that since the appellant filed the appeal late due to the fact that after the District Tribunal decision was delivered, he took

time chasing for copies of judgment and decree, the documents which are necessary to be attached to his appeal, he therefore decided to abandon it and then agreed that the appeal to be heard on merit.

When I started hearing the appeal, I gave the appellant an opportunity to argue for his case. He adopted a length of his grounds and insisted that the land which situated at Kigarama village Kanyigo, Kiziba Missenyi District (the suit land) is clan land. It was before owned by his grandfather, the late Athuman Kigoye who made a WILL bequeathing the same land to his father, the late John Mbeta. The district tribunal was supposed to comply with the WILL left by the late Athumani Kigoye. Similarly, he said that the suit land had never been sold to anyone. He therefore asked this court to quash and set aside the judgment and decree of the district tribunal.

When the 1st respondent was invited to address this court, he adopted what contained in his reply to "petition of appeal" and supported the decision of the district tribunal. He pressed for the dismissal of the appeal with costs as it has no merit. As stated herein above, the 2nd respondent Ibrahim Mgengi was absent. As I went through his reply, I found that he also strongly opposed the appeal.

I have decided to dispose of the grounds of appeal together. I have thoroughly gone through the records of the district tribunal and I found the decision of Gera Primary Court which on 21/11/2014 appointed the appellant in *Mirathi* No. 9 of 2014 as administrator of the estate of the late Athumani Kigoye who died on 6/5/1976. The appellant was issued with a latter of administration as exhibited by Gera Primary Court decision exhibit P1, collectively. He had therefore a locus stand to institute the suit at the district tribunal.

Before the district tribunal there were two issues for determination: who is the lawful owner of the suit land and what relief are the parties entitled. The appellant claimed that he is the administrator of the estate of his grandfather, the late Athumani, and he is suing to recover the suit land for benefit of the clan. However, he does not deny that the late Athumani Kigoye was married to the late Zena Ally, the grandmother of the 1st respondent who claimed that he inherited the suit land from her and had developed it and currently living therein.

In the same vein, the record shows that the late Athumani Kigoye and Zena Ally together purchased the suit Land. In his decision, the district tribunal found that ownership of the suit land passed from the late Zena

Ally, the then wife of the late Athumani Kigoye to the 1st respondent by way of inheritance. He further more found that the two couples purchased it and therefore it was no longer a clan land. The record show further that after the death of Athuman Kigoye, the suit land was left in use and occupation of his wife, Zena Ally. She continued to use it together with her daughter, Rehema until both of them passed away. The 1st respondent was taking care of his grandmother throughout her aging period and upon her death, he inherited the suit land.

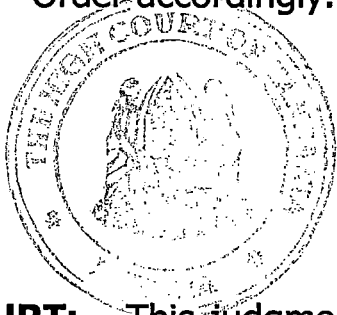
I have noted that previously there was a dispute over the same suit land whereby John Mbeta, the father of the appellant, successfully sued Zena Ally at Kanyigo Primary Court in Civil Case No. 17 of 1994. On appeal in Civil Appeal No. 75 of 1996 at Bukoba District Court, the decision of Kanyigo Primary Court was reversed. The District Court continued to declare that Athumani Kigoye had no clan Member who qualified to inherit the suit land. It was only his wife, Zena Ally, being a surviving wife who was entitled to inherit the suit land, the district court declared.

On the strength of the above finding, I am of the settled mind, **one** that the late Athuman Kigoye and Zena Ally were husband and wife respectively, and managed to purchase the suit land. Then ownership

changed from being clan land to individual ownership of the couples. Therefore, clan ownership was accordingly extinguished by way of purchase. **Two**, Athumani Kigoye's son John Mbeta, the father of the appellant had tried to dispossess Zena Ally the suit land through court process but in vain. The suit land remained in the possession of the widow, Zena Ally. Considering these incidences, I am convinced that in fact the suit land is not part and parcel of the estate of the late Athumani Kigoye. Therefore, the district tribunal was correct and right to find that the rightful owner of the suit land is the respondent by way of inheritance from his grandmother, the late Zena Ally.

In the event, I find nothing to fault the district tribunal decision. I find it credible and plausible. The appeal is accordingly dismissed with costs.

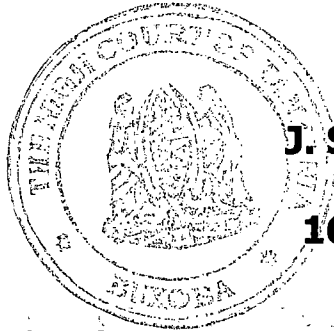
Order accordingly.




J. S. MGETTA
JUDGE
16/7/2021

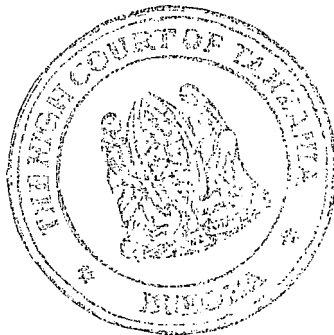
COURT: This judgment is delivered today this 16th day of July, 2021 in the presence of the appellant in person and in the presence of

1st respondent in person, but in absence of the 2nd respondent who is reported to be bereaved.




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