

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT TANGA**

LAND APPEAL NO. 10 OF 2020

(From decision of the District Land and Housing Tribunal for Tanga
in Land Appeal No. 57 of 2017)

MARTHA MLOWE 1ST APPELLANT

BENNET MBWANA 2ND APPELLANT

VERSUS

DAUDI CHANDO RESPONDENT

JUDGMENT

MKASIMONGWA, J

In the Ward Tribunal of Mpapayu Ward in Muheza District one Daud Chando claimed for ownership of an acre of land against Martha Mlowe, Benert Mbwana and Omari Abedi. The Land which is located along Magoda Hamlet of Magoda Village in Mpapayu Ward valued at Tshs. 500,000/=.

After hearing the matter, the Ward Tribunal found it as undisputed fact that the land in dispute was among those pieces of land originally owned by Mzee Soniki Chando and that in his life time sometime on 09/092001 he bequeathed it to his son one Helton Chando (deceased) as he did to his other children in respect of other pieces of land he owned. The Tribunal therefore found the land to be the property of the family of Helton Chando and that Daudi Chando to be the legal representative of the



late Helton Chando. To borrow from the decision, the Ward Tribunal; stated as follows:

"... Mgogoro huu ni wa ndani ya Familia ya Daudi Chando na Martha Mlowe nani eneo la babu ya oambaye hapo awali ndio alikuwa mmiliki wa eneo hilo na mlalamikaji pamoja na mlalamikiwa wazazi wa wote walikuwa wakiishi ndani ya eneo hilo kama wanafamilia wa mzeee Daudi Chando ambae aliamua kuligawa eneo hilo.

Hivyo basi Baraza linatamka kuwa hatuwezi kutengua hati ya mgawanyo na pia hatuwezi kutengua fomu ya usimamizi wa mirathi kwa kuwa amethibitishwa na mahakama. Kila mmoja atamiliki eneo alilopewa kwenye mgawanyo huo hivyo Baraza linatamka eneo lenye mgogoro litamilikiwa na familia ya Hethoni Chando na msimamizi wa familia ni ndugu Daudi Hethoni Chando na ambaye hajaridhi kama maamuzi haya tutampa siku 45 kuanzia leo kukata rufaa "

Martha Mlowe and Bennet Mbwana were dissatisfied by that decision of the Ward Tribunal. They therefore challenged it by appeal preferred to the District Land Housing Tribunal for Tanga at Tanga. The Appeal was not successful. This is because, the Appellate Tribunal was of the view that the evidence on record amply demonstrates and in fact it is not disputed that the land in dispute initially was the property of Mzee Soniki Chando and

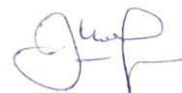


that on 09/09/2001 he bequeathed it to the Respondent's father. As such the District Land and Housing Tribunal upheld the Challenged decision of the Ward Tribunal. In so doing the First Appellate Tribunal stated as follows:

"I join hands the decision of the Tribunal and the allocation of the said land as it was done by Mzee Soniki Chando be respected, the respondent on behalf of his father's family and administrator of the estate of his late father's estate is declared lawful owner of the land in dispute"

Again the Appellants are aggrieved by the decision of the District Land and Housing Tribunal. They therefore preferred this appeal, a petition of which lists three grounds of appeal which are;

- 1. That, the Trial Tribunal erred in law and fact by making the finding that the disputed land is the part of Mzee Soniki Chando's Estate since the properties distributed in the WILL of Mzee Soniki Chando is not connected with the land in dispute nor did the land in dispute being mentioned in the WILL since it belonged to my late father and mother who died prior her father Mzee Soniki;*
- 2. That, the Trial Tribunal erred in law and fact for it did not consider the truth that the land in dispute was inherited by the first appellant from her late mother and father who gained*



ownership since "operation Vijiji" and it is not true that the late "Mzee" Soniki Chando distributed the disputed land through WILL to the first appellant's mother who was the second appellant's grandmother who died in 1997 while the first and the second appellant were living in the disputed land and "Mzee" Soniki Chando drafted the WILL in 2001 when the respondent was still in the disputed land;

- 3. That, the Honourable Tribunal erred in law and fact for failure to interpret the WILL left behind by Mzee Soniki Chando as well as to give weight it deserves the evidence provided by the Appellants.*

The Respondent disputed to the Appeal and on the date the same was fixed for hearing before me, all parties appeared in person. When was invited to argue her case, the first appellant, contended that the District Land and Housing Tribunal erred in law when it found that the land in dispute to be among the properties listed in the WILL of Soniki Chando. She said the land in dispute in fact belonged to her parents who died even before Soniki Chando died. The parents acquired the land during the Ujamaa village Operation and that the appellant inherited it from the parents. The first appellant added that Appellate Tribunal did not accord any weight to the Appellants' testimonies nor did it properly interpret the WILL of Soniki Chando. As such the first Appellant prayed the Court that it



allows the appeal with costs. The submission and prayer by the first Appellant above were adopted by the second appellant in his submission. The later added that going by the WILL of Soniki Chando, the maker of the same clearly stated that he was bequeathing land which belonged to the Respondent's father. If the WILL was to be properly interpreted the District Land and Housing Tribunal could not have made the decision it made.

On his part, the Respondent contended that initially Soniki Daudi Chando owned a piece of land which he apportioned and bequeathed it to his four Children namely; Zefania Soniki Chando, Maria Soniki Chando, Ethoni Soniki Chando and Libel Soniki Chando. That land now in dispute was bequeathed to Ethoni Soniki Chando. The Tribunal below found the matter infavour of the Respondent based on those established facts.

As regards to the WILL, the respondent contended that the WILL was taken on board by the Court in the Probate and Administration cause instituted in Ngomeni Primary Court for the Court was satisfied that the same was valid hence it deserved to be honoured. He prayed the Court that it upholds the contested decision.



In a brief rejoinder, the first Appellant stated that, there is no dispute that the land in question formerly belonged to Soniki Chando and that it was listed in the WILL of the late Soniki Chnado. The family however admires the Respondent where he claims that the land belonging to his late father to be part of the properties listed in the WILL. The first Respondent added that they do not contest to the WILL so this is not a matter challenging the WILL. It is a matter against the respondent's assertion that the disputed land was among those properties listed in the WILL of Soniki Chando. The second appellant subscribed to the rejoinder submission by the first Appellant.

That is all what was submitted by the parties in substantiating their respective cases. I have again considered the record brought before me. Going by the record, it is the contention by the Appellants that the land is dispute is not part of the land initially owned by the Soniki Daudi Chando and that the same was owned by the first appellant's parents who were allocated with it longtime ago by the Village Council even before the Ujamaa Villages Operation. The Second Appellant said that the land was allocated to his grandmother during the operation. In evidence Rwebangira Mathias Karwishe (DW2) had the following to tell the Court:



"Kwa hiyo kutoka na hali hiyo nawatambua wote na eneo hilo wanalogombania nyumba aliyo nayo Silas ndiyo ilikuwa eneo la baba yao marehemu Helthoni Chando. Baada ya Silas hiyo nyumba ambayo ipo mpaka sasa hivi ni ya marehemu baba yao mzee Soniki... Lakini Mzee Soniki Chando alimuita Mwenyekiti wa Kijiji James Msonde na Mzee Soniki na baadhi ya uongozi kuandika wosia juu ya mali zake kwa ajili ya familia yake ..."

It is from the evidence or record the Tribunals were unanimously of the view that the land in dispute belonged to Soniki Chando and that the later bequeathed it to the late Respondent's father and that the Respondent is an administrator of the estate of the late father. It is the principle of law that the second appellate Court shall not interfere with the unanimous findings of the organs below it unless it is shown from the Court that in reaching to the findings; the organs has misapprehended the evidence adduced. I have considered the grounds of appeal together with the submission made by the parties. It is my considered opinion that, the Tribunals below well apprehend the evidence on record and the finding of fact that, the land in dispute was initially the property of Soniki Chando and that the later bequeathed it to the respondent's father cannot be interfered with by this court.



In events, the Court finds no merit in this appeal and the same is hereby dismissed with costs.

DATED at **TANGA** this 9th of June, 2021.



E.J. Mkasimongwa

JUDGE

09/06/2021

Date: 09/06/2021

Coram: E. J. Mkasimongwa, J.

For Appellant: Present in person

For Respondent: Present in person

C/Clerk: Alex

Court: Judgment delivered in Chambers, this 9th day of June, 2021 in
the personal presence of all parties.

Right of Appeal is explained.



A handwritten signature in blue ink, appearing to read "E. J. Mkasimongwa".

E. J. Mkasimongwa

JUDGE

09/06/2021