

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

AT TANGA

LAND APPEAL NO. 4 OF 2020

(From the Decision of the District Land and Housing Tribunal
for Tanga in Application No. 38 of 2017)

PASKALI MILLINGA APPELLANT

VERSUS

BAKARI SEIF SHABANI (As Administrator of the estate of **MWANAISHA**

MOHAMED MAGANGA RESPONDENT

JUDGMENT

MKASIMONGWA, J

Vide the Land Application No. 39 of 2017 of the District Land Housing Tribunal for Tanga one Bakari Seif Shabani (As Administrator of the estate of the late Mwanaisha Mohamed Maganga) claimed against Paskali Millinga for a surveyed parcel of land of about 75 x 70 paces out of the total area of 1.5 acres equated to 105 x 70 paces located at Kasera kwa Seif Kange Area, Tanga Region.

It was alleged by the Applicant therein the Application that by virtue of being an Administrator of the estate of the late Mwanaisha Mohamed Maganga, he is the original owner of the land in question and that on the diverse dates of January, 2011 the Respondent, did wrongfully trespass



into the land by erecting a mud and poles hut and a permanent residential house claiming ownership of it, which caused the Applicant mental torture, economic suffering and or psychological torture. He eventually prayed the Tribunal that it grants the following reliefs:-

- 1. A declaratory Decree that the Applicant is the rightful owner of the land in dispute.*
- 2. An order for demolition of the building therein*
- 3. General damages at an amount to be assessed by the Tribunal*
- 4. Costs*
- 5. Any other order (s) as the Tribunal deemed fit and just to grant.*

The Respondent contested to the Application and after a full trial, the Tribunal found the Application in favour of the Applicant. The Tribunal was of such a finding on being satisfied that it was not disputed that the Respondent had sometime acquired the land by purchase from one Halima Seif (AW2). The land shared a boarder with that of the Applicant's grandmother and in her testimony Halima Seif (AW2) clearly told the Tribunal that the Respondent did encroach into the Applicant's land as the former did set a boundary of the land beyond the boundaries of the land she sold to him. The Tribunal, again so found on being satisfied that there



was a lot of forgery on the part of the Respondent on how he acquired the land in dispute. The Tribunal stated as follows in determining the matter in dispute:

"In event and for reasons and or grounds stated above the Applicant proved his case on balance of probabilities a yard stick on proving Civil Cases. Therefore, the applicant's application is allowed with costs. It is so ordered"

The Respondent in the trial Tribunal was dissatisfied by the decision of the Tribunal. He therefore came to this Court with this appeal. In a bid to have the decisions been vacated, the Appellant listed four grounds of appeal in the filed Petition of Appeal. They are that:

- 1. That, the District Land and Housing Tribunal erred in law and fact in adjudging the Respondent the rightful owner of the suit land without proof of any evidence or document regarding the ownership of the suit land.*
- 2. That, the District Land and Housing Tribunal erred in law and fact by completely misapprehending the substance, nature and quality of the evidence adduced and it misdirected itself on the same, thereby wrongly adjudging the respondent the rightful owner of the suit land.*
- 3. That, the District Land and Housing Tribunal erred in law and fact in adjudging the Respondent the rightful owner of the suit land without considering the evidence adduced by the Appellant's witnesses.*



4. *That, the District Land and Housing Tribunal erred in law and fact in adjudging the Respondent the rightful owner of the suit land while this case already being decided by the same Tribunal and The Appellant was declared the rightful owner of the suit land.*

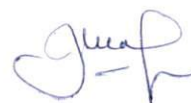
The Appeal was objected to by the Respondent and to that effect, the later filed a Pepley to the Petition of Appeal. On the date the Appeal was placed before me for hearing, Mr. Ahmed Abdallah (Adv) appeared on behalf of the Appellant and the Respondent appeared in person. Upon being invited to argue, the Appellant's case Mr. Abdallah did first request the Court that it marks the fourth ground of appeal abandoned and the Court so marked. He further submitted on each of the remaining grounds of appeal.

As regards to the first ground, Mr. Abdallah contended that during the trial, the Appellant tendered various documents to the Tribunal which were admitted by the Tribunal to be exhibits. These included the Land Sale Agreement, Village Land Survey, A certificate issued by the Village Council after Land Survey, Receipts issued in respect of the Land Survey exercise and a Certificate to the effect that the Appellant was admitted to the Village. The learned counsel submitted that these were not considered by the Tribunal when deciding the matter. Instead the Tribunal declared the



land in dispute to be the property of the Respondent who had just supported his case by oral evidence and without substantiating as to how he got the land.

As for the second ground of appeal Mr. Abdallah submitted that the trial Tribunal did not consider the substance, nature and quality of the evidence adduced in reaching at its decision in the case. He said going by the proceedings, Bint Seif (Halima Seif) who sold the land to the Appellant clearly stated in evidence that when selling it to the Appellant, the land was not measured to establish its size. She only showed its boundaries. The Sale Agreement however stated that she sold 2.5 acres. In terms of Section 6 of the Evidence Act [Cap 6 R. E 2002], since there was a written contract executed during sale of the land, which was again admitted in evidence, the oral evidence could not be taken to prove the contents of the contract. The Tribunal, under the circumstance, was bound by the contents of the contract as it is provided for under Section 100 of the Evidence Act [Cap 6 R.E 2019. Mr. Abdallah added that, the dispute over the land arose in 2014 that is 19 years since when the land was sold to the Appellant sometime in 1995. On the basis of the above submission, Mr. Abdallah prayed the Court that it allows the appeal with costs.



On the other hand the Respondent submitted that the trial Tribunal did correctly find the matter in his favour. He contended that the Tribunal heard the testimonies of the witnesses brought by the parties. In their testimonies AW1 and AW2 clearly testified to the effect that the Respondent's land is different from that claimed by the Appellant. The Appellant's land co-exists with that of the Respondent and that the dispute arose when the Appellant sought to survey the land and at the disguise of the survey he trespassed into his (Respondent's) land.

As to the documentary evidence relied upon by the Appellant, the Respondent contended that at the time of the alleged Sale Agreement of the Land was executed there were no computers to type documents as those tendered in evidence by the Appellant show. The Respondent submitted that the documents were forged. The Respondent prayed the Court that it finds no merit in the Appeal and the same should be dismissed with costs.

In a short rejoinder, Mr. Abdallah submitted that an allegation that the documents tendered in evidence were forged ones is an afterthought. There was no time had the trial Tribunal heard and determined on the allegation. Mr. Abdallah added that the documents were admitted without



the concern being raised by the Respondent. Mr. Abdallah stated further that the land in dispute was sold and that in evidence AW2 did not tell about the measurement of the land in dispute. The learned counsel reiterated his prayer to have the appeal been allowed with costs.

I have attentively considered the submission made by the parties in support of their respective cases as well as the record as a whole. Going by the grounds of appeal it is clear that the complaint the Appellant has in this appeal against the decision of the trial Tribunal revolves around the evidence; that there was no ample evidence by the respondent to justify the decision and that of the Appellant was not considered by the Tribunal which again it completely failed to apprehend the substance, nature and quality of the evidence. Going by the evidence, it is clear and it is in fact, not disputed that on 09/01/1998 Halima Seif (AW2) sold a piece of land to Appellant which according to her it was not big. It was like a plot and the land constituted not that which is now in dispute. The disputed land according to AW2 belongs to the Respondent. The first ground of appeal purports to show that the Appellant had strong evidence in the case for his allegations were supported by the documentary evidence which was not the case on the part of the Respondent. The exhibits tendered were; the



Sale Agreement and the Village Council Land Survey Documents (Exhibit R1). Price Payment effected confirmed by the Village Authorities (Exhibit R2), Certificate/Notice of Occupancy dated 21/10/2011 issued by the Village Council (Exhibit R3), Certificate/Notice of Occupancy and Receipt No. 366 issued to Mrs. Veronica Millinga (Exhibit R4 collectively) and "Hati ya kupokelewa Kijijini (Exhibit R5). Part of Exhibit R.1 reads as follows"

Mimi ndugu Halima Seif nimeuza shamba langu kwa Ndugu Pius Milinga ambalo lina Minazi, lililopo Kange lina ukubwa wa ekari 2¹/₂ kwa makubaliano ya Tshs. 86,000/= tu.

Again part of Exhibit R2 reads as follows:

"Mimi Bint Sief na muuzia Pius Milinga nusu ya shamba langu kwa sh. 86,000/= na ameanza kutoa shs 40,000/= zimebaki tshs. 46,000/="

Going by the Exhibits in the record it is evident that Exhibit R3 was issued to Paschal N. Millinga, Receipt No. 366, part of Exhibit R4 was issued to Mrs. Veronica Millinga, Certificate/Notice of Occupancy; part of exhibit R4 was issued to Paschal Millinga and Mrs. Veronica Millinga and Exhibit R5 was issued to Pius Millinga.

Exhibit R5 shows to have been issued on 09/01/1998 and it bears the Photograph of that Pius Millinga who according to Paskali Nicodem Millinga (RW1) was 20 years old by 2018. A simple calculation shows that sometime in 1998 Pius Millinga was in his first year of being on earth. This fact renders Exhibit R5 doubtful and unreliable. Again going by Exhibits R1 and R2 Paskal Millinga (Appellant) was not the buyer of the land. The evidence again shows that the land was surveyed by the Village. I hesitate to hold it that its identification following the survey is as it is shown in Exhibits R3 and R4 (collectively). This is because the two exhibits bear different owners of the plots from that of Pius Millinga. Suffice it to say that for the purposes of this case the tendered exhibits were not of any assistance. The trial Tribunal was of the opinion that there was a lot of forgery on the part of the respondent (now appellant) on the acquisition of the land which observation I am attracted to agree with. If all the exhibits did not support the Appellant's case then the case depended on the oral evidence adduced in the matter which on the balance of probabilities it tilts in favour of the Respondent.



In event I find the judgment of the Tribunal was justified and there is no merit in this Appeal. The judgment is therefore upheld and the appeal is accordingly dismissed with costs.

DATED at TANGA this 26th of May, 2021.



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

E. J. Mkasimongwa

JUDGE

26/05/2021

Date: 26/05/2021

Coram: Mkasimongwa, J

For the Appellant: Mr. Ahmad Abdallah(Adv)

For the Respondent: Present in person

C/C Alex Kamwaya

Court: Judgment delivered in Chambers this 26th of May,2021 in the presence of Mr. Ahmad Abdallah (Adv) for the Applicant and the Respondent in person.




E. J. Mkasimongwa

JUDGE

26/05/2021