

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA – SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 38 OF 2021

(Originating from Appeal No. 09 of 2020 of the District Land and Housing Tribunal for Tarime; Original Land Case No. 62 of 2019 of Kyangómbe Ward Tribunal).

CHARLES WIKORU.....APPELLANT

VERSUS

MWASITI MSETI..... RESPONDENT

JUDGMENT

9th and 31st August, 2021

F. H. MAHIMBALI, J.:

The appellant; Charles Wikoru unsuccessfully instituted a suit before Kyangómbe Ward Tribunal against Mwasiti Mseti claiming that he is the lawful owner of the land in dispute.

The brief background facts to this appeal are that, Charles Wikoru, the appellant herein instituted a civil suit against the respondent. He alleged that the respondent trespassed into his land by cutting trees and removing sisal plantations that were kept as boundary. In his testimony at the ward tribunal, he stated that prior to acquiring the land in dispute

it belonged to one Makongoro. This was also supported by the testimony of one Ghati Wikoru who was his witness at the ward tribunal. He further submitted that he was told by his late father (Mzee Wikoru) before his demise that the land in dispute belongs to them as his ancestors acquired the land during colonial period. He further submitted that after the demise of his late father, that is when the respondent trespassed into the land in dispute. He sorted for legal remedy by going to report to the village chairman where they went to set boundaries. However, as the respondent was not satisfied with the boundary setting by the local authority, he then decided to institute the suit before Kyangómbe ward tribunal.

On the other hand, the respondent alleged that she was married in the year 1963. She alleged that the land in dispute and other lands belonged to one Sabhare. In the year 1974 the village council allocated that land to other people where they demanded compensation from those allocated but the government intervened, saying that the land they had was enough. She further alleged that they allowed the appellant's family to bury their relatives in their land for some years but later on her husband told them to stop. She also said the land in dispute is her land as it belonged to her father-in-law.

Having heard the parties, the tribunal decided the matter in favour of the respondent by declaring her the lawful owner of the land. The appellant not amused with the decision of the ward tribunal unsuccessfully appealed to the District Land and Housing Tribunal (DLHT).

The appellant still aggrieved has lodged his complaint through this petition of appeal armed with three grounds of appeal which are subject of this appeal. The grounds of appeal are as follows in verbatim ;

- 1. That, both the trial and first appellate tribunals erred in law and fact by failure to consider that both the appellant and the respondent had no locus standi to claim any interest over the land in dispute; thus, the appellant is not an administrator of the estate of either late MAKONGORO NYAKIHA or late WIKORU MAKONGORO while on the other side the respondent is not an Administratrix of the estate of the late MSETI SABHARE.*
- 2. That, both the trial and first appellate tribunals failed to critically analyze the evidence adduced by the appellant; thus , here are nine graves of the appellant's relatives within the land in dispute. Copy of judgments has been attached and marked as annexure " B " and leave is craved for the same to form part of this appeal.*

3. That, the trial tribunal's judgment and proceedings are tainted with irregularities as the coram therein does not specify the gender of members who heard and determined the suit.

When this matter came for hearing of the appeal , both the appellant and the respondent appeared in person and unrepresented.

The appellant submitted that he is dissatisfied with the decision of the DLHT. He prayed his grounds of appeal to be part of his submission and added that the administrator of the estate of the late Wikoru Makongoro and Makongoro Nyakila to be party of this case as they have not been party to it all the time.

Replying the respondent submitted that the land in dispute is hers and she has occupied peacefully the said land for a long time since she was married. She stated that the lower tribunals' decisions ruled in her favour as per the available testimony. She also stated that the appellant has no locus as he does not have letters of administration.

Re-joining, the appellant submitted that the land belongs to his deceased grandfather Wikoru Makongoro and he prayed the appeal be allowed with costs.

Having heard the parties, the vital issue of determination is for the court to decide whether this appeal is meritorious.

The appellant's first complaint is that both himself and the respondent had no locus standi at the ward tribunal as the lands do not belong to them. He went on to ask the court to allow his brother the administrator of the estate to be joined as a party to this case. I have gone through the court's records and particularly the typed proceedings at the ward tribunal. At the ward tribunal the appellant stated "*mimi nina mlalamikia mama Mwasiti Mseti kwa tuhuma ya kuvamia eneo langu la Mahame...*" and later on in his testimony he said the land belonged to his late father. Gathering from this and the court's record it is clear that the appellant was not sure to whom the land belongs to. This is because, during the hearing of this appeal, he is asking the court to allow the administrator to be party of this case. This matter should not detain us as it a common ground and both parties agree that the appellant had no locus to institute the suit at the ward tribunal and he has even prayed that the court allows the administrator to be part of the suit. As per section 18(2) of the Land Disputes Courts Act [CAP.216 R.E. 2019] a relative or any member of the household or any party to any proceedings is only allowed to appear at the ward tribunal upon request.

In the case at hand the appellant did not request. Therefore, this ground is devoid of merits and it is dismissed. And the court advises if the proper party with capacity is still interested with the matter to institute a suit in a proper body/court.

On the second ground of appeal, the appellant's grief is that his ancestors' graves are in the land in dispute. With all due respect, this point is devoid of merits as I know of no law that where one's ancestors' place of burial, is a proof of ownership of the whole land surrounding it. Considering the fact that a person can be buried anywhere, thus his place of graveyard is not necessarily connected to his ownership of that place unless it is established that the clan reserved their land for that purpose only. In that regard, this ground of appeal is meritless and is dismissed.

The third ground of appeal is that there are irregularities as the coram does not specify the gender of the members who heard and determined the suit. Section 11 of the Land Disputes Courts Act [CAP. 216 R.E. 2019] provides that

" Each Tribunal shall consists of not less than four nor more than eight members whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act"

From the above provision, it means that if there are four members then at least one has to be a woman. I have gone through the court's record and seen the names of the members present were; Suzan Revocatus, Ibrahim Segere, Wambura Osara, and Josphate Mirumbe. From these names it is not easy to know their gender as some of the names are used for both genders. However, this court finds it safe to state that Suzan Osara was a female. In that regard this court does not see any violation of section 11 of the Land Disputes Courts Act (supra) unless the appellant would have categorically argued that in his attendance at the trial tribunal none of its members was a female. That argument would have at least holden water and worth of inspection, otherwise this ground of appeal is devoid of merits and it is equally dismissed.

In fine, this appeal is devoid of merits and it is dismissed with costs. It is so ordered.

DATED at MUSOMA this 31st day of August, 2021.




F. H. Mahimbali

JUDGE

31/08/2021

Court: Judgement delivered this 31st August, 2021 in the presence of both parties and Mr. Kelvin – RMA.

Right of further appeal is well explained.



F. H. Mahimbali

JUDGE

31/08/2021

