

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND APPEAL NO. 1 OF 2021

(Arising from Land Appeal No. 41 of 2020 before the District Land and Housing Tribunal of Mtwara at Mtwara delivered on 24th day of September, 2020. Original Mkoreha Ward Tribunal Land Case No. 10 of 2019)

KASSIM ALLY SAHILI.....APPELLANT

VERSUS

HAWA IBRAHIM LILANGA.....RESPONDENT

JUDGMENT

01 June & 19 August, 2021

DYANSOBERA, J.:

The appellant herein is challenging the judgment and decree of the District Land and Housing Tribunal of Mtwara at Mtwara in Land Appeal No. 41 of 2020 dated 24th September, 2020. The appeal is on a number of grounds.

The brief facts of the case unfurled at the trial Ward Tribunal are that in 2002, the respondent bought a piece of land from Said Haki Selemani (DW 4) and in 2011 she bought other two pieces of land from Mzee Mangoni. The appellant then asked her to provide with him, a place to do farming. He was then permitted to construct a house temporarily. At a later stage, misunderstandings between the two cropped up. The respondent claimed back her land from the appellant. The latter refused to give the land back to former. This prompted the respondent to institute a suit before Mkoreha Ward Tribunal. The Tribunal, after hearing the respondent and her witness Mussa Said Litonya (PW 2) and the respondent with his three witnesses, namely, Zaina Hassan Simba (DW 2), Asha Selemani Mngoni (DW 3) and Said Haki Selemani (DW 4) found that the respondent's claims were proved on balance of probabilities. The respondent, therefore, carried a day. The appellant was not satisfied with the trial Tribunal's decision. He appealed before the District Land and Housing Tribunal in Land Appeal No. 41 of 2020 but the appeal was dismissed hence this second appeal.

At the hearing of this appeal, the appellant was represented by Zaina Hashim Simba holding the appellant's power of attorney while the respondent appeared in person. Both parties had nothing useful to add.

Having perused the records of the Ward Tribunal and the District Land and Housing Tribunal, I am satisfied as were the lower Tribunals, that the respondent had proved her claims and the appellant's first appeal to the District Land and Housing Tribunal was properly dismissed.

First, it was proved that the respondent had bought the pieces of land from DW 4 in 2002. This evidence was materially supported by the said DW 4, the witness the appellant had called at the trial. It was not controverted that the same respondent had bought other two pieces of land from Mzee Mangoni.

Second, the appellant himself admitted that when he went to the land shown to him by DW 2, he found the respondent using the land. DW 2 was clear in her evidence that she handed over the land to the appellant after he was directed by Mangoni. DW 3 also testified that it was the respondent who was the first person to build on the disputed piece of land.

Third, the vendor of the land one Said Haki Selemani (DW 4) affirmed that he had a piece of land and sold to the respondent some cashew trees.

Four, both the Mkoreha Ward Tribunal and the District Land and Housing Tribunal were satisfied that the evidence of the appellant was contradictory on when he acquired the land from Mangoni and built a

house. According to the appellant, he was given the land in 2018 but constructed the house thereon in 2012. What a contradiction!

Fifth, as rightly found by the District Land and Housing Tribunal, the appellant was a mere invitee as such he could not exclude his host. This court (Hon. Moshi, J. as he then was) in the case of **Samson Mwambene v. Edson James Mwanyingili** [2001] TLR 1 at page 3 had this to say:

'...no invitee can exclude his host whatever length of his occupation ...it mattered for nothing that the appellant had even made unexhausted improvements on the land in dispute'

Sixth, this being a second appeal, it is trite law that the court should rarely interfere with the concurrent findings of the lower courts on the facts unless it is shown that there was mis-apprehension of the evidence; a miscarriage of justice or a violation of a principle of law or procedure. This principle was echoed by the Court of Appeal in the case of **Amratlal Damodar and Another versus A. H. Jariwalla** [1980] TLR 31, in which it was held that;

"Where there are concurrent findings of the facts by the two courts, the court of appeal as a wise rule of practice, should not disturb them unless it is clearly shown that there has been a mis apprehension of evidence, a miscarriage of justice or violation of some principle of law or procedure".

In find no material to impugn the concurrent findings of the two Tribunals below.

The upshot of this is that this appeal should be and is hereby dismissed with costs.



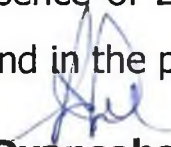

W.P. Dyansobera

Judge

19.8.2021

This judgment is delivered under my hand and the seal of this Court on this 19th day of August, 2021 in the presence of Zaina Hashim Simba holding power of attorney for the appellant and in the presence of the respondent.




W.P. Dyansobera

Judge