IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA – SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 29 OF 2021

(Arising from Land Appeal No. 76 of 2020 at District Land and Housing Tribunal for Mara, Originating from Land Application No. 3 of 2020 for Magange Ward Tribunal)

ISON MAKORE ..... APPELLANT

VERSUS

CHACHA ISON MARO ..... RESPONDENT

JUDGMENT

1st Sept & 30th Sept 2021

F. H. MAHIMBALI, J.:

Isoni Makore, the appellant herein is aggrieved by the decision of the first appellate tribunal (Musoma District Land and Housing Tribunal) which reversed the decision of Magange Ward Tribunal by setting it aside. Instead it, declared the respondent Chacha Ison Maro as the owner of the whole land in dispute after he had inherited the disputed land customarily from his grandmother Isona Maro.

The brief facts of the case can be put this way albeit. Mr. Chacha Isoni Maro successfully sued Ison Makore and Gikene Chacha Sasi at Magange Ward Tribunal for trespassing into his land. It is alleged that the said Chacha Isoni Maro had acquired the said land by way of customary inheriting the same from his deceased grandmother one Isoni Maro.

On the other side, Isoni Makore, alleged that she acquired the suit land in 2005 by clearing the bush, whereas the 2nd respondent (not party to this appeal) acquired portion of that land from one Wasare Maro Mataiga at the exchange of two herds of cattle.

Upon hearing of the suit, the appellant lost the suit against Ison Makore whereas succeeding against Gikenge Chacha Sasi at the Ward Tribunal. Not amused with that decision of the trial tribunal, Chacha Isoni Maro successfully appealed against that decision to the DLHT at Musoma where he was declared the owner of the whole land in dispute against Isoni Makore and Gikene Chacha. The reason of the decision being one that the assertion of Isoni Makore that she acquired her portion of land in 2008 by clearing a bush was so skimpy and unconvincing evidence against the original owner the late Isoni Maro.

It is this decision of the first appellate tribunal which has not amused the appellant (Isoni Makore), thus, the basis of the current appeal. The four grounds of appeal preferred against the decree of the first appellate tribunal are:

1. *That, the 1st appellate Tribunal erred in law and fact for deciding the matter without the opinion of assessors.*
2. *That, the 1st appellate tribunal erred in law and fact for disregarding strong and water tight evidence adduced by the appellant at the trial tribunal which approved how the appellant acquired the land in dispute.*
3. *That, the 1st appellate tribunal erred in law and fact for disregarding the time the appellant has used the land in dispute and permanent houses located by appellant in the land in dispute.*
4. *That, the 1st appellate tribunal, erred in law and in fact for deciding the matter in favour of respondent while respondent had weak evidence, he had not proved his case on balance of probabilities how he acquired the same from his grandmother named Isoni Maro.*

Based on these grounds of appeal, the appellant prays that this honorable court be pleaded to quash and set aside the decision of 1st appellate court and uphold the trial tribunal's decision.

During the hearing of the appeal, the appellant fended for himself and so is the respondent.

While praying that her grounds of appeal be adopted to form part of her appeal submission, the appellant added that she has a strong case at the trial tribunal and it is a reverse to what has been decreed by the DLHT. She thus, prays that the decision of the trial court is restored in place of the 1st appellate Tribunal's decree.

On the other hand, the Respondent ponders the appeal as being unmeritorious and out of context. As she inherited the same from his grandmother, he finds himself having a better and stronger title than the Respondent. Thus, it is his pleasure that the first appellate tribunal rightly decreed him as the owner of the said land in dispute.

Responding to the issues posed by the court whether it was right for the same tribunal members to mediate first and later sit in adjudication, he had nothing useful to offer. He infact admitted that the trial tribunal first

mediated then the same members who attended at the mediation process also attended the trial proceedings. Nevertheless, he insisted that the appeal is bankrupt of any legal merit.

In her rejoinder, the appellant reiterated her submission in chief and prayed his appeal be allowed. When asked how she instituted the suit at the trial Tribunal, (orally or in writing), she had no any recollection, but she however received tribunal summons for that session.

As to whether the mediation process took place and whether the members who took mediation role also adjudicated the matter, she had no proper recollection.

The vital question here having heard the parties, is whether the appeal is meritorious.

That, the 1st appellate Tribunal erred in law and fact for deciding the matter without the opinion of assessors, I find this ground of appeal barren of merit. The DLHT's records is clear as per proceedings dated 19th October, 2020 that the assessors' opinion would be taken on 4th December, 2020 on which day the coram and proceedings are in conflict with what the appellant is alleging. As the proceedings are clear that the opinion of

assessors were taken and the same are in DLHT's record, I wonder how this argument can be valid as per proceedings in record. In the case **EDINA ADAM KIBONA VS ABSLOLOM SWEBE CIVIL APPEAL,** Civil Appeal No. 286 of 2017, the Court of Appeal made a good insistence on the issue of assessors' opinion to be filed in the DLHT's records as per proper and conspicuous flow of events. This ground of appeal falls short of target.

The argument in the second ground of appeal that, the 1st appellate tribunal erred in law and fact for disregarding strong and water tight evidence adduced by the appellant at the trial tribunal which approved how the appellant acquired the land in dispute seems to be interesting and needs a discussion. It is clear that the trial tribunal balanced the evidence by declaring that the Respondent had a better title of ownership of the said land against Gikene Chacha. However, as against the appellant Isoni Makore, the trial tribunal considered that the appellant had some rights over a certain portion of land but the other remaining plot it was satisfied that it belonged to the Respondent. In its evaluation of the evidence, the first appellate court had a different view that the appellant had not established how she acquired the said land. As the evidence was wanting,

it declared the respondent as owner of the said land by inheriting the same from his grandmother Isoni Maro. As per available evidence in record, I have no good reason to concur with the finding of the first appellate tribunal. I find the findings as unmerited and wanting as it is not supported by the evidence in record that the said land originally also belonged to the deceased grandmother Isoni Maro. I am in agreement with the trial tribunal's findings that as these two parties are neighbors and related, the boundaries between them be respected. The argument that the said land belonged to Isoni Maro is wanting of evidence and if so ought to have been dealt with in a probate court and not in a civil court as done. This view was well elaborated in the case of **MGENI SEIF V. MOHAMED YAHAYA KHALFANI**, Civil Application No. 1 / 2009, Court of Appeal – Dar es Salaam (unreported) where at page 14, it was held:

> *"As we have said earlier, where there is a dispute Over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership".*

Additionally, on page 8 of the cited case of the Court of Appeal had this to say;

"It seems to us that there are competing claims between the applicant and the respondent over deceased person's estate. In the circumstances, only a probate and administration court can explain how the deceased person's estate passed on to the beneficiary or a bona fide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate".

Considering the findings in this ground of appeal, I find the findings in the third and fourth grounds of appeal as falling suit in the above findings as who between the two has better title over the said disputed plot.

As regards the fact that whether there was any legal complaint lodged at the trial tribunal prior legalizing the commencement of the trial proceedings, the records are silent. Similarly, the parties didn't offer any useful information on that. Whether the same trial tribunal members who attempted mediating the parties in respect of this dispute also participated in the trial of the matter, each party had a diverse submission. Whereas

the appellant didn't remember well the participation of the members in mediation process and the trial are the same or not, the Respondent admitted the truth of it. He submitted that, prior to the hearing of the case, there was mediation process and some of the members who participated into mediation on the 3rd February, 2020 also participated into the hearing of the case at the same Ward Tribunal. If this happened, vitiated the proceedings.

However, reading the provisions of the LDCA (section 13, 14 and 17) there is no clear cut point as per law between the compulsive mediatory and adjudicatory duties of the Ward Tribunal. My understanding of the law on this, makes me believe that the Ward Tribunal's Powers on land matters is more compulsive mediatory than adjudicatory. This gives me an understanding that whatever is done by the Ward Tribunal respect of land matters is more mediatory than adjudicatory. Unlike DLHT, the Ward Tribunals are not governed by any adjudicatory rules (see GN 174 of 27th June of 2003). This makes the trial proceedings at the Ward Tribunal being unguided. Nevertheless, by virtue of section 15 of the Ward Tribunal Act and section 45 of the LDCA, any irregularity done by the Ward Tribunal in its conduct is served.

In conclusion, the appeal is meritorious. The findings and decision of the first appellate tribunal is set aside, in its place finding and decision of the trial tribunal is hereby restored as it is meritorious and just in the eyes of the law in all fairness. As the parties are related, I make no order as to costs as each party shall bear its own costs.

It is so ordered.

DATED at MUSOMA this 30th day of September, 2021.

F. H. Mahimbali

JUDGE

30/09/2021

Court: Judgment delivered this 30th day of September, 2021 in the presence of both parties and Miss Neema P. Likuga – RMA.

Right of appeal is explained.

F. H. Mahimbali

JUDGE

30/09/2021