

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
(LABOUR DIVISION)
AT BUKOBA**

LAND APPEAL NO. 85 OF 2020

(Originating from Land Application No. 172 of 2015 of the District Land and Housing Tribunal of Bukoba)

LEOPORD KYARUZI.....APPELLANT

VERSUS

**MKURUGENZI BUKOBA MUNICIPAL COUNCIL.....1ST RESPONDENT
KELEZENSIA ALEXANDER.....2ND RESPONDENT
SPIRASIA THADEAO.....3RD RESPONDENT**

JUDGMENT

5th October & 15th October 2021

Kilekamajenga, J.

In this case, it is alleged that the appellant purchased a piece of land from Nestory Baltazari on 29th July 1987. Sometimes in 2000, the District Council of Bukoba surveyed the land and compensated the owners of lands including the 2nd respondent who is, according to the appellant's allegation, she was compensated for the appellant's land. By the time when the survey was conducted, the appellant was in Dar es salaam. In 2015, the appellant sued the current respondents and Nestory Bartazari alleging that Nestory Baltazari breached the sale agreement. After the full trial, the case was decided in favour of the respondent hence this appeal. In moving this court, the appellant was armed with six grounds of appeal thus:



1. *That, the trial District Land and Housing tribunal of Bukoba erred both in law fact to deliver a contradictory judgment that a land in dispute was situated at kalego, Buhembe in Bukoba Municipality but the judgment and witnesses mentions Kimizi an area that was not in dispute.*
2. *That, the trial Tribunal erred both in law and fact to deliver the judgment without visiting the status quo to prove whether Kalego and Kimizi are the same area.*
3. *That the trial Tribunal erred both in law and fact to deliver the judgment without considering good evidence adduced by the witnesses produced by the third Respondent one Kelezensia Alexander.*
4. *That the trial Tribunal erred both in law to deliver the judgment without considering documents tendered before the Tribunal that the Appellant was supposed to be compensated but the 2nd Respondent deliberately did not honour the same.*
5. *That, the trial Tribunal erred both in law and fat to deliver a contradictory judgment without considering that the Appellant has enjoyed the disputed land since 1987 without any encumbrances. A sale agreement is hereby attached as "Annexure LJ. 1" and a leave of this Court is craved forming part of this appeal.*



6. That the trial Tribunal erred both in law and fact to favour the Respondents while the 3rd Respondent (Kelezensia Alexander) whom disposed the disputed land to the 2nd respondent did tender any documents to support her legality onto the land legally owned by the appellant.

When it was time to hear the appeal, the appellant appeared in person and without legal representation whereas the 1st respondent was represented by the learned solicitor, Mr. Athumani Msole. The 2nd and 3rd respondents were absent and the court ordered the appeal to proceed in their absence because they had knowledge about the case but they wilfully failed to appear. As the appellant was unrepresented and a layperson, his submission was brief. He argued that the 1st respondent invaded and surveyed his land which is located at Buhembe within Bukoba Municipality. He further argued that the 1st respondent surveyed the land without his consent which he bought from Nestory Baltazari in 1987 at the price of Tshs. 4,500/= . The 1st respondent surveyed the land when he travelled to Dar es salaam. Also, the 2nd respondent failed to prove ownership of the land and he blamed the 1st respondent for using the 2nd and 3rd respondent to take his land. He urged the court to allow the appeal, nullify the survey conducted by the 1st respondent and order payment of Tshs. 200,000,000/= as compensation for the cut trees.



When invited for the response, the learned solicitor for the 1st respondent prayed to adopt the reply to the petition to form part of his submission. He further submitted that the appellant is not the lawful owner of the disputed land. The land was surveyed in 2000 and the real owner of the land was Domina Daniel who inherited the land from her father though it was placed under the 2nd respondent as the caretaker. However, the land was next to the land of Nestory Baltazari. During the survey, the 2nd respondent was identified as the owner of the land and she was compensated. Therefore, the appellant's claim has no merit because he is not the owner of the land. He prayed for the dismissal of the appeal and uphold the decision of the District Land and Housing Tribunal.

When rejoining, the appellant admitted the fact that Domina Daniel owned a piece of land near him and that he bought the land in the presence of the 2nd respondent and Domina Daniel. He however insisted that the 2nd respondent did not own land at that place.

At this point, it is apposite to determine whether or not the instant appeal has any merit. As already stated, the appellant advanced six grounds of appeal that all revolve around the ownership of the disputed land which was later surveyed by the 1st respondent and compensation finally paid to the 2nd respondent. In

resolving this contention, I revisited the whole file and evaluated the evidence adduced during the trial. The careful perusal of the file reveals that, initially, the appellant's complaint was against Nestory Baltazari and the respondents. This fact is captured from the appellant's application which was lodged at the District Land and Housing Tribunal. In the application, especially at the 6th paragraph, the appellant stated that:

*6(a) that the respondents unlawfully **made breach of contract concerning my area in dispute as agreed when respondent No. 1 accepted to pay me compensation of my area in dispute after the same have been allocated to respondents No. 1, 3 and 4.***

Furthermore, on the 7th paragraph, the appellant stated that:

7. Relief claimed

That since the 1st respondent have made breach of contract I beg in the interest of justice that I be allowed to continue to develop and own the area in dispute buy ordering respondent No. 1, 3 and 4 to vacate from my area forthwith.

For clarity and easy understanding, the 1st respondent frequently referred by the appellant in the application was Nestory Baltazari who was later removed from the case after his death. From this backdrop, the application suggests that the appellant had a cause of action arising from the breach of contract committed by Nestory Baltazari. Also, the evidence adduced during the trial shows that the



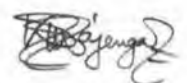
appellant purchased the land from Nestory Baltazari in 1987. In support of his evidence, he tendered the sale agreement which was however admitted without reading it. Such documentary evidence suffers the consequences of being expunged from the records of the trial tribunal. In the case of **Robert P. Mayunga and David Charles Ndaki V. R; Criminal Appeal No. 514 of 2016**, CAT at Tabora where the Court of Appeal of Tanzania stated that:-

"...documentary evidence which is admitted in court without it being read out to the accused is taken to have been irregularly admitted and suffers the natural consequences of being expunged from the record of proceedings."

The court went further stating that:-

"In essence the requirement to have the document read out to the appellant after it is cleared for admission is meant to let the appellant aware of what was written in the document so that he can properly exercise his right to cross-examine the witness effectively."

The evidence of the appellant was supported with the evidence of PW2 who was the wife of Nestory Baltazari. She confirmed that her husband who died in 2018 sold the land to the appellant. The evidence of PW3 further showed that he bought a piece of land from the appellant in 2010. As he was preparing to develop the piece of land, the Municipal Council installed beacons and when he consulted the appellant who seemed to be unaware about the survey. As PW3 prepared to sue the appellant, he (appellant) filed the instant suit.

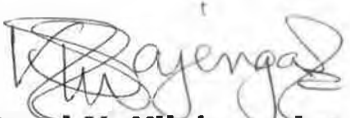


The defence evidence of DW1 contravened the evidence of ownership of disputed land to the appellant because during the survey, the 2nd respondent was identified as the owner of the disputed land and was compensated Tshs. 28,000,000/= by the 1st respondent. DW2 who was the Ward Executive Officer of the area where the land is located testified that the land belonged to the 2nd respondent. In 2011 when the survey was conducted, DW2 held several meetings to create awareness to the community about the survey. She participated in the process of identifying owners of the areas before the survey. She further confirmed knowing the appellant and that his land was not included in the survey. Apart from identifying owners of pieces of land, as a leader, she witnessed the compensation of the land to the 2nd respondent. DW2 was not aware whether Nestory Baltazari ever sold a piece of land to the appellant. Also, DW3 (2nd respondent in this appeal) confirmed that the land belonged to her child called Domina Mbaga who inherited it from her father called Leonard Kilambo. Domina's father died when she (Domina) was only four years old. DW3 further confirmed that Nestory Baltazari was their neighbour and his land had never being encroached and there were demarcations. In fact, there was a time when the appellant's sister requested a piece of land to cultivate from DW3. She further admitted to have been compensated on behalf of Domina for the land after the survey. DW4 (Domina Leonard Mbaga) testified that in 1980's when she came from Tabora, she was informed about the inheritance allocated to her. Clan

members, a leader and Nestory were present when the land was handed over to her. DW5 further insisted that the land belonged to Domina who inherited it from Leonard. The land borders that of Nestory and that the appellant was not the owner of the land.

On the mere balance of probability, the defence evidence was strong enough to contravene the ownership of land to the appellant. The appellant failed to prove that he was the owner of the land which was surveyed by the 1st respondent and compensation finally paid to the 2nd respondent. Based on the strength of the defence evidence, it is evident that the appellant has no any right over the disputed land. He possibly wants to take advantage of the survey and compensation done by the 1st respondent. For that reason therefore, the evidence proved that the 1st respondent acquired title after compensating the owner of the land and that the appellant was not among of the owners. I do not find any merit in this appeal and I hereby dismiss it with costs. It is so ordered.

DATED at **BUKOBA** this 15th day of October, 2021.


Ntemi N. Kilekamajenga.
JUDGE
15/10/2021



Court:

Judgment delivered this 15th October 2021 in the presence of the appellant and the counsel for the 1st respondent, Mr. Athuman Msosole. The 2nd and 3rd respondents were absent. Right of appeal explained to the parties.




Ntemi N. Kilekamajenga.
JUDGE
15/10/2021

