

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM
LAND CASE APPEAL NO. 76 OF 2021

(Originating from Land Appeal No. 81 of 2019 at Morogoro District Land and Housing Tribunal)

YAHAYA RAMADHANI.....APPELLANT

VERSUS

HADIJA JUMA..... RESPONDENT

JUDGEMENT

Hearing date on: 25/11/2021

Judgement date on: 30/11/2021

NGWEMBE, J:

The appellant being aggrieved with judgement and decree of the District Land and Housing Tribunal for Morogoro (the tribunal), decided to exhaust his right to appeal to this court. The background of this land dispute originated from a claim of ownership of a piece of land between the disputants. As a result, the appellant lodged a complaint before Mlali Ward Tribunal at Mvomero district. On the hearing of that dispute, the appellant claimed ownership of such piece of land through inheritance from his mother. That his mother died way back in 1976, leaving the said estate to him, hence entitled to ownership.

In turn, the respondent Hadija Juma testified that she was allocated the suit land by the respective village Government. Though she lost



documents proving that allocation and ownership of the suit land, yet one of the members of the village land allocation committee Mr. Rashid Janga appeared in the Ward Tribunal on 16th January 2019 and confirmed that he was among the five (5) members of the village land allocation committee, which he rightly remembered to have allocated the suit land to Hadija Juma. The Tribunal had an opportunity to visit *locus in quo* with a view to satisfy that the suit land is well known to them. At the end and due to available evidences, the Ward Tribunal decided in favor of the respondent as lawful owner of the suit land.

Being dissatisfied with that decision, the appellant appealed to the District Land and Housing Tribunal, challenging such decision. Unfortunate may be to the appellant, the District Land and Housing Tribunal upheld the decision of the Ward Tribunal and proceeded to declare the respondent Hadija Juma as the lawful owner.

Such decision aggrieved the appellant, hence this appeal, clothed with five (5) grounds namely:-

- 1. That, the Hon. Chairperson erred in law and in fact after failing to make a good valuation of the evidence, which was adduced by the respondent in the ward Tribunal;*
- 2. That, the Hon. Chairperson erred in law and in fact after uphold the decision of the ward Tribunal, while they did make the decision relying on the administration of estate and not land issues;*
- 3. That, the Hon. Chairperson erred in law and fact after allowing an appeal from the ward Tribunal which previously pronounce the appellant is a legal owner of the disputed land;*



4. *That the Hon. Chairperson erred in law and in fact after failing to make justice to appellant in this case and relying on the evidence of the respondent, while sometimes she failed to prove how she became the owner of the disputed land; and*
5. *The Hon. Chairperson erred in law and in fact after failing to read opinion of the assessors before pronouncing judgement.*

On a hearing date of this appeal, the respondent, since institution of this appeal, never appeared in court. In that circumstances this court ordered the appellant to proceed *ex parte* against the respondent.

More so, the appellant did not procure services of learned advocate; thus, had no useful arguments on all five grounds of appeal, rather prayed this court to consider his grounds of appeal and decide according to law. Added that, he was surprised, the district Tribunal heard the appeal *ex parte* against the respondent, yet the *ex parte* judgement was in favour of the respondent who never appeared before that Tribunal. To justify his surprise, asked an interesting question on how could an absent party win a case against a present one who has been in court all the time?

Further submitted that in the whole trial at the Tribunals faulted the law, therefore, this is the only court capable to rectify such injustice done to him. Concluded by insisting that, the suit land was owned by his mother who died on 6th May 1976. Therefore, this court should quash the decision of the Tribunals and order that, the suit land belonged to him.

Having traced the genesis of this dispute and upon considering the grounds of appeal in line with the available evidences adduced during



trial at the Ward Tribunal, subsequently on the grounds relied by the District Land and Housing Tribunal, I am certain, the appellant doesn't know how the court arrived into that decision. In essence the appellant was right to be surprised as to why an absent party may be declared a lawful owner in a case like this one. To answer, it is simple that, courts decide cases based on available evidences, prevailing circumstances, applicable laws and precedents. Once the evidence is adduced in court the same evidence will be considered on appeal. In other words, on appeal, parties do not adduce new evidences, rather pinpoint areas upon which the trial court or tribunal faulted either by failure to analyze properly the adduced evidences, or faulted the proper applicable laws and alike.

Moreover, the plaintiff/applicant/claimant in civil related suits has uncompromised duty to establish *locus standi* over the subject matter. That he has to prove that he has right to seek protection from the court of law. Thereafter, has a duty to establish and prove his claim to the preponderance of probabilities. In the absence of concrete evidences establishing lawful ownership of the suit land, even if, it is an *ex parte* hearing, yet the appellant may fail. This concludes the surprise of the appellant that the district Tribunal declared the absent a lawful owner.

Considering the grounds of appeal, the first issue to determine is the *locus standi* of the appellant to claim ownership of the suit land. According to the available evidences, the appellant strongly alleged before the ward Tribunal and before the District Tribunal that he became the true owner of the suit land through inheritance from his late



mother. He strongly narrated enticing stories on how he inherited the suit land from his mother. Unfortunately I find nothing on the record explaining how the ownership shifted from the deceased to himself.

The only record in his favour is that he is an administrator of the estate of Amina Abdalah Kwizi, appointed by Mikongeni Primary Court on 11 April 2018. There is no dispute that, the appellant was in year 2018, appointed an administrator of the deceased estate, but being an administrator does not automatic make the owner of the deceased estate.

From the outset, the appellant instituted this suit before the ward Tribunal, later appealed to the District Land Tribunal and finally in this court claiming ownership of the estate of the late Amina Abdalah Kwizi in his personal capacity as opposed to being under capacity of an administrator. As owner of the suit land he has uncompromised duty to prove *locus standi* which he failed.

In the whole records of the Tribunals, the appellant appeared in capacity of an owner not as an administrator of his mother's estate. The two capacities are different. Since, the appellant appeared on individual capacity owning the suit land through inheritance, then he ought to have completed the process of transferring the ownership of such land from the deceased Amina Abdalah Kwizi to himself.

Even if this court may assume that the appellant complied all legal procedure of inheritance from his mother to himself, yet the evidence adduced during trial at the Ward Tribunal and even after the members



of the trial Tribunal visiting *locus in quo*, yet the whole evidences proved the respondent to be lawful owner. Perusing the available evidences, it is undisputed fact, through the evidence of Rashid Janga in year 1976 was among the village land committee who allocated the respondent a piece of land subject of this appeal. Since then to year 2018, the respondent enjoyed occupation, of the suit land undisturbed. Such period is equal to 42 years. Such long time of occupation not as a tenant or lessee paying rent to the owner, obvious negates any claim of ownership from another person.

It is a trite law that, when there is concurrence of two subordinate courts or Tribunals on a point of fact, the second appellate court may, unless there is an apparent error thereon, otherwise, such point of fact will prevail.

The two Tribunals had concurrent decision on the fact of ownership, that due to the available evidences, undoubtedly, the respondent is a true owner of the suit land who first was allocated by a lawful organ of Mlali Village. Second, she has been occupying it for more than 42 years undisturbed from whoever. Third, the appellant did not disclose where he was, for all those years since the death of his mother in year 1976. From that year to the date of dispute that is, in year 2018, was equal to 42 years.

I am aware of the most cherished principles of law that, generally, in civil cases, including land matters, the burden of proof lies on the party who alleges anything in his/her favour. Sections 110 and 111 of the Law of Evidence Act [Cap 6 R.E, 2002] are quoted hereunder that:-



Section 110. whoever desires any court to give judgement as to any legal right dependent on existence of facts which he asserts must prove that those facts exist.

Section 111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side".

The proper understanding of these two sections is that, there must exist a legal right, which that right has been infringed unlawfully and without colour of right by another person. The one who has that legal right seeks assistance of the court to enforce that person out of that right. When the two parties are in court, the one who claim to have a legal right has also a legal duty to prove that that legal right, actually, existed and the other party has without colour of rights infringed it. Mere allegations of ownership of land without proof of it, will always remain allegations.

In this appeal and upon deep consideration in totality of grounds of appeal, I am settled in my mind that all do not point any valid error committed by neither the ward Tribunal nor by the district Tribunal. Consequently, I find no reason to labour much on them for they cannot change the already arrived conclusion by the two Tribunals.

Accordingly, this appeal lacks merits same is dismissed entirety. I proceed to uphold the decisions of the two Tribunals.

I accordingly order.

DATED at Dar es Salaam this 30th November, 2021





P.J. NGWEMBE

JUDGE

30/11/2021

Court: Judgement delivered at Dar es Salaam in Chambers on this 30th day of November, 2021 in the presence of the appellant only.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

30/11/2021