

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA DISTRICT REGISTRY)
AT IRINGA**

MISC. LAND APPEAL NO. 15 OF 2020

(Originating from the decision of District Land and Housing Tribunal for Njombe in Land Appeal No: 73/2019, Originating from the Decision of Bulongwa Ward Tribunal in Land Case No. 2 of 2019)

METHYUM SANGA..... APPELLANT

VERSUS

OBEDI SANGARESPONDENT

JUDGEMENT

Date of last order: 23/11/2021
Date of judgement: 02/12/2021

MLYAMBINA, J.

This is a second appeal by the Appellant. It originated from the decision of the Bulongwa Ward Tribunal as *Land Case No. 2 of 2019* whereby the Appellant herein sued the Respondent herein for invading his land given by his grandfather one Saidi Sigara and Aloni Kyando. In his defence before the Ward Tribunal, the Respondent asserted to have bought the said land from one Mwamepo Sanga. Upon trial, the Ward Tribunal decreed in favour of the Respondent.

The Appellant being aggrieved by the Judgement and Orders of the Bulongwa Ward Tribunal, unsuccessfully appealed before the District Land and Housing Tribunal for Njombe at Njombe in *Land Appeal No: 73 of 2019*. Hence, the instant appeal on one ground, to wit; the Appellate Tribunal erred in law and facts in holding in favour of the Respondent by failure to correctly re-evaluate the evidence adduced by both parties before the trial Tribunal.

At the hearing of this appeal, the Appellant was represented by Mr. Innocent Kibadu and the Respondent was represented by Mr. Frank Ngafunika, both learned Counsel. The appeal was argued by written submission and both parties adhered to the schedule issued by this Court.

In his submission, Mr. Kibadu argued that; the Appellate Tribunal erred in law and fact in holding that the Respondent proved ownership of the suit land because he bought it from the Appellant's parents after they asked him to buy the same so that they could raise money for Appellant's medical purpose who was in jail in Dar-es-Salaam.

Mr. Kibadu further submitted that; it is on trial Tribunal's records that the Appellant was been given the disputed land by his grandfather in presence of her mother. Mr. Kibadu was of the view that; the Appellate Tribunal failed to assess the evidence adduced by the Respondent at trial as there is ample testimony by the Appellant side to the effect as to how he came into ownership of the suit land which the Respondents claims to have bought it from Mwamepo Sanga who in turn claimed to have bought it from the Appellant's father.

Furthermore, he submitted that; the Appellate Tribunal failed to re-evaluate the evidence adduced by both parties, hence inviting this Court to reevaluate the evidence as submitted above and make a finding that the suit land is property of the Appellant and not the Respondent. He cited the case of **Deemay Daatia & 2 Others v. Republic** (2005) TLR 132, in which the Court held that:

It is common knowledge that where there is misdirection or non-direction on the evidence or the lower Court has misapprehended the substance, the

nature and the quality of the evidence, an appellate Court is entitled to look at the evidence and make its own findings of facts.

In reply, Mr. Ngafumika submitted that; it is a common principle of law that a second Appellate Court should not interfere with concurrent findings of the two lower Courts on matters of fact unless it is clearly shown that there has been misapprehension or non-direction of evidence or violation of some basic principle of law. He cited several authorities including, **Bushangila Ng'onga v. Manyanda Maige** [2002] TLR 335 and **Amratral Damodar Maltaser & Another T/A Zanzibar Silk Store v. A.H Jariwalla T/A Zanzibar Hotel** [1980] TLR 31.

Further, Mr. Ngafumika argued that; the Appellant failed to show clearly any factors which suggests that failure of the Tribunal to re-evaluate the evidences adduced by both parties during the trial at the Ward Tribunal which in turn cannot warrant this Court to interfere the concurrent findings of two lower Courts on matters of facts. Thus, the cited case of **Deemay Daatia & 2 Others v. Republic** (*supra*) is distinguishable to the case at hand because in this case, there has been no instance of misapprehension, misdirection or misapplication of a basic principle of law. Consequently, the cited authority cannot at any rate be at the rescue of this appeal which ought to be dismissed. He invited this Court to read the decision of this Court in the case of **Methyum Sanga v. Mwamepo Sanga**, Land Appeal No. 16 of 2020 (unreported) in which this Court, dismissed the appeal which had similar ground with this appeal and which concerned the same facts.

Also, Mr. Ngafumika referred this Court to the cases of **Ally Linus & 11 Others v. Tanzania Harbours Authority & The Labour Conciliation**

Board of Temeke District [1998] TLR 5 and the case of **ULC (Tanzania) Limited v. National Insurance Corporation & Another** [2003] TLR 212 in which the Court held that:

Judges of the same Court should not give conflicting decisions over similar issues, unless it is absolutely necessary.

In his conclusion, Mr. Ngafumika submitted that; since the facts giving rise to the appeal at hand are similar, and the record of the lower Tribunals resemble; and since there already exists a decision of this Court over similar complaint, it is a matter of wise practice to maintain the same position as was maintained in *Land Appeal No 15 of 2020*. Hence, the appeal be dismissed with costs and leave undisturbed the concurrent findings of the two lower Tribunals.

Having considered the submissions of the parties, the pertinent question for determination is; *whether the High Court as the second Appellate Court has the power to re-evaluate the evidence in the trial Tribunal and make new findings.*

It is the trite law that; the first Appellate Court (District Land and Housing Tribunal) has the power and it is entitled to re-evaluate the evidence of the trial Court (Bulongwa Ward Tribunal) and come out with its new conclusion as if it was the trial Tribunal. (See the case of **Hamis Chuma@ Hando Mhoja v. The Republic**, Criminal Appeal No.36 of 2018. (unreported) at page 10). It means that; the District Land and Housing Tribunal for Njombe at Njombe had the right to do so.

However, it would be different if what is claimed by the Appellant is the legal point. If the point of aggravation was that the decision of the first Appellate Tribunal was tainted by some illegalities, this Court would be empowered to re-evaluate the record and render a proper legal decision. In the circumstances of this appeal, the Court is of a settled view that; its hands to re-evaluate the findings of the two lower Courts are tightly closed. [See the case of **Bushangila Ng'onga v. Manyanda Maige** (*supra*)].

Again, *Section 42 of the Land Disputes Act, Cap 216 [R.E. 2019]* can interfere with the decision of the District Land and Housing Tribunal on factual issues if it seats in its appellate jurisdiction on matters originating from the District Land and Housing Tribunal and not on matters which originated from Ward Tribunal. *Section 42 (supra)* provides explicitly that:

The High Court shall in the exercise of its appellate jurisdiction have power to take or to order the District Land and Housing Tribunal to take and certify additional evidence and whether additional evidence is taken or not, to confirm, reverse, amend or vary any manner the decision or order appealed against.

The above being the case, this Court as the second Appellate Court has no jurisdiction to re-evaluate the evidence of the Ward trial Tribunal and make its new findings.

Even if this Court had such jurisdiction, I find nothing in record to prove that the Appellant legally owns the suit land. The evidences given before the trial Court was water tight on the part of the Respondent. The vendor of the suit land testified in favour of the Respondent herein. The Ward Tribunal was in the better position to render a valid decision as far as the ownership of the

land is concerned as it had an opportunity to hear the parties, their witnesses and to visit the *locus in quo*.

In view of the above discussion, the Court do hereby dismiss this appeal for lack of merits. The judgement and Orders imposed by the two lower Tribunals are hereby sustained. Taking into consideration of the Appellant's situation, I order costs be shared.



Y. J. MLYAMBINA
JUDGE
02/12/2021

Judgement pronounced and dated 2nd day of December, 2021 in the presence of Counsel Innocent Kibadu for the Appellant and Raymond Byombalirwa for Frank Ngafumika for the Respondent.



Y. J. MLYAMBINA
JUDGE
02/12/2021