

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOKA DISTRICT REGISTRY

AT BUKOKA

LAND CASE APPEAL NO. 44 OF 2021

(Originating from Application No. 94 of 2018 at the District Land and Housing Tribunal for Kagera at Bukoba)

PRUCHELA KASHEBA-----APPELLANT

VERSUS

PHILBERT BAKERA-----RESPONDENT

JUDGEMENT

Date of Last Order: 12/10/2021

Date of Judgment: 12/11/2021

Hon. A. E. Mwlpopo, J.

Pruchela Kasheba, the Appellant herein, has filed the present appeal against the decision of the District Land and Housing Tribunal for Kagera at Bukoba in Application No. 94 of 2018 before Hon. R. Mtei, Chairman, which was delivered on 21st April, 2021. The Appellant was aggrieved by the decision of the trial Tribunal which was delivered which ordered her to pay compensation to the Respondent namely Philbert Bakera for the development he made in the suit land including the house which was built by the Respondent. The Tribunal also ordered the Respondent to find valuer to evaluate the value of the development made by the Respondent in the suit land. The, the Tribunal declared the suit land to remain in ownership of the Appellant.

The Appellant has a total of five grounds of appeal as they are found in the petition of appeal. The said grounds of appeal are as follows:-

- 1. That, the Hon. Chairman of the District Land and Housing Tribunal erred in law and facts by awarding the Respondent with Tshs. 10,000,000/= as compensation without any sufficient evidence such as receipt or valuation report proving the same amount as claimed by the Respondent.*
- 2. That, the Hon. Chairman of the District Land and Housing Tribunal erred in law and facts by relying on the mere say of the Respondent that back in 1992 she transferred all ownership right of the said land (shamba) to the Respondent without any conclusive evidence proving any oral or written agreement entered between the Appellant and the Respondent showing the said relief.*
- 3. That, the Hon. Chairman erred in facts by assuming the value of the said house is Tshs. 10,000,000/= without any valuation report.*
- 4. That, the Hon. Chairman erred in law by awarding the trespasser with the fruits of Tshs. 10,000,000/= as compensation.*
- 5. That, the Hon. Chairman erred in law and facts by assuming that a mere provision of residence by a mother to a son is amounting to transfer of ownership.*

On the hearing date, both parties appeared in person and the hearing proceeded orally.

Ms. Pruchelia Kasheba being a lay person briefly submitted that the Tribunal erred to award the Respondent with shilling 10,000,000/= as compensation for the development while there is no valuation of proving the same. She said that the Respondent demolished her house which was in the area and built another house without her consent. The tribunal erred to order payment of compensation to the Respondent for the development which was done by him without her consent. She added that the house which was built by the Respondent has no value of shilling 10,000,000/= as it was ordered by the Tribunal to be compensated.

In response, Mr. Philbert Bakera submitted that the Appellant gave him the land in dispute as he was taking care of Appellant's father who is his grandfather. After the grandfather died, the Respondent came back and lived with him. The house which she left at the suit land was glass thatched (msonge) which was built in 1992. As that house was on bad shape and was destructed by termites, he decided to build a block house. Since the suit land was given to him, he decided to develop it without her approval as he need none. As the one who build the house, the Respondent said that he know the value of the house in dispute. The Appellant has not stated at all the value she think the house has. He developed the land by cultivating it and there are banana trees which she

sell. He said that the land in dispute was developed by him and the Appellant is now benefiting from the house and the land.

In her rejoinder, the Appellant stated that the Respondent demolished her house and built another house. He may decide to take it from the land. She said that she had a house in the land and after she came back to live in the area as she has nowhere else she could live than to enter into the house built by the Respondent.

After hearing submissions from the parties, reading the proceedings and the judgment of the Trial Tribunal, I'm going to determine each of the issue raised by the parties herein.

The Appellant had a total of 5 grounds of appeal as they are found in the petition of appeal. Ground No. 1, 3 and 4 are concerned with the order of the Tribunal to award Tshs. 10,000,000/= to the Respondent and grounds No. 2 and 5 are concerned with the ownership of the land in dispute. In determination of the said grounds of appeal, the ground No. 1, 3 and 4 will be determine together and the same to ground No. 2 and 5.

Starting with the issue of compensation, the Appellant submitted that the Tribunal erred to award the Respondent with shilling 10,000,000/= as compensation for the development while there is no valuation report which proves the same. She also said that the Respondent demolished her house which

was in the suit land and built another house without her consent. The tribunal erred to order payment of compensation to the Respondent for the development which was done by him without her consent. In response, the Respondent submitted that the Appellant gave him the land in dispute as he was taking care of Appellant's father (his grandfather). The house which she left at the suit land was grass thatched (msonge) which was built in 1992. As that house was on bad shape and was destructed by termites and he decided to build a block house. Since the suit land was given to him, he did not need her approval to develop the land.

In order to determine if the Respondent is entitled to the compensation for the development he made on the suit land, it is important to know whether or not the Respondent has claim of right over the land. The Respondent testified before the Tribunal that he was given the suit land by the Appellant in 1992 as the Appellant was living in Izimbya village where she was married. The Respondent stated that the land was given to him by the Appellant in the presence of some people including Cresencia Gasper – PW2. He said since the land was given to him, he has no reason to seek approval of the Appellant to develop it. Cresencia Gasper – PW2 who is the neighbor at the suit land testified that she was present when Appellant gave the land to the Respondent. In the other hand, the Appellant denied to give the land to the Respondent and said that as a mother she allowed the Appellant to live in the land in 1997 after her

father died, but she never gave it to the Respondent. She came back to live in the land in 2005 and that after there was misunderstanding with the Respondent she decided to ask the Respondent to leave her land. The Appellant testified that she was the one who built the house in the suit land and she said that the Respondent has no right to inheritance to his father's clan land and not to his uncle's clan land. The Respondent called Therezia Kajerero – SU2 and Goszibart Byabato –SU3 who testified that the land belongs to the Appellant and that they do not know if the land was given to him. SU3 in answering Assessors' questions during cross examination stated that the Appellant was taking care of the land and that as a leader of Kitendaguro street he knew that the land was registered in the name of the Appellant in the formalization process.

From these evidence, it is clear that the Respondent who was Plaintiff in the application before the Tribunal, failed to prove that the Appellant gave him the land in dispute. The reason is that the Respondent did not mention or call the people who witnessed the alleged handing over apart from PW2. There is no relative who witnessed the handing over bearing in mind that the said land was a clan land. Also, the evidence from other neighbours to wit are SU2 and SU3 shows that they were not aware of any handing over of the suit land to the Respondent. SU3 testified that the suit land was registered in the name of the Appellant in the formalization process going on. The standard of proof in civil cases is on balance of probabilities as it was held in **Daniel Apael Urio V. Exim**

(T) Bank, Civil Appeal No. 185 of 2019, Court of Appeal of TANZANIA, at Arusha, (Unreported). This same position was also stated by the Court of Appeal in **Mathias Erasto Manga V. Ms. Simon Group (T) Limited**, Civil Appeal No. 43 of 2013, (unreported), where the Court held that:-

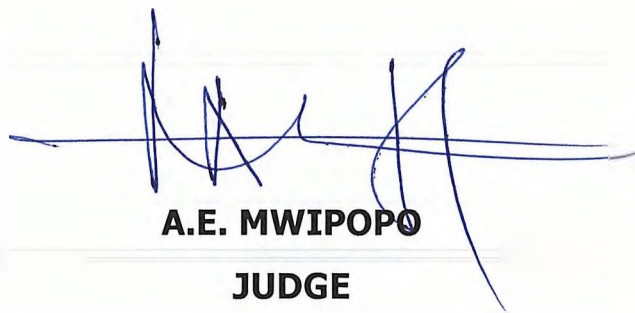
"The yardstick of proof in civil cases is the evidence available on record and whether it tilts the balance one way or the other."

From the evidence available in record, it is clear that the evidence from the Appellant was heavier than that of the Respondent. The Appellant proved that she did not transfer the land to the Respondent. The Appellant in her testimony claimed she is the one who built the house in the suit land. The evidence in record prove that Appellant came back to the area in 2005 when the Respondent had already constructed the house. However, in her submission the Appellant ~~admitted that the house in suit land was built by the Respondent and she stated~~ that she has nowhere to live as the Respondent demolished her grass house and constructed in its place a brick house. This evidence proved that the house in the suit land was built by the Respondent. The Tribunal rightly held that the house in suit land was built by the Respondent. Thus, I find that the Appellant proved on balance of probabilities that the Respondent constructed his house on Appellant's land without her approval.

The Appellant deponed that the Trial Tribunal erred to award compensation of Tshs. 10,000,000/= for the development he made in the suit

land. I agree with the Appellant that since the Respondent has no claim over the suit land, he built the house unlawfully without the consent of the owner. As a result, it was wrong for the Trial Tribunal to order the Appellant to pay for the development made by the Respondent in the suit land. However, the Tribunal in its judgment did not award for payment of compensation of Tshs. 10,000,000/= to the Respondent, but it ordered for the Respondent to be compensated for the development he made in the area and that he has to find a valuer to evaluate the value of the development made by the Respondent in the suit land. But, still the order for compensation was improper.

Therefore, I find the Appeal has merits and is allowed. The District Land and Housing Tribunal decision is hereby quashed and its orders are set aside. The Respondent is at liberty to remove his house or any part of it from the area if he wish to do so. As the case is between the Mother and the son and for interest to bring harmony between them, there will be no order as to the cost of the suit.



A.E. MWIPOPO
JUDGE

12/11/2021

Date: 12/11/2021

Coram: Hon. J.M. Minde, DR

Appellant: Present

Respondent: Present

B/C: George F.

Court: Judgment delivered today on 12th day of November, 2021 in the presence of both parties.



Sgd:  J.M. Minde, DR

12/11/2021