

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

LAND APPEAL NO. 36 OF 2019

(Arising from Land Application No. 12 of 2016 at Iramba District Land and Housing
Tribunal dated 25/04/2019)

AMINA OMAR KINGU..... APPELLANT

VERSUS

JUMA KAUNDA AMASI RESPONDENT

29/11/2021 & 15/12/2021

JUDGMENT

MASAJU, J

The Appellant, Amina Omar Kingu, unsuccessfully sued the Respondent, Juma Kaunda Amasi, before the District Land and Housing Tribunal for Iramba District at Kiomboi for recovery of thirty (30) acres of land she had allegedly leased to the Respondent in 1999. Hence this appeal to the Court. Her appeal is made up of three (3) grounds of appeal that the trial tribunal erred in facts and law for deciding that the Respondent was the lawful owner of the suitland.

The Respondent contested the appeal and there is his Reply to Petition of Appeal to that effect.

When the appeal was heard before the Court on the 29th day of November, 2021, the layman Appellant appeared in person. She adopted her

grounds of appeal to form part of her submissions in support of the appeal in the Court. She prayed the Court to allow the appeal and declare her the lawful owner of the suit land she had leased or given the Respondent, her relative, for temporary use. That, she had not sold the suitland to the Respondent.

Mr. Lucas Komba, the learned counsel for the Respondent contested the appeal arguing that the Appellant had sold the suitland to the Respondent and that the Sale Agreement to that effect was admitted in evidence before the trial tribunal. That, the Respondent had used the suitland for seventeen (17) years consecutively undisturbed by the Appellant. The Reply to Petition of Appeal was adopted by the learned counsel to form part of the submissions against the appeal in the Court as he prayed the Court to dismiss the appeal with costs accordingly.

During the trial before the trial tribunal, the Appellant (PW1) and her witnesses, Eliezeri Zabron Kituli(PW2), Haruna Nyuha(PW3) and Juma Said (PW4) testified that the thirty (30) acres suitland belonged to the Appellant. That the Appellant gave the said suitland to the Respondent for temporary use, that is, to just take care of it. That, the same was not sold to the Respondent.

The Respondent (DW1) testified that he bought about 10-12 acres suitland from the Appellant and had used it for 17 years without any demand from the Appellant by the time the dispute arose in 2016. That, there was a Sale Agreement of the suitland. The same was admitted in evidence as Exh. "D1". The Respondent was so supported by his witnesses Joseph Luther Muna(DW2) and Shaban Athumani (DW3) who testified that the suitland was twelve(12) acres in size.

The Assessor Elimamba Msafiri Lula, whose written opinion is dated the 13th day of March, 2019 opined that there was difference in regard to the size of the suitland. That, whilst the Appellant testified that the suitland was 30 acres, the Respondent testified that the suitland was about 10-15 acres. That the tribunal should visit the suitland *locus in quo* so as to get the actual picture as to who was the owner of the suitland and know the actual size of the suitland. He also opined that the Sale Agreement lacked the names of the leaders such as the village chairman a ten cell leader where the suitland is situate.

The other Assessor, Joram F. Masenga, in his written opinion dated the 5th day of March, 2019 opined that the suitland belonged to the Respondent.

Both the said written opinion by the Assessors were not read over in the presence of the parties upon the conclusion of the trial prior to the trial chairman's composition of the judgment. This was contrary to section 23(2) of the Land Disputes Courts act, [Cap 216] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.

The trial chairman stated in his judgment that both assessors had opined that the application be dismissed and that the Respondent be declared the lawful owner of the suitland. This was not true of the original record.

The Court is also of the considered position that the trial tribunal couldn't have decided that the Respondent was the lawful owner of the suitland without there being a determination of the actual size of the suitland *visa vis* the discrepancy of the size of the suitland as between the Appellant and the Respondent in their testimonies before the tribunal.

That said, since the trial tribunal opinions were not given and read over to the trial Tribunal in the presence of the parties so that the parties could know the nature of their opinion as the law mandatorily guides in section 23(2) of the Land Disputes Courts Act, [Cap 216] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003, the proceedings of the trial tribunal along with the decision and Decree thereof have to be vitiated accordingly.

Therefore, pursuant to the Courts revisionary powers in section 43(1) (b) of the Land Disputes Courts Act, [Cap 216 RE 2019], the trial of the Land Application No. 12 of 2016 before the District Land and Housing Tribunal for Iramba at Kiomboi along with the record of proceedings, judgment and decree thereof are hereby severally and jointly declared a nullity. There shall be a trial *de novo* before another chairman with a different set of Assessors, except if the parties settle the dispute amicably. The parties shall bear their own costs accordingly.




GEORGE M. MASAJU

JUDGE

15/12/2021