

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISCELLANEOUS LAND APPEAL NO 106 OF 2021

(Arising from land appeal No. 235 of 2018 of District land and Housing Tribunal for Mara at Musoma. Original land application No 21 of 2018 of Manyamanyama Ward Tribunal)

GEWA PETER APPELLANT

VERSUS

JIPE MOYO GROUP RESPONDENT

JUDGMENT

21st March and 23rd May, 2022

F. H. MAHIMBALI, J.:

This is the second appeal now after the appellant who initially lost the suit at the trial ward tribunal, first unsuccessfully appealed to the District Land and Housing Tribunal. Still unamused, has now come to this Court challenging the said verdict allegedly the suit land is his as given to him during the life time of his father.

The facts of the case can be put this way. The appellant is the son of Peter Gewa who is now deceased. It appears according to the available tribunal records, during the life time of his father, the appellant was in 2004 given the land in dispute by his father. However, while he

was in prison (from 2007) after his conviction for some other causes, his father appears to have sold the said land without his knowledge. When he got out in 2016, he saw his father Peter Gewa being sick. He thus started taking care of him for his medication. Later in 2018, when he went to his farms, he noted two acres of it invaded by some people and they were digging it. He then referred his dispute to the trial tribunal for resolution but in vain and so was at the DLHT by way of appeal. When he inquired, he was told that while his father was still alive, decided to sell part of that to the respondent.

On the other hand, the respondent claims ownership of the said land as purchased from the appellant's father in 2008 during his life time. He wonders why then the said appellant claims the said land now. If he was interested, he argues that he could challenge the said sale during the life time of his father who sold it to them.

The appellant being uncomfortable/unpleased with the use of the said land by the respondent following the demise of his father, he then commenced the said suit at the trial ward tribunal and subsequently at the District Land and Housing Tribunal and now to this Court as stated hereinabove.

Now undaunted by the DLHT's findings which blessed the findings of the trial tribunal, has preferred this appeal armed with a total of seven grounds of appeal. The same can be paraphrased this way:

- 1. That, first appellate tribunal erred both in law and fact in denying the appellant's right over the Suitland upon the fact that the appellant's father gave him (the appellant) the Suitland in 2004 before he fetched his death.*
- 2. That, the Respondent failed to prove that appellant's father sold to her the Suitland as chairman of the Respondent.*
- 3. That, the Respondent failed to prove that appellant's father sold the Suitland to the Respondent as sale agreement dated 01/06/2008 produced as exhibit was a photocopy document and thus inadmissible in law.*
- 4. That, appellate District Land and Housing chairman erred both in law and in fact in deciding the case in respondent's favour on ground that appellant's relatives were present during alleged sale while in fact appellant's mother alleged to have witnessed the sale one Meryciana Robenza was not called to testify to prove that fact and appellants brother PW2. Yohana Peter denied to have witnessed the sale.*
- 5. That, appellate District Land and Housing chairman erred both in law and in fact in assuming that appellant's father gave the Suitland to the appellant on temporary basis while in fact that finding was not supported by any evidence in record.*
- 6. That, appellate District chairman erred in law and in fact in deciding the case in Respondent's favour on ground that the*

appellant was present during alleged sale of the Suitland in 2009 but took no action against the Respondent until his father's death in 2018 while in fact alleged sale is said to be in 2008 but it was not disputed that the appellant became a convict for 10 years in 2007 before the dispute sale.

7. That, respondent's witnesses were not credible witnesses worth to believe as DW1. Juma Kamata in his testimony before trial Tribunal had it that alleged sale of the Suitland was made on 18/05/2008 while in fact a photocopy sale agreement he produced as exhibit shows that alleged sale was conducted on 01/06/2008.

The respondent, on the other hand resisted the appeal, arguing that the two lower tribunals rightly determined the matter and he considers this second appeal as unmerited. He urges the Court to dismiss it with costs.

As I was going through the trial court in the course of composing this judgment, I came to note some irregularities during the hearing of the said case at the trial tribunal. First, there was no formal complaint in the case file pursuant to section 17(1) and (2) of the LCDA. Secondly, the trial tribunal membership during the hearing of the said suit was not regular. The membership kept on changing from one proceeding to another. For instance, on the first date of hearing (20/6/2018), the members in coram were six, namely; Masige Maregesi, Ilendeja Kituma, Stephano Ligima, Daudi Masharo, Elizabeth Mashine and Sane Mariko.

As if this was not enough, in the subsequent proceedings dated 27th June 2018, the membership was as follows: Masige Maregesi, Alphonse Lugoye, Daud Masharo, Sane Mariko, Elizabeth Mashine, Ilendeje Kituma and Stephano Ligima. This coram is not the same as that of the previous proceeding. Surprisingly, when the matter was heard on 22nd August 2018, those in attendance were five. Namely, Masige Maregesi, Nora Wabare, Daud Masharo, Alphonse Lugoye and Sane Mariko. By the membership on this latter date, it is obvious that Ilendeja Kituma, Stephano Ligima and Elizabeth Mashine were new members following the composition on the former proceedings. Similarly, is to the trial tribunal's deciding members as featuring on 26th September, 2018.

The worse of the story is one of the trial tribunal members by name of Sane Marko who also took part in the trial tribunal's proceedings testified in the same tribunal and finally sat in decision making.

With these irregularities, I had to inquire from the parties whether that was proper after I had referred them to the relevant provisions of the law. The appellant quickly responded that it is true that there was no formal complaint reduced into writing by the Secretary of the trial Ward Tribunal and registered for deliberation when he reported his complaint there. As regards the membership at the trial Ward Tribunal, he admitted that the membership was not ordinary. The numbers and

faces kept on changing from one proceeding to another. Worse, one member also turned to be witness of the matter and finally came to sit as adjudicator. He considers it as improper. Nevertheless, he left it for the Court to decide accordingly. The respondent equally admitted that the membership kept on changing. He thought it was not prejudicial as it met the tribunal's minimum quorum as members in the meeting. The changing of members though happened; he was not aware if it prejudiced the trial Tribunal's decision.

In consideration of the parties' accounts and the proper positions as per law, I am of the settled view that the trial tribunal's proceedings and the resulting first appellate's proceedings and orders emanating thereof are all flawed as per law (See section 14 and 17 of the LDCA). The same are hereby quashed and set aside as being nullity pursuant to section 43(1) and (2) of the LDCA on the revisionary powers of this Court. The parties are at liberty to refile their case subject to the current regime in the administration of land disputes.

Each party shall bear own costs.

DATED at MUSOMA this 23rd day of May, 2022.



F. H. Mahimbali
JUDGE

Court: Judgment delivered this 23th day of May, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.



F. H. Mahimbali

JUDGE

23/05/2022