

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB-REGISTRY OF MWANZA

AT MWANZA

LAND APPEAL NO. 65 OF 2021

(Arising from Land Application No. 07 of 2020 of the District Land and Housing Tribunal for Chato at Chato)

MATHAYO ENOSAPPELLANT

VERSUS

- 1. BUSANGI MUGANGA**
- 2. MAGINA MAKEJA**
- 3. LAMECK BUSANGI**
- 4. METHOD BAHATI**
- 5. DAUDI LUGWISHA**
- 6. KESI BUTA**
- 7. EMMANUEL MADARAKA**
- 8. KASANGA NKONONG'WILUNDE**

.....RESPONDENTS

JUDGMENT

19th July & 4th August, 2022

DYANSOBERA, J.:

The appellant Mathayo Enos (Administrator of the estate of the late Enos Gakuba) is challenging the decision given by the District Land and Housing Tribunal for Chato in Land Application No. 7 of 2020 dated 26th day of October, 2021 wherein he lost the suit.

The historical back ground of the matter is, briefly, the following. The appellant is the administrator of the estate of the late Enos Gakuba. The deceased was a resident of Imalabupina Village, Ichwankima Ward in Chato District in the Region of Geita. During his life time, the deceased owned piece of land measuring 64 acres with an estimated value of Tshs.

28,886, 000/= . Following the death of the deceased and after the appellant was appointed administrator of the deceased's estate, he lodged a claim before the District Land and Housing Tribunal for Chato District against the eight respondents over encroachment and claimed for vacant possession and restraint order against the respondents from trespassing the land. In his Land Application form, the appellant averred that he purchased the suit land way back in 1967 from Saimon Nguno at a price of Tshs. 350/= and that the agreement was oral but in 2017, the seller confirmed the sale in writing. It is the appellant's argument that the respondents have encroached the land and have refused to give vacant possession. At the said Tribunal he was making the following prayers:

- i) A declaration that the appellant is a legal owner of the suit land.
- ii) A declaration that the respondents are severally and jointly occupying and utilizing the land illegally.
- iii) Vacant possession
- iv) Permanent injunction against the respondents
- v) General damages for loss of earning, disturbance and costs of the suit.

The suit was resisted by the respondents who filed their joint written statement of defence.

At the commencement of the hearing of the suit, the District Land and Housing Tribunal framed three issues. One, who is the rightful owner of the suit land. Two, whether the respondents are trespassers and three, reliefs to which parties are entitled.

Parties were given opportunity to give their evidence. The appellant testified that the respondents have trespassed his land in that after they had bought it from Chota Kabadi, they crossed over and tilled the land. The appellant told the trial Tribunal that his father, the deceased had bought the suit land from Saimon Nguno in 1967 and he, the appellant was later, appointed administrator of his estate.

On cross examination, the appellant stated that he was not present when his father bought the suit land and that the respondent's encroachment was in 2009. Supporting the appellant's evidence, PW 2 Saimon Nguno, aged 85 years, told the trial Tribunal at p. 17 of the typed proceedings that:

'Shamba la mgogoro alinunua mleta maombi kutoka kwa Jirani yangu Swila Kiso. Baadaye alihama akanikabidhi ili nikipata wateja niliuze.

Mimi ndiye niliua eneo la mgogoro kwa niaba ya Swila kwa kuwa aliniachia. Sikumbuki bei ya mauziano.

Hatukuandika mkataba wa mauziano, tuliaminiana tu.

The respondents' defence was a flat denial of having trespassed the appellant's farm. Lameck Busangi who testified as RW 1, told the Tribunal that he tills the land belonging to his father, Busangi Mganga (RW 6) who had told him that he had bought it from Chota Kabadi. The said RW 6 supported the version of RW 1. On his part, RW 2 one Magina Makeja stated that he started using the land from 1992 when his father Makeja Bugumba moved to that village from Ngudu. He said that he was given the land by Kalori Jonijo in 1972 and in 1984, Kalori Jonijo sold the land to Makeja Bugumba at Tshs. 9000/=.

Kessy Buta (RW 3) testified that the suit land belonged to his grandfather Busangi Mganga who had bought it from Chota Kabadi and RW 3 started using it in 2007. It was in the evidence of Emmanuel Madaraka (RW 4) that he was given the area by his father-in-law Busangi Mganga.

RW 5 Kasanga Mkono Mwilunde testified that the piece of land was his wife's inheritance while RW 7 one Maganiko Budeba said that he moved to Imalabupina in 1968 and testified that the piece of land belonged to RW 6.

The last defence witness was Mussa Mtwajo (RW 8). According to him, he had been living at Imalabupina since 1960. The suit land was given to Sugwa Mathayo, the wife of RW 5 who is the RW 8' s sister.

The learned Tribunal, after considering the evidence, was satisfied that the appellant had failed to prove his claims against the respondents. Agreeing with the opinions of the lay members, dismissed the suit with costs.

The appellant was aggrieved by that decision. He had come to this court on appeal with the following complaints: -

1. That, the trial tribunal erred in law and facts to hold that the appellant failed to prove his ownership over the suit land on balance of probabilities contrary to the evidence on records.
2. That, the trial tribunal erred in law to declare the 1st, 2nd and 8th respondents as lawful owners of the suit land while their testimonies are tainted with full of inconsistencies and contradictions.
3. That, the appellant's evidence was neither considered nor accorded any weight.
4. That, the trial tribunal erred in law and facts for failing to give any expert verdict (judgment) regarding the 4th and 5th respondents thereby leaving out their status undetermined vis-à-vis the contested suit land.
5. That, the trial tribunal erred in law and facts to hold that the appellant failed to prove his ownership over the suit land on balance of probabilities contrary to the evidence on records.
6. That, the trial tribunal erred in law to declare the 1st, 2nd and 8th respondents as lawful owners of the suit land while their

testimonies are tainted with full of inconsistencies and contradictions.

7. That, the appellant's evidence was neither considered nor accorded any weight.
8. That, the trial tribunal erred in law and facts for failing to give any expert verdict (judgment) regarding the 4th and 5th respondents thereby leaving out their status undetermined vis-à-vis the contested suit land

Submitting in support of the appeal, Mr. Constantine Ramadhan who represented the appellant argued the 1st and 3rd grounds together and undertook to argue the 2nd and 4th grounds separately.

With regard to the 1st and 3rd grounds of appeal, Counsel for the appellant argued that the appellant proved the ownership of the disputed land. Learned Counsel took through the court the evidence of the appellant and his witness and concluded that the Tribunal did not consider the appellant's case and gave insufficient reasons to deny him of his right. He also argued that the 3rd and 6th respondents gave hearsay evidence. Further that the 2nd and 8th respondents were wrongly declared owners.

In fine, the learned Counsel for appellant contended that the evidence before the Tribunal was not well evaluated and analysed.

In his submission, Mr. Masanja Ngofilo, learned Counsel for the respondents refuted the submissions on part of the applicant and urged

the court to find that the appellant had failed to prove his claims against the respondents and that the decision of the trial Tribunal is impeccable.

In his rejoinder, the learned Counsel for the appellant re-iterated almost what he had submitted in chief.

I have meticulously considered the record of the trial Tribunal, the grounds of appeal and the submission in support and in opposition. I am satisfied that on the materials available, the appeal has no any legal basis.

In the first place, there is no dispute that the appellant was strange to the truth in his averment under paragraph 6 (ii) of his application that, the applicant acquired the suit land way back in 1967 having been purchased it from one Simon Nguno at a price of Tshs. 350/= by oral agreement and in 2017, the seller confirmed in writing. This is partly because, the appellant admitted in his evidence that it is his father, the late Enos Gakuba who bought the suit land and that he, the appellant was not present when the deceased was buying the suit land. This evidence was confirmed by Simon Nguno (PW 2), the witness he himself called. And partly because the appellant had testified that the respondents were owners of the adjacent suit lands but overstepped the boundaries and entered his land. In the absence of the proof of exact boundaries the respondents were alleged to have overstepped, it was difficult to prove the encroachment.

Second, the evidence is clear that the appellant decided to raise the claim against the respondents a long time after the owner of the suit land had died. The respondents were clear that during the life time of the deceased who is the appellant's father, no any dispute arose. This means that land dispute between the appellant and the respondents was ill-motivated and fancy. In other words, I agree with learned Counsel for the respondents that the appellant had failed to prove his claims against the respondents on balance of probabilities. To that extent means that there is no material placed before this court upon which this court can fault the judgment of the District Land and Housing Tribunal as the District Land and Housing Tribunal based its decision on the pleadings and the evidence before it.

In the upshot and for the given reasons, the appeal is dismissed with costs for want of merit.


W.P. Dyansobera
Judge
4.8.2022

This judgment is delivered under my hand and the seal of this Court this 4th day of August, 2022 in the presence of the 3rd respondent but in the absence of the appellant and the rest respondents.




W.P. Dyansobera
Judge