

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO.61 OF 2021

*(Arising from the decision of Maswa District Land and Housing Tribunal in Land
Appl. No. 87 of 2016)*

GODFREY MASANJA (*Administrator of the
estate of MATHIAS MILOLA*).....**APPELLANT**

VERSUS

GEORGIA BENEDICTO (*Administrator of
the Estate of BENEDICTO SILILO*)**RESPONDENT**

JUDGMENT

30th May & 1st July 2022

MKWIZU, J:

The center of the dispute in this appeal is the ownership of a landed property registered as plot No 22 Block B located at Lubala -Nyalikungu urban area within Maswa District in Simiyu Region. The respondent, the daughter and administrator of the estate of the late Benedicto Sililo, (original claimants) asserted that the suit plot was allocated to her father the late Benedicto Sililo by the land authorities in the year 1975. That in 2016, she leant of the appellants claim that the suit plot belongs to Mathias Milola's estate of which appellant is administering and has since then receiving rent from the suit house without any justification and he has refused to vacate the suit premises despite several requests. It is at this point that respondent approached the DLHT via Land Application No 85 of 2016 seeking inter alia to a declaration that the suit premise is the property of late Benedicto Sililo and that appellant be declared a trespasser. A letter from the Executive Director Maswa District Council

dated 22/5/2020 (exhibit P3) was relied upon by the respondent to support her claim.

Appellant strongly opposed the claim. He, like the respondent, in his capacity as an administrator of Mathias Milola said the suit premise belongs to his Late father Mathia Milola acquired through a purchase from one Suzan Lugwisha at a purchase price of 1500,000/=. Letter offers (exhibit DW5) in the name of the deceased issued in 2003, sale contract dated 27/3/2002 (exhibit Dw2 and Dw3) between Mathia Milola and Sazan Lugwisha, were tended in support of the appellant's assertion.

The tribunal heard the parties and their witnesses. It ruled in favour of the respondent. It declared the applicant (now respondent) lawful owner of the suit premises and the appellant (original respondent) was declared trespasser. Appellant is aggrieved. He has filed the present appeal on four grounds of appeal that:

- 1. The Hon trial tribunal erred in both law and fact in holding that the plot in dispute belonged to the late Benedicto Sililo against the weight of evidence on the records*
- 2. The Hon trial tribunal erred in both law and fact in shifting the burden of proof to the appellant*
- 3. The Hon trial tribunal erred in both law and fact in deciding in favour of the respondent against the weight of evidence*
- 4. The Hon trial tribunal erred in both law and fact for failure to correctly consider and evaluate the evidence on the records and subsequently reaching into a wrong finding.*

At the hearing, appellant had the services of Mr. Elias Hezron learned advocate while Emmanuel Buttamo advocated appeared for the

respondent. Mr. Hezron began his submissions by abandoning ground 2 of the appeal and combining grounds 1 and 3 together.

Arguing the combined grounds 1 and 3, Mr. Hezron submitted that; the trial tribunal failed to properly consider the evidence resulting into an erroneous decision. He said ownership of registered land is established through documents, either a title deed or Letters of the offer. In this matter, he argued, a letter offer issued to the late Mathias Milola supported by the sale agreement exhibit DW2 and Dw3 showing that Mathias acquired the land through purchase from one Suzan Lugwisha were admitted without objection. Mr. Hezron was of the view that, the letter from the DED (Exhibit P2) dated 22/5/2020 obtained after the filing of the suit before the tribunal could not at any rate overweight the Letter offer tendered by the appellant.

He added that, the sale transaction was concluded in the year 2000, and the appellant remained in uninterrupted enjoyment of the suit land to 2016 which is beyond 12-years period. He was in a way wondering why the respondent dispute was filed after the death of both the buyer, Mathias Milola, and the Seller, Suzan Lugwisha.

Regarding ground four, Mr. Hezron urged the court to reevaluate the evidence on the records and come to its own decision if need be. His contention on this point was that the trial tribunals had wrongly grounded their decision in exhibit DW4 a letter of notification to pay land rent of the year 1999. His contention was that the requirement to prove whether Suzan Lugwisha paid land rent or not was baseless for the Land authority had already transferred the ownership and that could only be possible on payment of the requisite fees. He insisted that the fact that the appellant

had paid all the land rent from 2003 as indicated on page 59 of the proceedings remained uncontroverted. He was of the view that the case of **NBC V Walter T. Zurn** (1998) TLR 380 cited by the trial tribunal is distinguishable for it was dealing with the transfer of a title without notification to the commissioner for land which is not the case here. He finally prayed for the court to allow the appeal with costs.

In response to the appeal, Mr. Buttamo submitted that, the suit house has never been the property of the late Mathias Milalo. He said, the suit premise was allocated to the late Benedictoi Salilo in 1975 who died in 1997 and his estate remained unadministered to 2016 when respondent was appointed administrator.

He said, Zuzan Lugwisha had no title over the suit property and therefore could not pass one to the alleged buyer. He on this relied on the decision of **Paschal Maganga v Kilinga Mbarika**, Civil Appeal No 240 of 2007. That, Exhibit P3 a letter from the DED Maswa the custodian of all documents relating to land proves that the land belongs to Benedicto Salilo and that exhibit P4 had nothing to do with the ownership of the suit land stressing that the evidence on the purchase of the suit land is contradictory. While oral evidence says the sale was at 1500,000, the documentary evidence tendered points to 1300,000/= as a purchase price paid and there is no proof of rent payment except for one month only.

Referring to section 67 read together with section 68 of the Land Act, Mr. Buttamo submitted that for a valid transfer of the deceased registered land, filing in of FORM NO LR 20 and LR 22 by the legal administrator is mandatory under Regulations 117 of 1954. He stressed that the selling of

the suit land in 2002 was illegal. He invited this court to reevaluate the evidence on the records.

When asked by the court to state whether it was proper for the tribunal to determine the dispute without involving the Land Authorities, Mr. Buttamo quickly responded that it was not. The non-involvement of the land authority in the circumstances of this case has brought about confusion. He on this urged the court to remit the file to the trial tribunal for taking of additional evidence if need be.

In rejoinder, Mr. Hezron relied on the case of **Samson Ndawanya V Theresia Thomas Madaha**, Civil Appeal No 45 of 2017 contending that the burden of proof is always on the plaintiff, and it never shifts until the party responsible discharge its duty. He said the plaintiff is the one to blame for the failure to call the land officer. He wondered why the land offer should be involved while the appellant has all the documents proving ownership of the suit property.

On the pointed-out contradiction, the appellant's counsel said, the fact that the purchase price was paid in two installments, the first installment in writing while the second installment before the magistrate remained unchallenged. And to him, section 67 of the land Act, is not applicable in the matter as the seller was not a legal representative but the owner of the suit land. He insisted that the appellant should be declared owner under the doctrine of adverse possession.

I have with enthusiasm evaluated the matter at hand plus the evidence adduced by the parties at the trial tribunal. The dispute is, as was at the trial tribunal on the ownership of the suit property described as Plot No 22 Block B Nyalikungu urban area in Maswa District Simiyu Region. As

exposed above parties are legal representatives, pegging their reliance on the information /documents by the land authorities.

It is on the records that a letter offer issued in 2003 and other rent claim forms by the land authorities were among others relied upon by the appellant while the respondent trust was on the letter also issued by the DED office at Maswa dated 22/5/2020 stating that the property in question was in 1975 allocated to his late father Benedicto Sililo. I have carefully read the letter. It reads:

“HALMASHAURI YA WILAYA YA MASWA

(Barua zote ziandikwe kwa Mkurugenzi Mtendaji)

Telegram: “MSW”
170,

S.L.P

Telephone: 0282750271

MASWA.

Fax: 0282750376

SIMIYU.

Kumb. Na. MDC/D.30/33/VOL.II/24

22/05/2020

***GEORGIA BENEDICTO
KATA YA NYALIKUNGU,
S.L.P 170,
MASWA – SIMIYU***

***YAH: KUILALAMIKIA OFISI YA AFISA ARDHI WILAYA
MASWA KUKATAA KUNIPA NAKALA YA HATI YA KIWANJA
NA 22 KITALU “B” NYALIKUNGU KWA AJILI YA USHAHIDI
WANGU BARAZA LA ARDHI NA NYUMBA (W) KAMA
KIELELEZO.***

***Tafadhali rejea barua yako ya tarehe 10.05.2020 kuhusiana na
somo tajwa hapo juu.***

Ninapenda kukujulisha kuwa kiwanja hiki kilimilikishwa Ndugu **Benedicto Sirila** tarehe **19/05/1975**, ambaye kwa sasa ni marehemu. Baada ya marehemu kufariki mlitakiwa kukaa kikao cha ukoo na kuleta nyaraka za usimamizi wa mirathi kwenye ofisi ya Ardhi.

Lakini cha kushangaza kiwanja hiki wameteuliwa wasimamizi wawili (2) wa mirathi kwa nyakati tofauti na mahakama ya Mwanzo Nyalikungu Wilaya ya Maswa.

Shauri la **Mirathi No. 18/2016** la Mahakama tajwa hapo juu lilimteua **Bi. Georgia Benedicto** kuwa msimamizi wa mirathi kuhusiana na kiwanja tajwa hapo juu.

Aidha, Mahakama ya Mwanzo Nyalikungu kupitia Shauri la **Mirathi No. 30/2016** ilimteua **Ndugu Godfrey Masanja Mathias** kuwa msimamizi wa mirathi kuhusiana na kiwanja tajwa hapo juu.

Kutokana na utata huo wa usimamizi wa mirathi nashauri wewe na urudi Mahakama ya Mwanzo Nyalikungu kwa ajili ya maelekezo Zaidi au wewe msimamizi wa mirathi ufungue kesi ya madai ya kupinga uteuzi wa msimamizi wa mirathi **Ndugu Godfrey Masanja Mathias**.

Pia ofisi yangu haiwezi kukupatia barua ya toleo ya marehemu kwa kuwa siyo jina lako na unachotakiwa ni kukamilisha taratibu zote za mirathi mahakamani na kama utapewa ushindi kwenye hukumu hiyo.

Ndiyo ulete ili tuweze kuanza taratibu za kukamilisha kama msimamizi wa mirathi.

Nakutakia utekelezaji mwema.

Joyce T. Ndunguru

KAIMU MKURUGENZI MTENDAJI

HALMASHAURI YA WILAYA MASWA”

It is this very letter that the tribunal banked upon in finding for the respondent without enquiring from the land authority on the legality of

ownership by the alleged Benedicto Sililo or any other person and any documents establishing the said ownership. My perusal of the records has failed to find any documentary evidence establishing ownership of the two claimed owners, that is Benedictor Sililo and Suzan Lugwisha

I am aware that the plaintiff bears the burden of proof as submitted by the appellant's counsel, but the court is, for justice's sake mandated to summon any material witness for the end of justice. Given the clue of ownership of the suit premise brought by the letter (exhibit P3) above and having no cogent proof of ownership brought by either party, the trial tribunal was, in my view, entitled to seek clarification of title over the suit property from its first allocation to the last registered owner of any and its legality from the land officer. This process was avoided by the tribunal chairperson leaving the central issue legitimately unresolved.

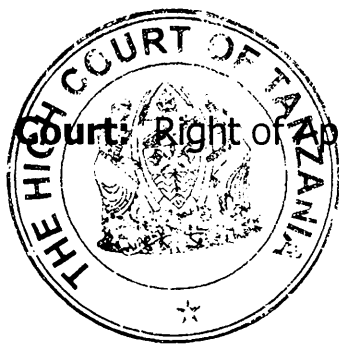
I am aware that this court has powers under section 42 of the Land Disputes Courts Act, Cap 216 [R.E 2019] to direct the tribunal for the taking of additional evidence. The section is couched thus:


*"42. 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."*(emphasis added)

It is for this reason, under sections 42 and 43 of the Land Disputes Courts Act, invoke my revisional powers and set aside the judgment of the

tribunal and the resultant decree. The file is thus remitted back to the tribunal for it to call the Land Authority from Maswa Land Offices to, with documentary evidence, illuminate the ownership of the suit property from its first registration to the current registered owner if any. The trial Tribunal should thereafter proceed to compose a fresh judgment that will take into account the additional evidence. Since no party is to blame for the disorder discussed above, I make no order as to costs.

ATED at **SHINYANGA** this 1st day of July, 2022.




E.Y. Mkwizu
Judge
1/7/2022

Court: Right of Appeal explained.


E.Y. Mkwizu
Judge
1/7/2022