

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

TANGA DISTRICT REGISTRY

AT TANGA

LAND APPEAL NO 13 OF 2020

**(Arising from the decision of the District Land and Housing Tribunal for
TANGA in Land Application No. 09 of 2018)**

IBRAHIM RAJAB MOHAMED.....APPELLANT

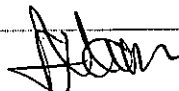
VERSUS

KADODO SAIDI.....RESPONDENT

JUDGMENT

DATE OF JUDGMENT- 04/03/2022

The dispute is over 2 acres of land situate at Maweni Village, Mkuzi Ward in Muheza District within Tanga Region, herein referred to as "the disputed land". The Applicant filed a case at the Trial Tribunal claiming for the ownership of the 2 acres of land, which was trespassed by the Respondent herein in January 2017. He claims that he bought the land from one Tatu Hamisi and Egenesi Hamisi on 17th October 2007, and his mother one Mariam Sekievu has been occupying and using the land undisturbed since 2007 and has planted orange trees. The respondent on the other hand claims



that the Appellant bought the land from the people who did not have a good title as the land in dispute belongs to the estate of the Late Mwakizenga Saidi. The Chairperson and the Assessors of the District Land and Housing Tribunal unanimously held that the land belongs to the estate of the Late Mwakizenga Saidi and that only his beneficiaries would be entitled to a share of it.

Aggrieved by the decision of the District Land and Housing Tribunal, the Appellant Ibrahim Rajabu Mohamed filed an appeal contain the following grounds:

1. the case was not res judicata.
2. the Chairperson of the Trial Tribunal failed to analyze the evidence of the parties and their respective witnesses.
3. the Chairperson misdirected herself as she failed to address herself on the dispute brought before her by the appellant.
4. the Chairperson of the Trial Tribunal introduced extraneous matters to the case without giving the parties the opportunity to address the Tribunal on those issues.

By the order of the Court, the Appeal was determined by written submissions, and parties filed their respective submissions on time.

On the first ground, I agree that the issue of res judicata was raised Suo moto by the Chairperson of the Trial Tribunal and the Chairperson did not give the parties a chance to address her on it. At page 4. of the typed Judgment of the Trial Tribunal, the Chairperson only said, and I quote:

“From evidence adduced by the applicant, it is very clear that there was a case over the land in dispute before the ward tribunal, a case which the respondent was handed over that farm. Evidence on record shows that he was aware of that case as well as the appeal which was filed before this tribunal as his mother informed him that case, he decided to file this case as that farm is his.”

The Trial Tribunal did not mention the number of cases at the Ward Tribunal, which was determined, she did not even mention the name of the Tribunal and did not mention the parties litigating before the Ward Tribunal. She did not say which piece of land was

at issue before the Ward Tribunal. She simply said there was a case at the Trial Tribunal over the same land, and that the land was already handed over to the respondent by the appellant's mother.

To find out whether there was a case decided by the Ward Tribunal, the High Court ordered the parties to furnish the Court with the Judgement of the Ward Tribunal. The respondent furnished to the Court a Judgment of the District Land and Housing Tribunal for Tanga, Land Appeal No. 19 of 2018, which was an appeal from the decision of Mkuzi Ward Tribunal in Land Case No. 45 of 2017. The parties in the case were Kadodo Sekievu as the Appellant and Kadodo Saidi as the respondent. The District Land and Housing Tribunal in Land Appeal No. 19 of 2018 quashed the proceedings and judgement of Mkuzi Ward Tribunal for two reasons, one was that Kadodo Sekievu was wrongly sued as the property was not of Kadodo Sekievu but her son one Ibrahim Rajabu, and secondly, Kadodo Saidi did not have powers to sue for the estate of the late Mwakizenga Saidi as she did not have Letters of Administration to sue for the estate of the late Mwakizenga Saidi.

The Parties were ordered to file fresh application before a proper forum.

Since the decisions of Mkuzi Ward Tribunal was quashed and set aside, it means there was no case decided by any Tribunal or Court, and thus the suit or application before the District Land Housing Tribunal was not res judicata.

Regarding the 2nd and 3rd grounds of appeal which were argued together by the appellant, that the chairperson failed to evaluate the evidence and failed to determine the dispute before it, the appellant argues that the appellant evidence before the Trial Tribunal is that he bought the land in 2007, and that 10 years later i.e., in 2017, the respondent trespassed the land. The appellant submits that the Chairperson of the Trial Tribunal ought to have investigated the sale agreements between the appellant and the vendors to see if they had good title to pass it over to the appellant, and if the vendors were not possessed with the good title, the Chairperson of the Trial Tribunal ought to have ordered a refund of the purchase price.

The issue was whether the Vendors Tatu Hamisi and Egness Hamisi had good title to pass over to the Appellant. The Appellant purchased the land from Tatu Hamisi and Egness Hamisi in 2007. The respondent claims that the appellant cannot buy this piece of land from Tatu and Egness as the land belongs to the Late Mwakizenga, who is now the deceased. The Appellant who testified as PW1 said he bought the land in 2007 and paid Tshs 200,000. He involved the Village Government when purchasing the land, the Sale Agreement was admitted as Exhibit P1. The Sale Agreement was entered in the presence of the witnesses who are the residence of the Village and had the stamp and signature of Afisa Mtendaji wa Kijiji. The Appellant also said, both the Vendors have passed away, and so they could not come to Court to testify. However, the issue is not whether he purchased the land from the Vendors, the issues is whether the vendors had good title to pass it over to the appellant, in other words, whether the vendors were the owners of the suit land, or the land belonged to the late Mwakizenga Saidi as alleged by the respondent. To support his case, the Appellant brought Fatuma Hussein Kibaja, who said one

of the Vendor Egness Saidi was her mother, and the land she sold to the appellant was her farm, she, thus, confirmed that her mother owned the farm and had sold it to the Appellant in 2007. In cross examination, this witness said, her mother inherited the farm from his grandfather one Hamisi Suleiman, and Mwakizenga was her grandmother, but Mwakizenga was not the owner of the farm. The Appellant also brought Juma Omari as PW3. He also confirmed that the land was the property of Tatu and Agness as they were given the land by their late father the late Hamisi Suleiman. He also confirmed that Tatu and Egness sold the land to the Appellant in 2007.

Thus, the burden now shifted onto the respondent to establish whether the land belonged to her grandmother one Mwakizenga Saidi. In her case, the respondent simply said, she was cultivating the land with her late grandmother the late Mwakizenga, and when she was cross examined, she said she did not have papers to show that the land was the property of her late grandmother Mwakizenga. The respondent brought as the witness one Michael Hiza Mkuu. This witness simply said the land belongs to the

respondent; he did not even say that the land belongs to Mwakizenga.

The Appellant says he bought the land in dispute from the owners, who confirmed before the Village that the land belongs to them and has been using the land since he bought it in 2007. He planted orange trees and has been harvesting. His mother resides on the land. Originally, the land belonged to Mzee Hamisi, and had either given the land to his daughters or his daughters have inherited it. Mzee Hamisi, the vendors' father died since 1950, when the vendors were still young ladies, and have been using the land until they got old and decided to sell the land to the Appellant.

I have read the entire records, and party's written submissions. I agree that parties herein are related. I also agree that the respondent had a dispute with the Appellant's mother one Kadodo Sekievu, but that judgment was quashed and set aside. I also agree that the Sale between Tatu and Egness and the Appellant was witnessed by the Village Council and the Village Council had confirmed that indeed Tatu and Egness were the owners of the land in dispute and had good title to pass it over to the Appellant.

The respondent had the burden of proving that the land belongs to her late grandmother, she was not able to discharge the burden. If, she was able to prove that the land belonged to her grandmother, which she was not able to, she was not clothed with legal power to sue or claim for the land for which she did not have letters of administration to administer it. I reject the submissions of the respondent and I hold that the evidence of the respondent, that of herself, and her two witnesses was not to be believed, as she could not even establish the title of her grandmother over the land in dispute.

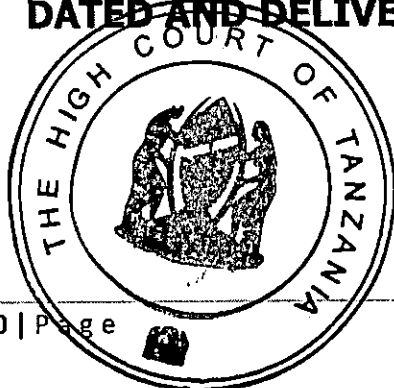
The evidence of the appellant was watertight, not only that he was able to give proof that he bought the land from the real owners, and the agreement was witnessed by Village Land Council who confirmed that Tatu and Egness were the real owners of the land in dispute but also he was in long use and occupation of the land. The Court would always believe and give high credence to the involvement of the Village Land Council on issues of land ownership in the villages, as not only the Village Council is vested with powers to administer lands in the villages but also is composed with people

of wisdom, and people with the knowledge of the history of the land, otherwise we shall be inviting chaos and misunderstanding between families in the villages.

I also do not agree with the submission of respondent when he submits that the evidence of the witnesses of the Appellant were contradictory. They all testified that the land belongs to the Appellant who bought it from Egness and Tatu. Tatu and Egness inherited or were given the land by their late father who died since 1950. Tatu and Egness have used the land from the time their father died, until the day they sold it over to the Appellant.

For the above stated reasons, this appeal is meritorious, and it is hereby allowed. The decision made by the District Land and Housing Tribunal in Land Application No. 09 of 2018 is hereby quashed and set aside. The land in dispute belongs to Ibrahim Rajab Mohamed, the appellant herein. Appeal allowed with costs.

DATED AND DELIVERED AT TANGA THIS 04TH DAY OF MARCH



2022
[Signature]
(L MANSOOR)
JUDGE
04TH MARCH 2022