

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MWANZA SUB-REGISTRY)**

AT MWANZA

MISC. LAND CASE APPEAL NO. 3 OF 2022

*(From the Decision of the District Land and Housing Tribunal of Geita District at Geita in Land Case
Appeal No. 30 of 2020. Original Ward Tribunal of Ngoma Ward in Application No. 03 of 2019)*

CHRISTINA BONIPHACEAPPELLANT

VERSUS

MASALU KAZINZA.....1ST RESPONDENT

MASALU MISUNGWI.....2ND RESPONDENT

AGNES DAUD.....3RD RESPONDENT

MARIA CLEMENT.....4TH RESPONDENT

JUDGMENT

22nd June, & 16th August, 2022

DYANSOBERA, J.:

The present appeal has been filed assailing the judgment passed by the District Land and Housing Tribunal for Geita at Geita on 8th October, 2021 dismissing the appellant's appeal with costs.

According to the petition of appeal filed by the appellant on 7th December, 2021, the appellant has raised the following grounds of appeal;

1. That the District Land and Housing Tribunal erred in both law and fact for failure to recognize that the disputed land is among the deceased's properties as appears in primary court form No. 5 namely "*Orodha ya mali za marehemu*"
2. That the District land and Housing Tribunal erred in both law and fact by blessing the illegal sales transaction of the said disputed Land, the said sale transaction were not witnessed by neither of the any family members like wife nor any other witness on the seller's side.
3. That the District Land and Housing Tribunal erred in both law and fact for failure to recognize in its findings that the sale agreement presented before the Geita District Land and Housing Tribunal by the Respondents were the forged and cooked one as each document (paper) contains different hand writings and the official stamp was endorsed very recent while previously the same documents contain no official stamp.

Before me, the appellant appeared in person, unrepresented while the respondent's defaulted appearance.

Briefly, the facts of the case are the following. The appellant filed Land Case No. 3 of 2019 before the Ward Tribunal of Ngoma claiming

the suit land allegedly left behind by her late father Boniphace Sanyenge. The claims land dispute was directed against the following nine defendants; Masorwa Misungwi, Masalu Kazinza, Salome James, Maria Clementi, Agness Daud, Paschal Luponya, Theresa Jeremiah, Ndugute Migeka and Masalu Misungwi. The appellant claimed that the said defendants were owning and using the suit land without involving the family members. She contended that after the death of owner it was agreed that the buyers be compensated and release the said land or else, the buyers be permitted to use the land for five years after which they would return the same suit land back to the deceased's family. On their part, the defendants denied the claims and in particular, the present respondents, proved orally and by documentary evidence to have bought the suit land from the late Boniphace Sanyenge.

The trial Ward Tribunal was satisfied that the appellant had failed to prove on balance of probabilities that the suit land belonged to the appellant, rather, it found the four respondents having proved to be the rightful owners of their respective pieces of land.

The appellant lost her appeal before the District Land and Housing Tribunal. In other words, the decision of the Ward Tribunal was endorsed.

Arguing in support of the appeal, the appellant told this court that there were fourteen people who were contesting ownership but had no exhibits. She told this court that she had exhibits but the same were gutted by fire which burnt their house. She asserted that the VEO refused to bring those documents but then they said that they went missing. The appellant maintained that no family member was involved in the sale and they are not prepared to recognise the sale agreement which did not involve the family members. She further asserted that their father could not recognise the sale which did not involve the members of the family as they believe their late father could not sell the land without involving the members of the family. She also argued that their father was a drunkard.

I have taken into account the appellant's submission in support of the appeal and the evidence that was given by the parties and their witnesses and recorded by the trial Tribunal. I have equally considered the petition of appeal and the reply to petition of appeal.

As far as the first ground of appeal is concerned it was amply proved that the deceased had sold the respective pieces of land to the respondents. The evidence of Shaban Ally, the ten cells leader was clear on this. According to him, the suit land belonged to the late Sanyenge

Magige. After his death, the family members filed a caveat to prevent it from being sold. Thereafter, his son Boniphace Sanyenge started selling portions of the said land. Both the cells leader and Mussa Daud then then Kitongoji Chairman, declined to approve the sale but when the late Boniphace Sanyenge was taken to court by the buyers, the court made a finding that the said Boniphace had sold his property that he legally owned it. The leaders then approved the sales.

Further, the Ward Tribunal was, upon hearing the case and visiting the locus in quo, satisfied that all the respondents were in the suit but it was the respondents only who had proved ownership by documentary evidence and the Irunda village had approved the sale. The argument that the disputed land was among the deceased's properties that appeared in a primary court form No. 5, namely '*orodha ya mali za marehemu*' was of no assistance to the appellant as the suit land had been sold by the very deceased who lawfully owned it. The suit land was, no longer a probate matter as the property in the land had already passed to the buyers, the respondents in particular.

With respect to the second ground of appeal, it was amply proved that the sale was not only blessed by both the trial Tribunal and the

District Land and Housing Tribunal but also by the Irunda village leadership as evidenced by PW 2. It proved to the satisfaction of the lower Tribunals that the 1st respondent had legally bought the suit land from the late Boniphace Sanyenge on 13.8.2008 and on 20.12.2008. The 2nd respondent proved that he bought the suit land from the same Boniphace on 6.8.2005, while the 3rd respondent bought it from the same deceased on 28.1.2006 and the 4th respondent bought hers on 28.1.2006. There was documentary evidence to prove this oral evidence.

As to the argument that no family member ever witnessed the sale transaction, it was sufficiently proved that by the time the sale was being made deceased was living alone. This is clear from the evidence of the appellant that at the time the sale transaction was taking place, the deceased Boniphace Sanyenge was living alone and got assistance from the village mates. The same appellant admitted that one can sell his property without involving family members if he is living alone.

This second ground lacks merit.

As regards the 3rd ground of appeal, the argument that the documents presented by the respondents before the Tribunal were a forgery is not borne out by the record. There is nowhere the appellant

challenged those documents. After all, this argument is but an afterthought as it was not raised on the first appeal before the District Land and Housing Tribunal.

Besides, this court being a second appellate court cannot readily interfere with the concurrent findings of fact made by the lower tribunals. This is particularly so because, the Ward Tribunal and the District Land and Housing Tribunal were satisfied that the appellant failed to prove her claims as per law requires. The Ward Tribunal saw and heard the witnesses testifying, it observed and assessed their demeanour. It was satisfied that the respondent gave more convincing evidence which contained probable truth. The District Land and Housing Tribunal concurred with such factual finding of the trial Tribunal. There is no dispute that the case was based on the demeanour and credibility of witnesses, the dominion of the trial Tribunal.

Insisting on this aspect, the Court of Appeal in the case of **Alli Abdallah Rajab v. Saada Abdallha Rajab and others** [1994] TLR 132, held:-

- (i) Where a case is essentially one of fact, in the absence of any indication that the trial court failed to take some material or

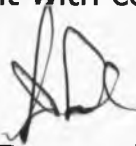
circumstances into account it is improper for the appellate court to say that the trial court has come to an erroneous conclusion

- (ii) Where the decision of a case is wholly based on the credibility of the witnesses then it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcript of the record.

With respect, that is the legal position. There is no suggestion or indication that the trial Tribunal failed to take some material point or circumstances into account, or omitted to consider or had misconstrued some material evidence or had acted on a wrong principle or had erred in its approach to evaluating evidence.

In the end result and for the reasons stated, I find this appeal devoid of any merit and dismiss it with costs to the respondents.

Order accordingly.



W.P. Dyansobera
Judge
16.8.2022

This judgment is delivered under my hand and the seal of this Court this 16th day of August, 2022 in the presence of the appellant and the respondents.

Rights of appeal to the Court of Appeal are fully explained.



W.P. Dyansobera
Judge