

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. LAND APPEAL NO. 11 OF 2022

(Arising from District Land and Housing Tribunal at Kondoa for Kondoa, Land Appeal
No. 44 of 2021, Originated from Serya Ward Tribunal Case No. 6 of 2020)

BI. KIBIBI MWINYIPEMBE APPELLANT

VERSUS

SUDI MOHAMED KAMBAKATI RESPONDENT

25/7/2022 & 22/8/2022

JUDGMENT

MASAJU, J

The Appellant, Bi. Kibibi Mwinyipembe, successfully sued the Respondent, Sudi Mohamed Kambakati, in Serya Ward Tribunal Kondoa. Aggrieved by the decision, the Respondent successfully appeal to the District Land and Housing Tribunal for Kondoa at Kondoa, hence the appeal in the Court.

The Appellant's Memorandum of Appeal is made up of four (4) grounds of appeal thus;

"1. That the District Land and Housing Tribunal erred in law and fact based on the weak contract entered 2006 while the land in dispute was given to him on 1995, this shows that there is fraud, then the contract doesn't show for how long the land in dispute will sustain toward the Respondent.

2. *That the Ward Tribunal erred in law and fact basing on the weak contract that the Appellant entered into contract without knowing what is stated on that contract simply because she doesn't know how to read and write also she is too old.*
3. *That the Ward Tribunal erred in law for being bias on deciding the matter.*
4. *That, the Ward Tribunal erred in law and fact when it proceeded with the hearing and determination of the matter in favour of the Respondent without considering the strong evidence adduced by the Appellant that she is the legal owner of the disputed land until the Respondent being given to only for doing business."*

The Appellant prayed the Court to allow the appeal with costs.

When the appeal was heard in the Court on the 25th day of July, 2022 both parties appeared in persons and prayed to adopt the Memorandum of Appeal and the Reply to the Memorandum of Appeal to form the submissions in support of, and against the appeal in the Court.

In the trial Tribunal, the Appellant alleged to have leased the land to the Respondent in the year 1995 for the Respondent to build a Milling Machine. That, the Respondent would hand over the land in dispute any time the Appellant would want it back to her possession. That, the Respondent started building a residential house, that is when the Appellant unsuccessfully requested the Respondent to hand back the land in dispute.

The Respondent alleged that the Appellant gave him the land in dispute as a gift and he gave her TZS 1,000/= as an amount for thanking her back. That, in the year 2006 the Appellant approached the Respondent requesting him to enter their agreement in written form before the

government leaders. That, they put their agreement into writing before the Village Executive Officer and other witnesses.

The trial Tribunal ordered the Respondent to tender the alleged documentary evidence but the original record of proceedings shows that the Respondent failed to tender the same as proof for his allegations. Thus, the trial Tribunal entered judgment in favour of the Appellant after considering the evidence adduced by both parties before it.

When considering the appeal by the Respondent, the District Land and Housing Tribunal for Kondoa gave out her decision in favour of the Respondent mainly basing on the documentary evidence allegedly tendered before the trial Tribunal. But indeed, the documentary evidence was never tendered in the trial Tribunal. The witnesses who allegedly witnessed the alleged written contract testified in the trial Tribunal in favour of the Appellant that the Appellant only leased the land in dispute to the Respondent. The witness Haji Shabani, was questioned by the assessors thus;

" 2. Je aliazimwa au alipewa bila ya kurejesha

- Aliazimwa"

This shows clearly that the Appellant only leased the land in dispute to the Respondent.

The Respondent had no any other evidence to prove his allegations. Thus, the trial Tribunal rightly decided the matter on the balance of probability as required by the law. The District Land and Housing Tribunal wrongly used a documentary evidence, which was never tendered in the trial Tribunal as part of the evidence in determination of the 1st appeal. Thus, the trial tribunal so rightly decided that the suitland belonged to the Appellant. The meritorious appeal is hereby allowed with costs accordingly. The judgment

and Decree of the District Land and Housing Tribunal for Kondoia in Land Appeal No. 44 of 2021 are hereby quashed and set aside accordingly.



A handwritten signature in blue ink, appearing to read "George M. Masaju", is written over a horizontal line.

GEORGE M. MASAJU

JUDGE

22/8/2022