

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 125 OF 2021

*(Arising from Decision of the District Land and Housing Tribunal for Mara at
Musoma in Land Appeal No. 190 of 2020)*

MWANAIIDI BURUDE..... APPELLANT

VERSUS

PASKALIA EPHRAM MAGESA RESPONDENT

JUDGMENT

1st & 13th September, 2022.

A. A. MBAGWA J.:

This is a second appeal from the District Land and Housing Tribunal for Mara. The respondent Paskalia Ephram Magesa instituted a land case in the Ward Tribunal for Mwisenge against the appellant Mwanaidi Burude. The disputed land is located at unsurveyed area within the municipality of Musoma. Paskalia Ephram Magesa claims that the appellant trespassed into her piece of land and planted trees therein. Paskalia stated that she acquired the land in dispute from her late father one Ephram Magesa who bought it from Lubanda Ludala. She called other witnesses namely, Fredrick Kenyata, Emerinda Ephram Magesa and Elena Lubanda to support her case. All

witnesses testified that the disputed land which is also claimed by appellant, Mwanaidi Burude belongs to the respondent, Paskalia Ephram Magesa.

Elena Lubanda, the wife of the late Lubanda Ludala told the Ward Tribunal that the disputed land belongs to the respondent. Elena stated she and her husband are the ones who sold the land to the respondent's father Ephram Magesa and the mango tree was within Magesa's land. She said that the boundaries between Ephram Magesa and Burude were pawpaw trees and michongoma but at the time she was testifying these boundaries had been removed.

On the contrary, the appellant, Mwanaidi Burude claims ownership over the suit premises. Mwanaidi also called Nyamakale Kilemeji and Burude Ndago who testified in his favour. All defence witnesses testified to the effect that Mwanaidi Burude is the lawful owner of the suit premises.

Having heard the evidence from both parties, the Ward Tribunal returned a verdict in favour of the respondent Paskalia Ephram Magesa. The Ward Tribunal ruled that the disputed piece of land belongs to the respondent. The appellant Mwanaidi Burude was not pleased by the trial Tribunal's decision. She thus appealed to the District Land and Housing Tribunal for

Mara via Land Appeal No. 190 of 2020. Her appeal, however, was unsuccessful as the appellate Chairman found the trial Tribunal's decision quite in order and consequently dismissed the appeal

Still aggrieved, the appellant has come before this court to assail the two lower Tribunals' decisions. She thus filed a petition of appeal containing five grounds as follows;

1. That the appellate Tribunal's decision is bad in the eyes of law for want of reasoning or justification for reaching at its conclusion
2. That the appellate Tribunal neither totally considered grounds of appeal raised nor evaluated evidence in record to reach its decision hence its nullity
3. That the appellate Tribunal misdirected on point of law to constitute itself as a witness contrary to the principle of visiting the locus in quo.
4. That the appellate Tribunal erred in law to declare the respondent as the owner of the disputed land in absence of strict proof thereof.
5. That the appellate Tribunal denied the appellant the right to rejoin contrary to principle of natural justice

When the appeal came up for hearing, the appellant was present in person whereas Juliana Magesa, the respondent's daughter stood for the respondent. Being lay persons, both parties had nothing useful to submit. The appellant simply adopted her grounds of appeal and prayed the court to consider them and allow her appeal. On the contrary, the respondent resisted the appeal through reply to petition of appeal.

After canvassing the record and grounds of appeal, there are three issues, in my view, worth of determination in this appeal namely,

1. Whether there is sufficient evidence to prove that the respondent is the lawful owner of the suit premises
2. Whether by visiting the locus in quo, the appellate Tribunal turned itself into being a witness
3. Whether the appellant was denied the right to rejoin contrary to the principle of natural justice.

To begin with the first issue, the respondent testified that the suit land belongs to her as she was given the same by her late father one Ephram Magesa. The respondent also called Elena Lubanda, the wife of the late Lubanda Ludala. Elena said that they are the ones who sold the said land

to Ephram Magesa in 1983 and the disputed land was part of the land which they sold to Ephram Magesa. Elena clarified that the mango tree which the appellant claims that is belongs to her was comprised in the piece of land which they sold to Ephram Magesa.

The respondent's evidence was also supported by Fredrick Kenya and Emerinda Ephram Magesa. The appellant could not procure witness who was present at the time the suit land was purchased. She simply testified that the suit land was owned by her parents. Both lower Tribunals found as a matter of fact, that the respondent is a lawful owner of the land in dispute. It is a trite law that a second appellate court is not entitled to interfere with the concurrent findings unless there are misapprehension of evidence or misapplication of principle of law. See **Peter vs. Sunday Post Ltd [1958] E. A. 424 and Jafari Mohamed vs. the Republic**, Criminal Appeal No. 112 of 2006, CAT at Dodoma. Neither of the two occurred in this case. Therefore, like the two lower Tribunals, I am of unfeigned findings that the respondent established, on balance of probabilities, that she is the lawful owner of the suit premises.

Coming to the second issue with respect to the locus in quo, it is an acceptable practice for the court to visit the locus in quo. However, this right is vested to the trial Court or Tribunal. An appellate Court or Tribunal is not enjoined to visit the locus in quo. See **Bomu Mohamedi vs Hamisi Amiri**, Civil Appeal No.99 of 2018 CAT at Tanga. Though by visiting the locus in quo, the court does not turn into being a witness as contented by the appellant, in this case the appellate Tribunal erred to visit the *locus in quo*. Nonetheless, this anomaly was not fatal as the evidence adduced before the trial Ward Tribunal is sufficient to dispose of this appeal.

With regard to the third issue, I have gone through the record of the appellate Tribunal and noted that on 01/03/2021, the appellate Tribunal made the following schedule;

1. Appellant to file WS by 15/03/2021
2. Reply on 29/03/2021
3. Rejoinder on 06/04/2021
4. Opinions on 13/04/2021

In view of the above, it goes without saying that the appellant was allowed to file her rejoinder submission on 06/04/2021. If she failed to exercise this right, it was up to her but the appellate Tribunal cannot be blamed.

On all this account, this appeal is devoid of merits. I consequently dismiss it with costs.

It is so ordered.

The right of appeal is explained.



A. A. Mbagwa

JUDGE

13/09/2022

Court: The judgment has been delivered in the presence appellant and Juliana Ephram Magesa on behalf of the respondent this 13th day of September, 2022.



A. A. Mbagwa

JUDGE

13/09/2022

