

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

MISC. LAND APPEAL NO. 54 OF 2022

*(Arising from Land Appeal No. 10/2021 of the District Land and Housing Tribunal for Kagera at Bukoba
and Originating from Civil Case No. 35 of 2020 of Bugandika Ward Tribunal)*

THEONEST ANATORY.....APPELLANT

VERSUS

EDIMUND GASPAR.....RESPONDENT

JUDGMENT

05th October & 28th October 2022

Kilekamajenga, J.

The appellant sued the respondent in the Ward Tribunal of Bugandika where he lost the case. He appealed to the District land and Housing Tribunal at Bukoba where he, again, lost the case hence this appeal. In this case, the appellant alleged to have owned the land in dispute for over 37 years before the dispute arose. He alleged that, 37 years ago, he purchased the land in dispute from the respondent at the price of Tshs. 50,000/= and continued to use it until on 19th June 2018 when he was imprisoned. When he came out of the prison on 18th December 2018, he found the respondent had demolished his house and stole the sale agreement over the land in dispute. To challenge the decision of the District Land and Housing Tribunal, the appellant coined four grounds as follows:

- 1. That the trial tribunal immensely erred in law by ordering the appellant return the land to the respondent without considering the appellant have been in possession to the land for more than 37 years, enjoying the land*



without any disturbance and have made a lot of development with the land for 37 years now.

- 2. That, the trial tribunal misdirected itself when it relied on the ownership of the land without considering how the appellant obtained the disputed land.*
- 3. That, the trial tribunal's judgment is void in law for failure to consider the appellant's evidence as well as his witness testimony.*
- 4. That, the trial tribunal erred in law and fact to decide the case against the weight of evidence.*

When defending the appeal before this court, the appellant who appeared in person without legal representation insisted that, he bought the land from the respondent about 37 years ago at the price of Tshs. 50,000/=. He fell sick and was imprisoned; after being released from prison, he found the respondent had sold the land to another person. He further alleged that, the respondent stole all the documents from his house when he was imprisoned. However, he informed the court that, he has no sale agreement between him and the respondent.

When responding to the appellant's submission, the respondent informed the court that, the appellant's allegation is a pure lie because he could not have sold the land in 1984 because he (respondent) was just 9 years old as he was born in 1975. By that time, when the appellant alleged to have bought the land, his (respondent) parents were alive and he had no ownership over the land in dispute. He further argued that, his father died in 1990 when he was in standard five. The respondent informed the court on the truth of the matter that, in 1996, he secured a loan of Tshs. 40,000/= plus an interest of Tshs. 20,000/= from the

appellant and pledged the same land as a security. The respondent paid back the loan in 2002 when he secured a job from CHICO Company. Two weeks later, the appellant was ill advised that, the loan ought to have increased hence he filed a case in the Ward Tribunal.

When rejoining, the appellant insisted that, he bought the land in 1986 at the price of Tshs. 50,000/=.


By reading the grounds of appeal, I gleaned one pertinent issue for determination; whether the appellant proved the case at the mere balance of probability that he purchased the land in dispute from the respondent. This point calls upon this court to re-evaluate the evidence adduced during the trial. In this case, the appellant's case was hinged on the appellant's testimony and one more witness thus, he purchased the disputed land from the respondent thirty seven years ago at the price of Tshs. 50,000/= and he thereafter continued to occupy and use the same. According to his testimony, on 19th June 2018, he was imprisoned and released on 18th December 2018 when he found the respondent demolished his house and stole the necessary documents including the sale agreement. Thereafter, he filed a case before the Ward Tribunal. The appellant's testimony was supported with the testimony of Remidius Francis who only stated that, the appellant purchased the land from the respondent at the price of Tshs. 50,000/= though he was not involved during the signing of the sale agreement.

On his side, the respondent was content that, the dispute ensued after he borrowed Tshs. 40,000/= from the appellant. The loan had an interest of Tshs. 20,000/= and was secured with the land in dispute. The land in dispute is measuring about 7 times 35 footsteps. The respondent did not discharge the loan facility until in 2002 when he paid back the loan the interest. The appellant was not happy with the repayment of the loan and he was ill advised, hence the dispute arose. Also, Deogratius Nestory confirmed that the respondent did not sell the land to the appellant as alleged but he borrowed some money and pledged the disputed land to cover the loan as a security. The size of the land was about 7 times 40 footsteps. Thereafter, the ward tribunal visited the locus in quo and finally decided in favour of the respondent.

The careful consideration of the appellant's evidence raises doubt on whether he actually purchased the land from the respondent. Throughout his testimony, he consistently stated that he purchased the land from the respondent thirty seven years ago. By simple calculation, the appellant alleged to have purchased the land in 1984; at that time, he purchased a land measuring 7 times 40 footsteps in the Ward of Bugandika at the price of Tshs. 50,000/=. I remain hesitant to believe whether that huge amount of money could be used to purchase such a small piece of land in 1984. Furthermore, when the respondent appeared before this court, he consistently stated that, he (respondent) was just nine years old in 1984. Hence, he could not have sold the land to the appellant while his parents were still alive. In his testimony, the respondent revealed the fact that, he

secured a loan from the appellant in 1996 and pledged the land as a security. However, there was no time limit to repay the loan. As a result, the loan was repaid in 2002 when the respondent secured an employment from CHICO Company. The appellant received the money and was later ill advised to remain in land hence the dispute arose. I find the appellant case too weak or rather a pure lie on the allegation that he purchased the land from the respondent in 1984. On the mere balance of probability, the appellant has failed to prove whether he purchased the land in dispute as alleged. Therefore, both the trial tribunal and the appellate tribunal were right in deciding in favour of the respondent. I find no merit in the appeal and dismiss it with costs. I order the appellant to vacate from the land in dispute as soon as possible. Order accordingly.


DATED at BUKOBA this 28th day of October, 2022.


Ntemi N. Kilekamajenga.
JUDGE
28/10/2022

Court:

Judgment delivered this 28th October 2022 in the presence of the parties all present in person. Right of appeal explained.




Ntemi N. Kilekamajenga.
JUDGE
28/10/2022

