

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

LAND CASE NO. 63 OF 2019

**(From the Decision of the District Land and Housing Tribunal of Iramba
District at Kiomboi in Land Application No. 28 of 2018)**

JUMA HASSANI RASHIDI.....APPELLANT

VERSUS

- 1. MONALIA MICROFINANCE LTD**
- 2. MSAKU NJIKU**
- 3. MWANAIDI NJIKU KIDEKA**
- 4. VERONIKA RASHIDI NJIKU**
- 5. ZAINABU NJIKU KIDEKA**
- 6. ABDALLA KIDEKA NJIKU**
- 7. JUMANNE RASHIDI NJIKU**
- 8. SHABANI RASHIDI**
- 9. MANGU MAKUHI**
- 10. YUDA CHARLES**
- 11. IBRAHIM PETRO**
- 12. NKUNGU MONKO**
- 13. SENGE KIDEKA**
- 14. YESAYA SHANGO**
- 15. ATHUMANI SAMWEL HUSSEIN**
- 16. SAMSON SHANGO**



DEFENDANTS

JUDGMENT

09 & 18/5/2022

KAGOMBA, J

The appellant JUMA HASSANI RASHIDI appeals against the whole of Judgment and Decree of the District Land and Housing Tribunal for Iramba at Kiomboi (the "Tribunal") made against him in Land Application No. 28 of 2018. The applicant had filed the said Land Application in the Tribunal claiming for land comprising 32 acres in Maluga village in Iramba District (the "suit land"), against the 16 respondents who were alleged to have trespassed into the suit land. He claimed to have acquired the suit land through clearance of the virgin land in the year 2000.

A half of the 16 respondents were case-shy as they did not enter appearance during trial. Those who appeared opposed the Application and adduced evidence to show that they bought their respective parcels in the suit land from the 1st and 2nd respondents. They also submitted proofs thereof to the satisfaction of the Tribunal. The Tribunal found the evidence of the appellant herein to be weak and thus proceeded to dismiss the application with costs. The Tribunal also declared the respondents to be the lawful owners of the suit land, having found them to be *bona fide* purchasers. The appellant could come to terms with this decision, hence this appeal.

The appeal is based on the following seven grounds as per the memorandum of appeal filed by the applicant:

1. That, the learned Chairman erred in law and in fact by failure to protect the long-standing occupation and peaceful use of the suit land by the appellant since 2000 to date which is over 18 years and the same fact was not denied by the respondent.
2. That, the learned Chairman erred in law and in fact by relying on the letter (Exhibit "D6") which is not genuine document and the same was not prepared and/or produced by a competent authority.
3. That, the learned Chairman erred in law and in fact by ignoring the fact that the land in dispute does not include the land alleged to be the property of the 1st and 2nd respondents' father.
4. That, the learned Chairman erred in law and in fact by holding that the appellant called two witnesses only while in reality the appellant called three witnesses who are Ramadhani Kolo Mrasi, Hadija Selemani and Iddi Rajabu.
5. That, the learned Chairman erred in law and in fact to declare all eight (8) respondents who entered appearance before the tribunal as the lawful owners of the suit land including one Yuda Charles (10th respondent) who denied to have purchased any land.
6. That, the learned Chairman erred in law and in fact to hold that the respondents are the lawful owners of the whole suit land after purchasing the same from the 1st and 2nd respondents in absence

of any sale agreement tendered at the hearing and /or served to the appellant to prove the number of acres purchased by each respondent.

7. That, the trial tribunal Chairman erred in law and in fact to refer appellant's case as Land Application No. 28 of 2016 while in reality it was filed and registered as Land Application No. 23 of 2016.

As it happened during trial, the respondents were not appearing in Court for hearing of the appeal, despite some of them being served. Others refused or ignored to receive summons once served upon them. For this reason, the hearing proceeded *ex-parte* against all the respondents, after service by publication was duly effected as per order of this Court.

On the date of *ex-parte* hearing, the appellant appeared unrepresented. Before submitting on the appeal, he notified the Court that he had already settled the matter between him and the 9th respondent, one Mangu Makuhi. He did not clarify about the type of settlement he had made.

The appellant also informed the Court that the 10th respondent, Yuda Charles, has denied being a party to the sale agreement for the suit land parcels. The appellant explained that while Yuda Charles denied entering into any sale agreement for the suit land, in the judgment of the Tribunal he was given a parcel of land, pursuant to per paragraphs (c) of the reliefs sought. The appellant did not clarify further as to who applied for those reliefs.

The appellant was able to make submission on the first ground of appeal. He told this Court that he has been occupying the suit land for 18 years, adding that the said fact has not been denied by the respondents. The appellant, being an unrepresented lay person, had that short submission to make. He prayed the Court to adopt all the grounds of appeal to form part of his submission on the appeal. This is all the appellant was able to submit, leaving the Court with a duty to examine the evidence on record in light of the grounds of appeal he filed.

From the above submission and after perusal of the proceedings and judgment of the Tribunal, the main issue for this Court to determine is whether the appeal is meritorious. In determining this issue, I am alive to the fact that this Court, being the first appellate Court, it has a duty to re-evaluate the evidence adduced before the trial Court and come up with own findings about the case.

Now, having scrutinized the evidence adduced for both sides during trial, there are weaknesses in evidence which, unless further clarified by the parties, would render justice in this matter futile.

On the appellant side, the main weakness in his evidence is that he did not establish the exact location of the suit land, which he alleges to be different from the land owned by the 1st respondent's father. Evidence on the exact location and clarification of the alleged difference is very crucial to be adduced for justice to be done.


On the side of the respondents, there are several shortfalls in the exhibits. For example, exhibit D1, Sale agreement tendered by DW2 Mangu Makuhi Lamba, is not in the record, the same applies for exhibit D2 tendered by DW4 Ibrahim Petro Mpwai. Above all some of the said sale agreements are mere photocopies not even certified by the Tribunal. Even with such agreements, it is still unclear if the land subject of the agreements is the same as the land the appellant claims to be his.

Under the above circumstances, it is this Court's finding that for justice to be better served, additional evidence, from both sides, need be taken for purpose of establishing the exact land parcel the parties dispute about as well as the owner thereof. The judgment and decree of the Tribunal would be rendered inexecutable without establishing these necessary facts.

For the above reason, and in the interest of expediency and justice, I hereby nullify the entire decision of the Tribunal. In lieu thereof and exercising the powers bestowed upon this Court under section 42 of **the Land Disputes Courts Act [Cap 216 R.E 2019]**, I order that this matter be determined by the Tribunal after taking and considering the additional evidence, as aforesaid. No order as to costs.

Dated at Dodoma this 18th day of May, 2022.




ABDI S. KAGOMBA
JUDGE