

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND APPEAL CASE NO. 46 OF 2019

[Arising from the decision of the District Land and Housing Tribunal of Dodoma at Dodoma in Land Appeal No. 63 of 2018. originating from Nzuguni Ward Tribunal in Land Case No. 244 of 2017]

STIVIN P. MAZENGO APPELLANT

VERSUS

JOSEPH JAMES MAZENGO RESPONDENT

JUDGMENT

2nd September, 2021 & 10th March, 2022

M.M. SIYANI, J.

The appellant sued the respondent at Nkonko Ward Tribunal to reclaim ownership of a piece of land located at Nzuguni. The appellant was declared owner of the suit land. The respondent appealed to the District Land and Housing Tribunal at Dodoma which reversed the decision and declared the respondent owner of the dispute land. Being aggrieved by the said decision, the appellant has preferred the instant appeal on the following grounds:

- 1. That the trial tribunal and the appellate court erred in law and fact by failure to consider the evidence of the appellant which were strong and not contradictory.*
- 2. That the appellate court erred in law and fact by upheld the decision of Nzuguni ward tribunal for being properly composed and or constituted as required by law.*
- 3. That, the trial tribunal erred in law and fact by delivering the judgment in favour of the respondent while the respondent never tendered any document to prove ownership.*

The parties are unrepresented and the appeal was argued by way of filing written submissions. In his submissions the appellant abandoned the second ground of appeal. The facts of the case are that the respondent is the appellant brother's son whom he raised at his residence. Due to that relationship the appellant gave the respondent a piece of land where he built two houses and he had used the same for five years up the time when this dispute broke out. A family meeting was held and it was resolved that the respondent would vacate the place subject to being compensated the costs

for construction of his houses which is Ths. 5,290,000/=. Instead of paying the appellant filed this case.

The submissions of the appellant on the first ground of appeal is unrelated to the complaint. While the complaint is that his strong evidence was not considered, his submission is that an invitee to the land cannot be the owner of the land. However, he admits that he gave the land to the respondent.

The respondent replied that the appellant cannot claim the land back because he gave it to him as a gift. I agree with the respondent that from the time the appellant gave the land to the respondent; he is estopped from claiming it back considering the fact that the respondent has already developed that land. Since they are relative, as a matter of courtesy the respondent can accept the said compensation and leave the place but he cannot be forced to leave if he does not wish to. The first ground of appeal has no merits.

On the third ground of appeal, appellant has submitted that the respondent tendered no document to prove his ownership of the dispute land. The

respondent replied that the land was given orally and no document was signed. Indeed, the respondent tendered no document to prove his ownership of the dispute land. However, he brought witnesses who supported his case. These are Titto Chilongozi, James Mazengo and Paul Mazengo. All of them testified that the appellant gave the land to the respondent unlike the appellant who not only did not summon any witness but also did not dispute the evidence that he gave the land to the respondent as his paternal uncle out of his free will. James Mazengo, the respondent's father and the appellant's brother, said the following on how the parties started to live together:

'... Stivin Mazengo aliniomba mtoto wangu ili akae naye na mimi nilimkubalia nikampa mtoto baada ya hapo mtoto aliomba kuondoka akapange yeye alimzuia asiondoke akiondoka mimi nitavamiwa hapo walipanga na mkewe wakampa kiwanja ili ajenge kweli alijenga nyumba 2 mwaka jana 2013 baada ya kujenga nyumba ndipo huyo mzee akaanza kumfukuza'

This evidence is undisputed by the appellant. By any standard, I find that the appellant proved that he constructed two houses on the dispute land after being given the land by the appellant himself. The third ground of appeal has no merits too.

In the event I dismiss the whole appeal. The decision of the first appellate tribunal is confirmed. I give no orders as to costs because the parties are relatives.

DATED at **DODOMA** this 10th day of March, 2022.



M.M. SIYANI
JUDGE