

IN THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
SUMBAWANGA DISTRICT REGISTRY
AT SUMBAWANGA
MISC. LAND APPEAL NO. 35 OF 2020

(Originating from Decision of the District Land and Housing Tribunal Katavi District at Mpanda in Land Application No. 19 of 2020 Kakese Ward Tribunal v Land Dispute No. 4 of 2020)

RAMADHANI KASONSO..... APPELLANT

VERSUS

ALBINA FRANCIS RESPONDENT

JUDGEMENT

Date of last Order: 20/11/2021
Date of Judgment: 23/03/2022

NDUNGURU, J.

This is a second appeal. The matter has its genesis from Kakese Ward Tribunal (henceforth the trial tribunal). At the trial tribunal the respondent herein successfully sued the appellant claiming ownership of 8 acres of land. Dissatisfied the appellant unsuccessfully appealed to the District Land and Housing Tribunal for Katavi at Mpanda (henceforth the Appellate Tribunal) where the decision of the trial tribunal was upheld.

Aggrieved by the appellate tribunal decision, the appellant has preferred this appeal by lodging the following grounds of appeal;

- 1. That the appellate tribunal erred in law by dismissing appeal while ignoring the mandatory requirements of*

the law on the procedure of considering the opinion of assessors.

- 2. That the appellate tribunal erred in law and fact by dismissing an appeal which was entertained by the trial tribunal without jurisdiction and contrary to trial de novo order.*
- 3. That the appellate tribunal erred in law and fact by dismissing the appeal which was heard by the trial tribunal in violation of principles of natural justice i.e right to be heard.*
- 4. That the appellate tribunal erred in law by dismissing appeal while the evidence of the respondent in the trial tribunal was contradictory i.e she did not reveal how she acquired the suit land also she claimed that the suit land belonged to her late husband.*
- 5. That the appellate tribunal erred in law by giving out a decree in appeal without giving the specifications of the suit land.*

As this appeal was called on for hearing, the appellant appeared in person, unrepresented while respondent defaulted to enter appearance. The court being satisfied that there is a proof of service to the respondent and the respondent had defaulted to enter appearance, ordered the case to proceed ex-parte.

I have read between the lines the appellant grounds of complaint and the entire proceedings of the tribunals below. The question to determine is whether the present appeal has merit.

This being the second appeal, the court is always cautious to reverse findings of fact made by courts below unless they are, on the face of it, unreasonable or perverse. The principle was reiterated in the case of **Neli Manase Foya vs Damian Mlinga**, Civil Appeal No. 2 of 2002, unreported, **Director of Public Prosecution vs Norbert Mbunda**, Criminal Appeal No. 108 of 2004, unreported.

In both cases above, the Court quoted with approval the following passage by Sir Kenneth O'connor, President of the Eastern Africa in the case of *Peters vs Sunday Post Limited* [1958] E.A 424 at page 425:

"It is a strong thing for an appellate court to differ the finding on a question of fact of the judge who tried the case, and who has had the advantage of seeing and hearing the witnesses. An appellate court has, indeed, jurisdiction to review the evidence in order to determine whether the conclusion originally reached upon that evidence should stand. But this is a jurisdiction which should be exercised with caution; it is not enough that the appellate court might itself have come to a different conclusion."

Now the crucial issue in the appeal is whether there is good ground upon which the court could fault the findings of fact made by the courts below.

As regards the first complaint that the appellate tribunal ignored the procedure of considering the opinion of assessors. The law is very

clear that the District Land and Housing Tribunal shall be dully constituted when held by a Chairman and two assessors who shall be required to give out their opinion before the Chairman reaches the Judgment. **Section 23 (2)** of the Land Disputes Courts Act, Cap 216 RE 2019.

My scrutiny of the appellate court record, show that Hon Chairman provided a chance for the assessor to give out opinion which was then read over by the Chairman. Apart from that Hon Chairman also took into account the opinion of assessor when composing his Judgement as provided under **section 24** of the Land Disputes Courts Act [supra]. Hon Chairman proceeded with one assessor and he gave reason for such in his Judgement. Thus, to say the Hon Chairman did not follow the procedure is improper.

This court finds that both tribunals below had jurisdiction to determine the dispute. The disputed land covers 8 acres as evidenced in the record of the appeal. There is no iota of evidence that disapprove the fact that the Kakese Ward Tribunal had no jurisdiction over the land dispute.

Again, it is on record that both parties were given audience to present their case, thus the complaint that there was a violation of the right to be heard is the same devoid of merit.

Looking at the available records, this court finds no contradictory evidence. The tribunals below properly evaluated the testimonies of all witnesses who testified.

In the final result, I see no tangible reasons to fault the decisions of the both tribunals below. Both tribunals below evaluated properly the evidence of both parties to the dispute. The appeal by the appellant has no merit, the same is dismissed in its entirety. No order as to costs.

It is so ordered.




D. B. NDUNGURU

JUDGE

23. 03. 2022