

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPEAL NO. 39 OF 2020

(Arising from Land Appeal No.12 of 2020 of the District Land and Housing Tribunal for Tanga at Tanga and originating from Land Case No 04 of 2019 of Mhamba Ward Tribunal at Muheza District)

MWAJUMA HASSAN YASSIN.....APPELLANT

-VERSUS-

MATHAYO JUMA MWAKIDUNGWE.....RESPONDENT

Date of Last Order: - 29/10/2021

Date of Judgment:-18/03/2022

J U D G M E N T

AGATHO, J.:

In the instant matter, the Appellant herein instituted a land case against the Respondent at the Ward Tribunal of Mhamba in Muheza District registered as Land Case No. 4 of 2019 claiming that the Respondent had trespassed into the farm. In that matter the Appellant alleged to act under the Power of Attorney of one Hassani Yasini, his father. The Appellant further alleged that on the same farm there occurred a previous land dispute between one Francis Chumo and his father at the Ward Tribunal of Songa and his father Hassani Yasini was declared the lawful owner. The Ward Tribunal having determined the

case in favour of the Appellant who then was declared as the lawful owner of the farm.

Dissatisfied with the decision, the Respondent appealed to the District Land and Housing Tribunal for Tanga at Tanga. In its decision, the Appellate Tribunal decided in favour of the Respondent as it found that the same farm was in dispute between the Appellant's father and the Respondent and the Appellant's father lost the case which ended at the same Appellate Tribunal as Land Appeal No. 22 of 2013 and that there was no another land in dispute apart from that. As a result, the decision of the trial Tribunal declaring ownership to the Appellant was reversed and the Respondent was declared the lawful owner of the land in dispute. Again, the appellant being dissatisfied with the decision of the District Land and Housing Tribunal for Tanga at Tanga in Land Appeal No. 12 of 2020 appealed to this Court on the following grounds;

1. That the Appellate Tribunal erred in law and fact by failing to consider that the Land Appeal No. 22 of 2013 consisted of a different piece of land from Appeal No. 12 of 2020.
2. That the learned Chairperson erred in law and in fact by failing to make a proper analysis of the evidence on records and thereby

failing to understand the case of Francis Chumo and Hassani Yassin therefore arriving at erroneous decision.

3. That both Tribunals (Ward and District Land and Housing Tribunal) erred in law and fact by using the name of the Appellant in the proceedings while she was suing under the Power of Attorney of her father.
4. That the entire judgment of the District Land and Housing Tribunal lacks legal support and it is problematic.

In the Appeal, the Appellant enjoyed legal service of the Tanzania Women Lawyers Association whereas the Respondent prosecuted the appeal personally. On the 29th day of October, 2021 the Court preferred the appeal to be disposed by way of written submissions. I will start determining the first and the second grounds of appeal altogether.

Regarding the respective grounds of appeal, it was the Appellant's submission that the Land Appeal No. 22 of 2013 dealt with a different piece of land from that of Appeal No. 12 of 2020. That in the former, the dispute was over ten acres while in the later which was Land Case No. 4 of 2019, the dispute concerned one and a half acres.

According to the Respondent, he submitted that at Mhamba Ward Tribunal there was Land Case No. 8 of 2012 and later Land Case No. 22 of 2013 of the Ward Tribunal of Mhamba then the Land Dispute No.4 of 2019 which the Appellant filed in the same Tribunal and which is related to this appeal.

The Court has considered submissions from both sides and the Court records and found that as per page 2 of the proceedings of Land Case No. 04 of 2019 of the Mhamba Ward Tribunal, the Appellant stated that there were two separate pieces of land and that the land in dispute was that of one and a half acre.

The decision of the Ward Tribunal indicated that having visited *locus in quo* the Respondent showed them his farm and included the land in dispute therein and as a result the Ward Tribunal declared the appellant to be the owner of the land in dispute.

The Court has thoroughly gone through the records in Land Case No. 4 of 2019 and found that there are no records showing the proceedings of the *locus in quo* visit and it is conspicuous that the Appellant was not accorded right to ask questions to the Respondent. Under that circumstance, I find that there is no sufficient evidence and it is quite difficult to establish whether the

land in dispute is independent or it is part of the land that was subject to the dispute in Land Case No. 8 of 2012 and later Appeal No 22 of 2013 between the Appellant's father and one Francis Chumo.

It is a fundamental principle enshrined under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977 as amended that whenever the rights and duties of any person are being determined by the Court or any other agency, that person shall be entitled to a fair hearing.

The trial Tribunal did not comply with the procedure of fair hearing during the trial as it did not afford the Appellant the right to cross examine the Respondent which is fatal. Further, although the trial Tribunal held in its decision that there was a *locus in quo* visit but the proceedings are silent.

In the case of **Mariam Daudi Mwakamajolo vs Abdallah Juma Mbiye, Misc. Land Appeal No. 19 of 2021, HCTZ Mbeya District Registry at Mbeya** referring the case of **Rajabu Dibagula v Republic [2004] TLR 196 and Mkulima Mbagala v Republic, Criminal Appeal No 267 of 2006** Lady Justice, Mongela, J held that a judgment is composed based on evidence on record before the court/tribunal and that the non-

recording of the evidence at the *locus in quo* and purportedly referring to the evidence on judgment is a procedural irregularity apparent on face of record and of sufficient importance.

The above two grounds of appeal suffice to dispose the entire appeal merely on the issue of procedural irregularities that go to the root of the matter. However, to ensure justice I prefer to proceed with the third and fourth grounds of appeal.

It is clear that the Appellant in the trial Tribunal and the District Land and Housing Tribunal, was not referred in the heading as acting under the Power of Attorney of his father and worse enough, the trial Tribunal declared the Appellant as the owner of the land in dispute which is a mistake. Again, the Court has observed that the Power of Attorney cannot be acted upon by the Court or the Tribunal because even though it was authenticated or notarised by the Commissioner for Oaths pursuant to Section 94 of the Evidence Act, [Cap 6 R.E 2019] the same was not stamped as per the requirement of Section 47 read together with Clause 46 of the Schedule of the Stamp Duty Act, [Cap 189 R.E 2019]. At this juncture, it is correct to state that the Appellant had no *locus standi* in the matter since the document that she purported to rely on in the Court was invalid.

On the issue of *locus standi*, in the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi [1996] 208** the Court held that in order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court. In the instant matter, the Appellant as a complainant at the Ward Tribunal had no *locus standi* in the case because there was no lawful authorisation and the order of the Court declaring her to be the lawful owner of the land in dispute is fatal and it is instantly vacated.

Regarding the fourth ground of appeal, I concur with the Appellant that the judgment of the District Land and Housing Tribunal was irregular since the Court did not properly analyse the evidence and the records in reaching to its findings. Being the first appellate Court with the guidance of the case of **Sugar Board of Tanzania v Ayubu Nyimbi and two others, Civil Appeal No.53 of 2013, CAT at Dar es Salaam** referred by the Appellant, the Appellate Tribunal was required to re- evaluate the record of evidence of the trial Court and reach to its own finding. Having examined all the grounds of appeal I am of the view that the irregularities observed in the proceedings of the Ward Tribunal

and the District Land and Housing Tribunal suffices this Court to allow the appeal and nullify the entire proceedings of the Mhamba Ward Tribunal in Land Case No. 04 of 2019 and Land Appeal No. 12 of 2020 of the District Land and Housing Tribunal for Tanga at Tanga and order a re-trial be conducted at the Ward Tribunal before another Chairperson and new set of members . It is so ordered.

DATED at TANGA this 18th Day of March 2022.




U. J. AGATHO

JUDGE

18/03/2022

Date: 18/03/2022

Coram: Hon. U.J. Agatho, J

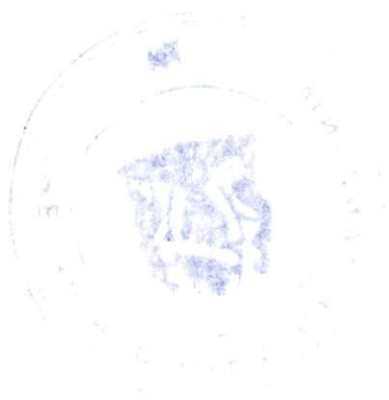
Appellant: Present

Respondent: Present

B/C: Zayumba

Court:

Judgment delivered today in the presence of both the Appellant, and the Respondent.



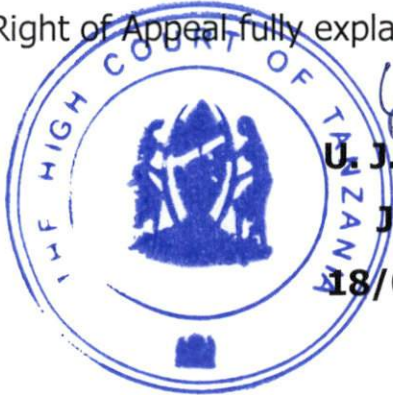


U. J. AGATHO

JUDGE

18/03/2022

Court: Right of Appeal fully explained.



U. J. AGATHO

JUDGE

18/03/2022