

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
LAND APPEAL NO. 45 OF 2018

*(Arising from the decision of the judgment, Decree and Order of the
Dodoma District Land and Housing Tribunal in Land Appeal No.310 of
2017 Original from Kiyuji Ward Tribunal in Land Case No. 91/2017)*

LAWRENT CHIMWAGA.....APPELLANT

VERSUS

JULIANA FRANCIS MKWABI..... RESPONDENT

JUDGMENT

Date of last Order: 21/02/2022

Date of Judgment: 11/03/2022

A. Mambi, J.

This appeal originates from an appeal filed by the appellant namely **LAWRENT CHIMWAGA**. Earlier in the Miyuji Ward Tribunal (the trial Tribunal) the respondent one **JULIANA FRANCIS MKWABI** sued the appellant in application No.91 of 2017. The trial Tribunal made the decision in favour of the respondent.

Aggrieved by the decision of the trial Tribunal, the appellant appealed to the Dodoma District Land and Housing Tribunal (the DLHT) in Land Appeal No. 310 of 2017. In the DLHT the appellant once again lost the appeal.

Aggrieved again, the appellant is up in arms before this Court challenging the decision of the DLHT basing on the following grounds, to wit;

1. *That, the Dodoma District Land and Housing Tribunal aforesaid erred in law and in fact in finding that the Miyuji Ward Tribunal was properly constituted.*
2. *That, the Dodoma District Land and Housing Tribunal aforesaid grossly erred in law and in fact in finding that the respondent is the legal representative of the owner with power of attorney when there was no evidence to warrant such a finding of fact.*
3. *That, the Dodoma District Land and Housing Tribunal aforesaid erred in law and in fact in ignoring the appellant ground of appeal that the Miyuji Ward Tribunal judgment based on contradictory evidence thus failed to evaluate evidence tendered before it.*
4. *That, the Dodoma District Land and Housing Tribunal aforesaid erred in law and in fact in ignoring the evidence on record of the Miyuji Ward Tribunal to the effect that the appellant has been in uninterrupted possession of the suit property for over 33years and was therefore entitled to judgment in his favour.*

In this case, the appellant was unrepresented whereas the respondent enjoyed the services of Mr. Paul Nyangarika-Learned Advocate. This Court ordered the parties to argue their case by way of written submissions.

Having summarized the grounds of appeal I now address the issues in line with those grounds of appeal and submission by parties. On his submissions, the appellant, submitted on the second, third and fourth ground of appeal leaving out the first ground.

Starting from the fourth ground of appeal, the appellant contended that the DLHT erred in ignoring the evidence on record to the effect that the he had been in occupation of the suit land for over thirty (30) years interruptedly since 1983. The appellant further argued that the respondent conceded to this fact that they abandoned the suit land for more than fifteen years (15) after they relocated to Dar Es Salaam. The appellant added that, abandonment of the suit land was proved by the land fee receipts as they showed that Mr. Dominick (the respondent's husband) paid necessary fees for only four years from 1981 to 1984. The appellant backed his position with the decision of the court **REGISTERED TRUSTEES OF HOLLY SPIRIT SISTERS TANZANIA VERSUS JANUARY KAMILI SHAYO AND 136 OTHERS**, CIVIL APPEAL NO. 193 OF 2016 (CAT ARUSHA) The court in this case outlined the elements that must be cumulatively proved by a person seeking to acquire title to land under the principle of adverse possession.

On the second ground of appeal, the appellant faulted the DLHT decision in holding that the respondent was the legal representative

of the owner of the suit land Mr. Dominick Pallangyo with power of attorney. The appellant submitted that, appearance in the Ward Tribunal is governed by s. 17 and 18(2) of the Land Disputes Courts Act, Cap 316 RE 2002. The appellant contended that while s.17 provides for any person aggrieved may make a complaint to the secretary of the Tribunal, s. 18(2) provides for appearance by any relative or any member of the household upon request. The appellant submitted that, in the record of the Ward Tribunal there is no request of the respondent to act on behalf of Mr. Dominick Pallangyo as the law requires. For that matter the appellant contended that the respondent had no locus standi to sue.

The appellant referred this Court to the decision of the court in **ZARINA MOHAMED VERSUS LEONIDA F. SAKULO**, LAND CASE NO. 166 OF 2010. (HC. DAR ES SALAAM.), the High Court, Ngwala, J. stated, that *"it must be settled now that if the litigant is of sound mind, there will be no exercise for another person, even if the litigant is old or illiterate to claim that he is holding power of attorney for the litigant."*

It was the appellant's further assertion that the DLHT based its decision by making its own facts that the respondent was a legal representative with a power of attorney as there were no such facts in the trial Ward Tribunal and the said power of attorney was not produced or even shown cause for non-appearance of the true owner. The appellant relied his arguments on the observation of the court in **GEORGIA CELESTINE MTIKILA VS. REGISTERED TRUSTEES OF DAR ES SALAAM NURSURY SCHOOL AND INTERNATIONAL SCHOOL OF TANGANYIKA LTD** [1998] TLR 13

where the Court of Appeal stated that, the appellant was not covered by the provisions of Rule 20(2) of the Court of Appeal Rules 1979 because she was a resident in Tanzania. Basing on this, the appellant submitted that the same principle made by the Court of Appeal applies to the case at hand. The appellant contended in that regard, that there was no proof from the respondent side that Dominick Pallangyo who is the owner of the suit land was not resident in Tanzania.

On the third ground of appeal, the appellant submitted that the DLHT wrongly ignored his assertion that the trial Ward Tribunal based its judgment on contradictory evidence. The appellant submitted that there was contradictory evidence on the respondent's side, since the respondent in her evidence stated that she was issued the letter of offer in 1981 while her key witness, witness no. 1 namely NZUMBI JABIR KANGOMBE, stated that the respondent obtained the suit land in 1984.

The appellant added that even if the respondent was in possession of the letter of offer, that, letter of offer and payment receipts by themselves do not make the holder, the owner the piece of land rather the title deed which in this case was not produced in trial Tribunal.

The appellant doubted the authenticity of the letter of offer because the original one was not produced for inspection at the trial Tribunal.

Another contradiction which the appellant identified was that, while the respondent testified that the suit land belonged to her, her

witnesses and the exhibits produced before the trial Ward Tribunal showed that the owner was one Dominick Pallangyo.

In response, the respondent submitted that the decision of the Court in was distinguishable. His argument was based on the fact that in that case **GEORGIA MTIKILA** above the respondent contended that the Court of Appeal was referring to parties who wants to be represented by their attorneys in the appeals before it and not the Ward Tribunal.

The respondent further contended that the appellant has argued that the owner of the land is Dominick Pallangyo but he does not dispute that the respondent is the wife/relative to Dominick Pallangyo. She added that the proceedings of the ward Tribunal contain a letter of Dominick Pallangyo dated 8th October, 2017 authorizing the respondent to represent him. The respondent further submitted that the law does not provide how the request is to be made, and since the respondent presented the said letter in the trial Tribunal before the hearing, then it can be impliedly referred as the request made by the respondent to the Tribunal requesting to represent her husband.

With regard to the third ground of appeal, the respondent submitted that the DLHT properly evaluated the evidence on record and its decision did not base on contradictory evidence. The appellant argued that, indeed, the letter of offer was issued to Dominick Pallangyo in 1981 whereas the respondent's witness one NZUMBI JABIR KANGOMBE testified that he knew the land belonged to Dominick Pallangyo since 1984. According to the respondent, there was no contradiction because the year 1984 was

the time when the witness became aware that the suit land belonged to Dominick and that at the time of allocation of the suit land to Dominick the witness was not there.

On the issue of not having a title deed, the respondent contended that, that alone does not mean Dominick Pallangyo is not the owner of the suit land and that title deed is just a final process of land allocation. The respondent referred this Court to the decision of court in **SARJIT SINGH V. SEBASTIAN CHRISTOM**, [1988] TLR 24 where it was held, a right of occupancy is created or established when a letter of offer is granted.

Furthermore, on the issue of failure to produce the original copy of the letter of offer before the trial Tribunal, the appellant referred this Court on s. 15(1), (2) and (3) of the Ward Tribunals Act, Cap. 206 [RE 2002] arguing that the Ward Tribunal is not bound by any rules of evidence or procedure applicable to any court and that the same provision allows the tribunal to regulate its own procedure. The appellant added that if the trial Ward Tribunal did not impose a rule requiring documents to be produced before it to be original, then the appellant argument lacks legs to stand.

Submitting on the fourth ground of appeal on adverse possession, the appellant asserted that it was a new ground of appeal which was neither raised in the DLHT nor the trial Ward Tribunal. The respondent substantiated her position with the decision of the court in **ALFONS JAMES RISASI V. MARRY GILBERT**, LAND CASE APPEAL NO 66/2017(HC-Unreported) where the court held that; *the principle that parties are bound by their pleadings is too settled to be forgotten*. The respondent contended that the lower courts could not

determine the issue of adverse possession for it was neither pleaded nor testified before the trial Tribunal. The respondent added that what the appellant testified before that trial Court was his ownership of the suit land by allocation by the Chairman vide the letter dated 4th February, 1983. Relying in the decision of the Court in **ALFONCE JAMES** (supra) the respondent asserted that one cannot be an adverse possessor of his own land.

Rejoining his submissions in chief, with regard to the power of attorney, the appellant contended that the purported letter dated 8th October, 2017 which was claimed to be written by Dominick Pallangyo authorizing the respondent to represent him was not presented before the Ward Tribunal for its consideration as per s. 18(2) of the Land Disputes Courts Act above nor was it shown to the parties for them to argue.

The appellant submitted that the law gives the Ward Tribunals discretion on how to regulate its procedure, but that discretion must be exercised judiciously in order to do justice. The appellant was of the view that the Ward Tribunal was required, as a matter of prudence, to compel the respondent to produce the original letter of offer. The appellant further argued that, the respondent's failure to produce the original letter of offer, failure to produce the loss certificate in regard with the original letter of offer and failure to explain the whereabouts of the original certificate of offer, creates doubts in the minds of court.

With regard to uninterrupted possession of the suit land, the appellant contended that he stated before the trial Ward Tribunal that he was allocated the suit land in 1983 during the reign of the

Chairman one Mathias Ngomboche which by then it was just a forest. The appellant was of the view that by that statement the principle of adverse possession can be applied.

I have considerably gone through the grounds of appeal, submissions from both sides and I have keenly gone through the DLHT and trial Ward Tribunal records.

Starting with the fourth ground of appeal on adverse possession. The respondent contended that it is a new matter which was neither pleaded before the trial Ward Tribunal nor raised as a ground of appeal at the DLHT.

At this juncture I must categorically state that this being the second appellate court, its duties are to determine faults made by the first appellate court if any. In doing this, this Court has to look into the trial Court proceedings and the decision made therefrom *vis-a-vis* the complaints made or raised in the first appellate Court and the decision made thereafter. The complaints that the appellant made before the first appellate court that is the DLHT were:-

1. *That, the Ward Tribunal erred in law and facts by delivery judgment (sic) by failing to evaluate and give weight to the evidence adduced by the appellant and his witnesses.*
2. *That, the Ward Tribunal erred in law and facts by delivery judgment (sic) basing on weak and contradictory evidence adduced by the respondent and his witnesses.*
3. *That, the Ward Tribunal erred in law and facts in deciding the matter without being properly constituted.*

Reading throughout the DLHT proceedings and its judgment I find no where the parties or the DLHT mentioned or stated points

concerning adverse possession. The DLHT in its judgment mainly answered the complaints that were raised by the appellant herein. In this regard I subscribe to the respondent's contention that the ground of appeal on adverse possession before this Court is a new ground. It has long been settled that parties in an appeal are not entitled to raise a new matter for the appellate court duty is to interfere whenever the lower court went wrong. This has been the position of the Court of Appeal in the case of **Alfeo Valentino Vs Republic**, Criminal Appeal No. 92 of 2006, in that;

*"It is now well established that the Court rarely interferes with the concurrent findings of fact. **An appellate court can only interfere with a finding of fact by a trial court where it is satisfied that the trial court has misapprehended the evidence in such a manner as to make it clear that its conclusions are based on incorrect premises.**"* Emphasis added.

However, even if this Court was to find it was not a new ground, still this Court wouldn't have turned the tables.

I wish to reproduce on what the appellant stated before the trial Ward Tribunal on 29/09/2017 concerning the suit land.

"Mimi shamba hilo linalolamikiwa na mlalamikaji nimelipata ktk ugawaji wa nguvu kazi mwaka 1983 wakati wa M/kiti Mathias Ngomboche. Na lilikuwa msitu nikaanza kulifyeka tar 02/04/1983 nilikuwa nalitumia kwa matumizi ya kilimo cha kawaida....."

In essence the appellant alleged that the suit land was his property being allocated in 1983. For one to succeed on the doctrine of adverse possession, among the elements which he must show is

that the suit land is his because he has been in uninterruptedly occupation of the same for more than twelve years.

Going by the decision relied by both parties of **REGISTERED TRUSTEES OF HOLY SISTERS**, the Court of appeal held that on the whole, a person seeking to acquire title to land by adverse possession has to cumulatively prove the following:-

- (a) That there had been absence of possession by the true owner through abandonment;*
- (b) That the adverse possessor had been in actual possession of the piece of land;*
- (c) That the adverse possessor had no color of right to be there other than his entry and occupation;***
- (d) That the adverse possessor had openly and without the consent of the true owner done acts which were inconsistent with the enjoyment by the true owner of land for purposes for which he intended to use it;*
- (e) That there was a sufficient animus to dispossess and an animus possedendi.*
- (f) That the statutory period, in this case twelve years, had elapsed;*
- (g) That there had been no interruption to the adverse possession throughout the aforesaid statutory period; and*
- (h) That the nature of the property was such that, in the light of the foregoing, adverse possession would result. Emphasis supplied*

It is not in dispute that the respondent is a wife to Dominick Pallangyo, it also not in dispute that the letter of offer of the suit land Plot No. 390 dated 24/9/1981 bears the names of Dominick Pallangyo and that Dominick Pallangyo paid land fees from 1981 to

1984. The appellant in all his testimonies he laboured in proving his ownership to the suit land. Among his evidence was a letter of ownership of the suit land from a Street Chairman dated 04/2/1983 and all his witnesses, WILLIAM MSAKWA NDAHANI, JULIAS MIYOLWA NDOLI and VALELIAN JUMA MPINGAMA, all of them stated that the ownership of the suit land was of the appellant. The position in the case of **REGISTERED TRUSTEES OF HOLY SISTERS** (Supra) is clear that one cannot be an adverse possessor of one's own land. As rightly argued by the respondent's counsel, since the appellant insisted that the land belonged to him, he could not be heard to argue that he was an adverse possessor of the same.

On the other hand the appellant contended that the evidence by the respondent was full of contradictions. In his submission the appellant's counsel alleged that the respondent's testimonies are contradictory from that of her witness namely NZUMBI JABIR KANGOMBE. The appellant counsel argued that the respondent testified that she was issued a letter of offer in 1981 whereas her witness testified that she obtained the suit land in 1984.

This calls upon this Court to look into the proceedings of the trial Ward Tribunal. The evidence at the trial Ward Tribunal were such that, the respondent testified that the suit land belongs to them being allocated by the defunct CDA in 1981 in which in the same year CDA issued a letter of offer in the names of her husband, Dominick Pallangyo. She testified that thereafter they planted grapes, mango and orange trees and to date they continue to pay land fees. On the other hand, the respondent's witness NZUMBI

JABIR KAGOMBE testified that upon his work transfer from Ruvuma region to Dodoma he requested for the respondent's husband a plot, so that he could keep his goats. He further testified that he knows that the suit land is the respondent's husband's land since, 1984.

Looking at the evidence by the respondent witness I find no contradictions as alleged by the appellant council. The witness clearly stated that he knows Dominick Pallanyo is the owner of the suit land since 1984. I am of the view that, the time when the witness became aware as to the ownership of the suit land does not necessarily mean that, to be the time when the respondent's husband became the actual owner of the suit land. Simply what the witness stated is that he trust requested for a piece of land to keep his goats where he was given the land by Mr. Dominick Pallangyo for temporary use.

That being the case, this Court finds that, the trial Tribunal and the DLHT in their decisions rightly found in favour of the respondent basing on the clear evidence.

With regard to the ground of appeal that the DLHT wrongly found that there was a power of attorney authorizing the respondent to represent Dominick Pallangyo. I wish to address this point as follows:

In their submission the counsels from both sides argued that, the law that is section 18(2) of the Land Disputes Courts Act, Cap 216 RE 2019 allows representation of parties in the suit before the Ward Tribunal from family members apart from advocates. This provision reads as follows:-

“(2) Subject to the provisions of subsections (1) and (3) of this section, a Ward Tribunal may permit any relative or any member of the household of any party to any proceeding, upon request of such party to appear and act for such party.”

Reading between the lines on the above provision, it is clear the provision requires a party who need a representation in the suit before the Ward Tribunal from his/her household member may request to do so to the very tribunal. The law, however, is silent as to the modality to be adopted by the party seeking representation.

It must be noted from the outset that rational for the creation of the Ward Tribunal was to enable disputes in the community be resolved peacefully in a simple manner. It was aimed that amicable resolution of dispute at community level in a village or ward to be of paramount in furtherance of the social and economic interests of the parties and community as a whole.

In order to achieve this aim, it is not expected the Ward Tribunal in dispensation of justice to adopt strenuous and hard principles or rules as are used in ordinary courts.

Principally, the Land Disputes Court Act, Cap. 216 [RE 2019] provides

13.-(1) Subject to the provisions of subsection (1) of section 8 of the Ward Tribunals Act, the primary function of each Tribunal shall be to secure peace and harmony in the area for which it is established, by mediating between and assisting parties to arrive at a mutually acceptable solution on any matter concerning land within its jurisdiction.

Reference can also be made to section 15 and 16 Ward Tribunals Act, Cap 206 RE 2002, section 15(1) provides that;

*“15(1) The Tribunal shall **not be bound** by any*

rule of evidence or procedure applicable to any court.

*(2) The Tribunal shall, subject to the provisions of this Act, **regulate its own procedure.***

(3).....

On the other hand section 16 of the same Act provides that:

“ Notwithstanding the provisions of section 4, the Tribunal shall in all proceedings seek to do justice to the parties and to reach a decision which will secure the peaceful and amicable resolution of the dispute, reconciliation of the parties and the furtherance of the social and economic interests of the village or ward as a whole in which the dispute originate.”

However, in instances where the Ward Tribunal has failed to comply with legal procedures, that omission can be cured at appeal level under section 45 of the Land Dispute Courts Act. Section 45 provides as follows:-

“45. No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.”

Addressing the rational of the above provisions the Court of Appeal in **YAKOBO MAGOIGA GICHERE VS. PENINAH YUSUPH**, CIVIL APPEAL NO. 55 OF 2017 at page 14 had this to say;

Section 13 of the Land Disputes Courts Act underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements.

I have perused the trial Ward's records and found a letter dated 8/10/2017 from D. A. Pallangyo to the Chairman of Miyuji Ward Tribunal authorizing her wife, JULIANA FRANCIS to represent him before the Ward Tribunal in respect of the suit land Plot No. 390 Block BB, Miyuji.

Since the law does not provide for modality on how to make a request for presentation, and since the law provides for the Ward Tribunal to regulate its own procedures, then it follows that the trial Ward Tribunal did not error in accepting the said letter requesting representation. In my view writing a letter and presenting to the Ward Tribunal is the simplest way in which parties in need of representation can do or else can present their request orally.

With due respect, this Court finds that all the case authorities relied by the appellant counsel are inapplicable in the case at hand and all the argument raised in that regard are baseless.

Again, the argument that the said letter was not shown to the parties are after thought because the appellant did not object during the hearing at the Ward Tribunal. I strongly hold that since the respondent being Mr. Dominick's wife and since Mr. Mr. Dominick presented his letter to the Ward Tribunal requesting to be allowed to be represented by his wife in the case at hand, then the

Ward Tribunal was right to do as it did, that is hearing and determining the case.

With regard to additional facts or new facts and argument made by the appellant I don't see any rationale of addressing the new arguments that were not part of ground of appeal at the DLHT. The appellant has raised the new issue on authenticity of letter of offer at this stage but that was not an issue at the DLHT and trial Tribunal. It is trite law that no party is allowed to bring a new issue, fact or argument at the second appeal that were not raised at the first appeal.

All in all my thorough perusal for both tribunals' decisions has revealed that the respondent was the legal owner of the disputed land.

In view of the foregoing discussions and observations, I have no reason to fault the decision made by the Dodoma District Land and Housing Tribunal rather than upholding it. That, said I find that this appeal lacks merit and is hereby dismissed in its entirety. Parties to bear their own costs.

Order accordingly.



A. J. MAMBI

JUDGE

11/03/2022

Ruling delivered in Chambers this 11th day of March, 2022 in presence of all parties.

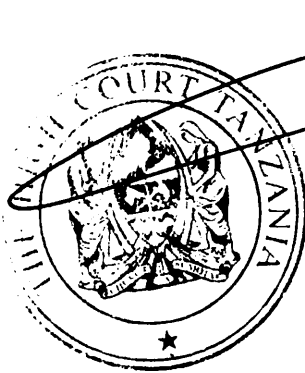


A. J. MAMBI

JUDGE

11/03/2022

Right of appeal explained.



A. J. MAMBI

JUDGE

11/03/2022