

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM
LAND REVISION NO. 43 OF 2020

(Originating from Land Dispute No. 28 of 2014 from Kihonda Ward Tribunal, Land Appeal No. 103 of 2015 at the District Land and Housing Tribunal for Morogoro)

MERTUS NESTORY APPLICANT

VERSUS

GRACE LULAMBO1ST RESPONDENT

SALUM A. CHAMBA2ND RESPONDENT

RULING

Hearing date: 29/4/2022

Ruling on: 06/5/2022

NGWEMBE, J:

This application for revision invites the court to call for and examine the records of the Land and Housing Tribunal for Morogoro related to Land appeal No. 103 of 2015. The revision is to satisfy such decision on its legality and propriety. Also, to satisfy if same is not tainted with illegalities by ordering the two acres of land be divided into one acre for each party. The application is supported by an affidavit of the applicant comprising 12 paragraphs.



Since the applicant was not represented on the hearing date, he was short sighted to argue his revision. Hence, I am compelled to rely mostly on his affidavit in support to the application.

The applicant avers in paragraphs 6,7 & 8, that he is the lawful owner of the disputed two acres of land and he is not able and willing to remain with one acre as decided by the District Land and Housing Tribunal. In his prayer, the applicant alleges that the decision of the Tribunal was tainted with ambiguity as it does not state the location or set of boundaries between the applicant and the respondent. More so, allege that the decision is confusing for both have been given the same piece of land without specific boundary.

In turn the respondents submitted by narration of when they started owning that land until the applicant came in. As such they supported the decision of the Tribunal as a compromise solution of that dispute. As I have stated above, to determine this revision, I have to rely most on documentary evidences. Perusing the decision of Kihonda Ward Tribunal where the Respondents were the complainants. The Tribunal solved the dispute as quoted hereunder:-

"Baraza kwa kuzingatia Ushahidi uliotolewa na pande zote. Walalamikaji wamepata haki na mlalamikiwa amekosa haki. Baraza linamwamuru mlalamikiwa aondoke katika eneo hilo mara moja kuanzia tarehe ya hukumu hii tarehe 18/9/2014"



Simply the respondents were declared the true owners of the whole piece of land and more so the applicant was ordered to leave the suit land with immediate effect from 18/9/2014.

Such decision was appealed against to the District Land and Housing Tribunal for Morogoro. Upon hearing both parties, the District Tribunal went back to the genesis of ownership. While the applicant herein alleges to have granted such piece of land comprising two acres by the Village chairman in year 2010, the respondents were given the same piece of land by Division Secretary during Nguvu Kazi policy in year 1999. Each party produced documentary evidences to that effect. The two respondents had a letter from the Division Secretary during Nguvu Kazi allocating them a forest to clear it and develop a farm. Likewise, the applicant produced a letter from street chairman allocating land to him.

At the end both the assessors and chairman of the District Tribunal rightly considered and concluded that:- first, the street chairman had no legal mandate to allocate village land to whoever. According to the Land laws, the Village Land Committee is mandated to allocate land to the applicant and that committee must report to the village meeting and report should be furnished to the relevant authorities. Second, the Division Secretary during that period of Nguvu Kazi was mandated to allocate land for usage only but not to own it. The allocation letter is quoted hereunder:-

"Unaagizwa kung'oa msitu na kuliweka shamba lako katika hali ya usafi. Ukishindwa kufanya hivyo utanyang'anywa aidha atapewa mtu mwingine"



This letter was written on 13/7/1992, to Mr. Laurent M. Katambi, but on 2/8/1999 in the same letter is written "Shamba hili sasa amekabidhiwa ndugu Salumu Abdalla Chamba. The change was witnessed by Division Secretary for Morogoro Urban, he signed and stamped thereon. Third, the Tribunal observed that in fact, none of the disputant was lawfully allocated that suit land. Moreover, the Respondents though were given that land prior to the applicant, yet they left it unattended, hence turned into bush. Having so considered, the appellate Tribunal compromised their decision by ruling each party to depart with one acre of land. Such decision aggrieved the applicant demanding this court to nullify the decision and declare him as lawful owner of the whole two acres of land.

I have deeply considered the nature of this revision in line with the applicable land laws, to a large extent I subscribe with the decision of the appellate Tribunal, which was a compromising and mediation decision for the following reasons:- First, none of the disputant owned permanently the suit land. The tendered documents during trial disclosed no ownership of the suit land, be it for the respondents nor for the applicant.

Second, under the principle of adverse possession, and usufructuary rights, the respondents were entitled since they started using it since 1992, and in 1999 changed hands to the current respondents, hence they used that land undisturbed from 1999 to 2010 when the street chairman allocated it to the applicant. Legally, the second allocation to the applicant was improper and illegal even if such land was presumed abandoned by the respondents.



Assuming the suit land was abandoned by the respondents and turned bush, yet conditions provided for under section 45 of the Village Land Act ought to be followed religiously. Failure to apply those rules as per section 45, neither village council nor any other person has powers to allocate such land to another person under pretext of abandonment.

Emphasizing on compliance to this section, the Court of Appeal in the case of **CHARLES MUSHATSHI VS. NYAMIAGA VILLAGE COUNCIL & ANOTHER, LAND CASE No. 8 OF 2016 at Bukoba (Unreported)** where the High Court Judge referred in the case **Abdu M. Kipoto Vs. Chief Arthur Mtoi, Civil Appeal No. 75 of 2017**. In this precedent, the Court of Appeal when analysing the requirements in section 45 of the Village Land Act, held:-

"...If a village council considers land to have been abandoned, it publishes notice stating that adjudication regarding that land will be done by the Village Council and inviting persons interested to show cause why the land should not be declared as abandoned. If no person shows cause, the Village Council will make a provisional order of abandonment which will become final order on expiry of ninety (90) days if no person challenges it in Court. The effect is to render the Right of Occupancy over the land revoked after which it reverts to the village and becomes available for allocation to another person ordinarily resident in the village. In the case at hand, there was no evidence brought before the Ward



Tribunal to show that the 18 procedure under the provisions of section 45 of Cap. 114 was followed. Given the ailment, we are of the considered view that the allocation of the disputed land to the appellant was illegal: Therefore, no good title passed to him by the purported allocation."

In respect to this revision, the street chairman had neither legal mandate to allocate land to the applicant. Failure to follow the 18 steps in acquiring such land from the respondent due to the fact that they abandoned it, the whole exercise was futile, illegal, null and void abinitio.

Acquisition of abandoned land had several procedures to be followed religiously. Such decision is made by a Village Assembly. The request must be presented by the Village Land Committee and the minutes of the Village Assembly shall disclose clearly the agenda, Coram of attendees and their resolutions.

In respect to this revision, there was no approval of the Village Assembly in acquiring such land from the respondents. Therefore, the transfer from the respondents to the applicant lacked authenticity, hence ineffectual as per the judgements in the case of **Bakari Mhando Swanga Vs. Mzee Mohamedi Bakari Shelukindo, Civil Appeal No. 389 of 2019; Abdu M. Kipoto Vs. Chief Arthur Mtoi; and Priskila Mwainunu Vs. Magongo Justus, Land Case Appeal No. 9 of 2020**).

It is evident in land law which has been repeatedly held in many precedents that a person having no ownership over land or good title over certain land cannot transfer good title to another. This position was repeated in the case of **Farah Mohamed Vs Fatuma Abdalah (1992)**

T.L.R 205. Legally, and without labouring much on this point, the street chairman had neither land nor mandate to allocate the suit land to the applicant, which land belonged to the respondents.

In totality and in the circumstances of this appeal, I would proceed to nullify the whole proceedings and decision of the appellate tribunal and uphold the decision of the Ward Tribunal. However, since the respondents were satisfied with the decision of the appellate Tribunal and did not appeal or apply for revision in this court, save only the applicant, I find no reason to disturb that compromise decision. Accordingly, this application lacks merits same is dismissed with no order as to costs.

I accordingly order.





P.J. NGWEMBE

JUDGE

06/5/2022

Court: Judgement is delivered at Morogoro in Chambers on this 06th day of May, 2022 in the presence of all parties.

Right to appeal to the Court of Appeal explained.

P.J. NGWEMBE
JUDGE
06/5/2022