

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND APPEAL NO. 39 OF 2022

(Arising from Land Appeal No. 17 of 2020 of the District Land and Housing Tribunal for Kororgwe and Land Case No. 09 of 2019 of the Kwasunga Ward Tribunal)

HALIMA SHABANI-----APPELLANT

VERSUS

ABEDI ABDALLA-----RESPONDENT

EX-PARTE JUDGMENT

14/11/2022 & 10/02/2023

MANYANDA, J.

Halima Shabani, the Appellant, is dissatisfied by a decision of the District Land and Housing Tribunal for Korogwe, hereafter referred to as "the DLHT" or "the trial Tribunal" which decided in favour of the Respondent, Abedi Abdallah, in Land Appeal No. 17 of 2020 arising from Land Application No. 09 of 2019 of the Kwasunga Ward Tribunal, hereafter referred to as "the trial Ward Tribunal".

Before the Kwasunga Ward Tribunal, the Respondent successfully sued the Appellant for ownership of the Plot in dispute located at Kwamsisi Village.

It was a story of the Respondent, Abeid Abdallah, (who was the Applicant before the trial Ward Tribunal) that the plot in dispute belongs to him. That he let a family of Mzee Mbelwa, now dead, to build a house on the plot for living only, but the plot remained his property. That as time went on the family of Mzee Mbelwa following his death vacated from the house. A person known as Kandilo, who was stove technician entered into a house which was built by Mzee Mbelwa as an invitee. That later on the said Kandilo sold both the house and the plot to Rajab Ally, the said Rajab Ally was a husband of the Appellant, now deceased.

On the other hand, the story of the Appellant (who was the Respondent before the trial Ward Tribunal) was that her husband purchased the house in issue together with its plot from a person called Steve Kandilo who also purchased it from the family of Mbelwa. She has lived in that house for 15 years without any dispute. That the dispute arose when the Appellant wanted to replace corrugated iron sheets.

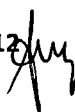
The trial Tribunal believed the story of the Respondent that there was no valid sale between Mbelwa's family and the Appellant's husband because Mbelwa was a mere invitee, he did not have good title. This decision aggrieved the Appellant who un-

successfully appealed to the District Land and Housing Tribunal which upheld the decision of the trial Ward Tribunal.

Undaunted the Appellant has come to this court challenging the District Land and Housing Tribunal decision on two grounds of appeal namely:

- 1. That the District Land and Housing Tribunal for Korogwe erred in law and in facts by holding that the appellant failed to prove his case while the Appellant had tendered a sale agreement which was executed between the Appellant's deceased husband and the owner of the land in dispute to prove her ownership; and*
- 2. That the District Land and Housing Tribunal for Korogwe erred in law and in facts by failing to appreciate that the Appellant lived on the disputed piece of land over 12 years undisturbed by the Respondent who lives in the same village with the Appellant.*

At the hearing only the Appellant appeared, the Respondent did not appear because he refused to receive the summons when it was served to him. As a result, this Court granted leave to the Appellant to argue her appeal ex-parte.

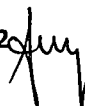


Arguing her appeal, the Appellant adopted her two grounds of appeal and added that her husband Rajabu Ally, now deceased, purchased the house in dispute and its plot from a person known as Kelvin Kandilo who also purchased it from Mbelwa family who resided in it.

It was her further submissions that the sale agreement was witnessed by Village leadership and the Respondent who resided in the same village knew about the sale. That, after buying the suit property, the Appellant lived in it undisturbedly until 15 years. That a dispute arose when she started thatching the house with new corrugated iron sheets. She condemned the appellate District Land and Housing Tribunal for failure to analyse well the evidence.

As it can be seen, her complaints in both two grounds of appeal and her submissions are all about insufficient evidence analysis.

I am aware that this is a second appeal. This been a second appellate court can only deal with matters of law or mixed matters of law and facts. However, it can interfere with the concurrent findings by the two tribunals below if, only if, their decisions are clearly wrong, unreasonable or are a result of a complete misapprehension of the



substance, nature or non-direction on the evidence or where those courts violated some principles of law or procedures which has an effect of occasioning miscarriage of justice.

This was the holding of the Court of Appeal in the case of **Emmanuel S.O Samson vs The Director of Public Prosecutions**, Criminal Appeal No.264 of 2018 (unreported) where it stated as follows: -

"This Court as the second appellate court is entitled to interfere with the concurrent findings by two courts below it, only if their decisions are clearly wrong, unreasonable or are a result of a complete misapprehension of the substance, nature or non-direction on the evidence or where those courts violated some principle of law or procedure which has an effect of occasioning miscarriage of justice."

The Court of Appeal followed its earlier decisions in the cases of **Director of Public Prosecutions vs. Jaffari Mfaume Kawawa**, [1981] TLR 149; **Mussa Mwaikunda vs. Republic**, [2006] TLR 387; **Wankuru Mwita vs. Republic**, Criminal Appeal No. 219 of 2012 and **Omary Lugiko Ndaki v. Republic**, Criminal Appeal No. 544 of 2015 (unreported).

In the case of **Wankuru Mwita (supra)**, the Court of Appeal observed as follows: -



"... The law is well-settled that on second appeal the Court will not readily disturb concurrent findings of facts by the trial court and first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of a complete misapprehension of the substance, nature or non-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of justice."

The principles cited above though were spelt in criminal cases, still they apply in civil cases. For instance, in the case of **Godfrey Chilongola vs. Nicodemus Martine and 19 Others**, Land Case Appeal No. 29 of 2018 (unreported), this Court, Hon. Mruma, Judge, applying the principle in a civil case stated as follows: -

*"This being a second appeal, this court is not required to re-evaluate the evidence. That is a duty of the first appellate court which must review the evidence and consider the material before the trial court (See **Pandya Versus R** [1957] E.A. 336 and **Okena Versus Republic** [1972] E.A 32). The second appellate court has no duty to re-evaluate the evidence adduced at the trial but it has the duty to consider the facts of the appeal to the extent of considering the relevant points of law or mixed law and facts as raised in the second appeal. In the process it may review the evidence (i.e. facts) adduced at the trial and particularly so if the first appellate court failed to*

discharge its primary obligation to rehear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion."

The question in this appeal is whether there is misapprehension of the substance, nature or non-direction on the evidence by the two lower courts. To get an answer to this question, this Court will have to enter into the shoes of the DLHT in its appellate jurisdiction and reappraise the evidence and may come up with a conclusion not necessarily the same as the lower tribunals.

Reappraisal of evidence entails three stages: - first it is recapturing briefly the description of the facts constituting the evidence subject of the analysis; second analysis of evidence by considering whether such evidence, if it is from the appellant, whether it supports the claims and if it is from the respondent, whether it rebuts the said claims; and third, it entails giving reasons for such evidence to be believable or not.

In this matter the evidence shows that the issue of ownership of the land in dispute according to the testimony of the first witness of the Respondent one Mohamed Omari (SU2), as far as original ownership of the plot in issue started with Mzee Omari Athumani Mchikwe (now deceased). SU2 is a son of Late Mzee Omari

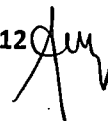


Athumani Mchikwe, he testified that his father owned the land in dispute. He gave it freely to Mzee Mbelwa, also dead, who was his grandson. Mzee Mbelwa erected a house on it in which he lived with his family until his death.

The evidence that the plot in issue initially belonged to the Late Mzee Omari Athumani Mchikwe also comes from the testimony of Athumani Nassoro (SM1). This witness was summoned by the Respondent. SM1 testified that initially the plot of land in dispute was unallocated to any, hence it was treated as a reserve, later on when an investor who wanted to erect a mobile antenna a dispute over ownership arose between Mzee Omari and Mzee Abeid Yusufu (the Respondent) which was resolved by allocating part to Mzee Omari and another to Abeid Yusufu (the Respondent).

SM1 is also a witness to the sale agreement between Steven Kandilo to Rajabu Ally, the husband of the Appellant in 2004.

The testimony of the Appellant is corroborated by SM1 testimony that Steven Kandilo bought the house and its plot from the family of Late Mzee Mbelwa and in turn re-sold the same to her Late



husband Rajabu Ally, a Sale Agreement which was witnessed by Athumani Nassoro (SM1).

On the other hand, the Respondent led evidence that Late Mzee Mbelwa was just an invitee to the plot in dispute where he was allowed to erect a house but not to own the plot. As a result, when he died, the house remained empty until it was occupied by the said Steven Kandilo. Therefore, his purported sale of the land in dispute is unfounded because the seller Steve Kandilo had not good title.

As it can be gleaned, the evidence by the Appellant is clear that the suit plot initially was under ownership of the Late Mzee Omari Athumani Mchikwe. This evidence is made clear by SM1 and SU2. It is this Mzee Omari Athumani Mchikwe a father of SU2 and grandfather of Late Mbelwa who gave it to the said Mbelwa. The Respondent claimed the suit plot belongs to him, but does not tell how he got it. The witnesses supporting him do not tell how he came about. It is SM1 who tells how the suit land was owned by the Late Mzee Omari Athumani Mchikwe. He stated as follows:

-

Maeneo yale yaligawiwa na Serikali mwaka 1975, Mzee Ysufu la kwake lipo Mashariki, Mzee Omari la kwake liko Magharibi, **kukawa kuna sehemu ya karibu na msitu haikugawiwa. Ikawa sehemu hii anatumia Mzee Omari** ilipofika 2009 wakaja watu wa mitandao wanataka wajenge mnara. Wakauliza tunataka sehemu hii mwenye eneo ni nani? Mzee Omari akasema ni kwangu. Akaandikwa jina lake yeye. Abeid Yusufu akaenda Ofisini kulalamika kuwa sehemu hii ni yangu mimi. Mkutano ule ikawa yule anayetaka kujenga mnala akasimamisha ujenzi, wakitwa wazee na Mh. Diwani Milipuko wakalizungumzia swala lile. Wakasema sehemu hii ni ya lizeva. Tunachoamua kila mtu eneo lake lilipotoka linunuliwe na msitu wa makaburi. Ndio ndugu Abeid Yusufu akaambiwa sehemu hii ya kujenga mnara ipo kwako. **Lakini wakati hiyo nyumba anayoishi huyu mama, wakati inanunuliwa ilikuwa iko kwenye umiliki wa Mzee Omari.**

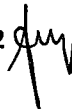


The trial Tribunal believed the story of the Respondent (who was the Applicant before it) and disbelieved the story of the Appellant (who was a Respondent before it).

As stated above the District Land and Housing Tribunal upheld the decision of the trial Tribunal. The two tribunals believed the evidence of the Respondent and disbelieved that of the Appellant.

A question I have asked my self is what were the reasons of disbelieving the evidence of the Appellant.

My perusal of the record I gathered from the decisions of the lower tribunals gave a reason that the seller of the land in dispute was an invitee. In my views, there is concrete evidence that the seller purchased the suit land from Mbelwa family. There is evidence from SU2 and that the suit land was given freely to Mbelwa by the father of SU2, Mzee Omari Athumani Mchikwe. This means Mbelwa and his family owned it, they had good title, they were not invitee to that land. Sale by the family of Mzee Mbelwa to Steven Kandilo was good in law. Hence Steven Kandilo acquired a lawful title which he lawfully passed to



Rajab Ally and the Appellant when he sold it to them as witnessed by SM1.

It is my views that the lower tribunals did not well analyse the evidence of both sides. Had they well analysed the same could have come to a conclusion like the one this court has made.

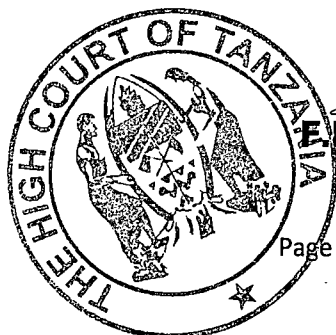
In the upshot, for reasons stated above, I find the Appeal as meritorious.

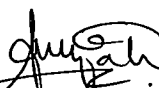
Consequently, I make the following orders: -

1. I do hereby allow the appeal.
2. I do hereby quash the judgement of the District Land and Housing Tribunal for Korogwe and set aside its decree.
3. I do hereby declare the Appellant as a lawful owner of the plot in dispute and the demolished house build on it;
4. The Respondent should vacate from the suit plot
5. The Respondent will pay the costs of this appeal.

It is so ordered.

Date at Tanga this 10th day February, 2023




E.K. MANYANDA
JUDGE