

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)**

AT DODOMA

LAND APPEAL NO. 23 OF 2022

(Originating from the decision of the District Land and Housing Tribunal for Singida at Singida in Land Application No. 60 of 2010 dated 17th March, 2022)

ILINDIRU IGIKURU.....APPELLANT

VERSUS

FRANCIS BENARD.....RESPONDENT

14/02/2023 & 27/2/2023

JUDGEMENT

MASAJU, J.

In 2010, the Respondent, Francis Bernard vide Application No. 60 of 2010 heard *ex-parte* successfully sued the Appellant, Ilindiru Igikuru for trespass before the District Land and Housing Tribunal for Singida. In 2018, the Appellant vide Misc. Land Application No. 74 of 2018 before the trial tribunal successfully sought for extension of time to set aside the *ex-parte* judgement. The *ex-parte* judgement was successfully set aside by the trial tribunal vide Misc. Land Application No. 125 of 2018. Hence, in 2022, hearing of the *inter-partes* Application No.60 of 2010 decided in favor of the Respondent.

Aggrieved by the decision of the trial tribunal the Appellant has come to the Court by way of an appeal. The Appellant filed an Amended Petition of Appeal which consists of seven (7) grounds of appeal. The Respondent contests the appeal as he filed a Reply to the Amended Petition of Appeal to the effect that he strongly denied all the grounds of appeal thus putting the Appellant to strict proof thereof.

When the appeal was heard in the Court on the 10th day of November, 2022 the Appellant was represented by Mr Edward Nchimbi, the learned counsel while the layman Respondent appeared in person.

The Appellant stated on the 1st ground of appeal that the Respondent had no *locus standi* to sue for recovery of the suit land because as per page 36-38 of the typed record of proceedings of the trial tribunal, the Respondent testified that the same belonged to his late father, Bernard Isango who died in 1997. That, the Respondent further testified that the suit land was a clan land and that he was not the administrator of the estate of the late Bernard Isango. To back up his argument, the Appellant referred this Court to the case of **Lujuna Shubi Balonzi v. The Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203.

As regards the 2nd ground of appeal, the Appellant submitted that trial Tribunal was not duly constituted as so revealed at page 34 to 35 of the typed record of proceedings whereby on the coram, the assessors were just recorded to be present without their names being stated accordingly though during questions for clarification their names were being recorded. The Appellant submitted that this is contrary to section 23(1)(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019].

The Appellant submitted on the 3rd ground of appeal that there was confusion in the record of the trial tribunal which can be noted in the judgement and typed record of proceedings. That, the number of the case and names of the parties were mixed thus capable of defeating justice. The Appellant prayed the decision and record of proceedings be declared a nullity.

The Appellant consolidated his 4th and 7th grounds of appeal and submitted that, the evidence in relation to the size of the suit land as so adduced by the Respondent was weak and contradictory thus should have been ignored by the trial tribunal accordingly.

The Appellant submitted on the 6th of ground of appeal that the trial tribunal erred for not taking into consideration that he adversely occupied the suit land since he had been using the same since 1998 up

to 2010 when the dispute arose which is exactly 12 years. That, this was testified by the Appellant in the trial tribunal as evident at page 41 to 44 of the typed record of proceedings. That, the Appellant was able to establish the size and boundaries of the suit land and how he acquired it, that is by clearing of the bush. That, he used the same for agriculture and livestock keeping. That, the Appellant evidence was supported by his two witnesses (DW2 and DW3).

The Appellant prayed the Court to nullify the proceedings and the decision of the trial tribunal for want of *locus standi* and coram hence order trial *de novo*. In the alternative, the Court to allow the appeal and declare the Appellant the lawful owner of the suit land.

The layman Respondent contested the appeal and the submissions made by the Appellant by adopting his Reply to the Amended Petition of Appeal. The Respondent added that there was no need for an application of the grant of letters of probate and administration of the estate of their late father because there was no conflict among them, hence he had *locus standi* to sue and that the coram of the trial Tribunal was properly constituted. The Respondent prayed the Court to dismiss the appeal for want of merit.

In rejoinder, the Appellant maintained his submissions in chief and added that the appointment of an administrator of the estate of the deceased is a legal requirement even if there is no conflict amongst beneficiaries. As regards legal representative in terms of section 3 of the Civil Procedure Code, [Cap 33 R.E 2019] the Appellant submitted that the Respondent ought to have so introduced himself before the trial tribunal. The Appellant maintained his prayers in the Court accordingly.

That was all by the parties for, and against the appeal in the Court.

The trial tribunal's original record shows that the Respondent's evidence as weighed against the Appellant's evidence was not credible thus did not prove the case on the balance of probabilities as the required standard of proof in civil cases. The Respondent (PW1) testified that, the suit land was the property of his late father, Benard Isango, whom had inherited the same from his grandfather. That, he is the third-born in their family and that his late father left fifteen (15) children. That, when his father passed away in 1997, he bequeathed the suit land to him. The Respondent called in only one witness, Marko Bernard (PW2), a relative from his mother's clan, who supported his evidence. Marko Bernard (PW2) stated that the suitland measured

approximately 250 acres while the Respondent (PW1) stated that the suitland measures approximately 170 acres. During cross-examination Marco Bernard (PW2) contradicted the Respondent's evidence as he testified that the suitland was divided among him and the Respondent by the Respondent's late father.

The Appellant testified that he acquired the suitland by clearing the bush during the 1998 *El Nino* rain season after he had migrated from Shinyanga. And that, since then he has been occupying and using the suit land for agriculture. The Appellant admitted that upon arriving Mtabila village he did not report to the local authorities therein but after clearing the bush he was so recognized as the villager thereof. The Appellant testified that the suitland contains 18 local houses for his family and four cemeteries which are of his grandmother, mother, brother and grandchild. The Appellant testified that the suitland measures about 250 acres. The Appellant evidence was largely supported by Njenja Nganja (DW2) and Issa Omary (DW3) who were among the people engaged by the Appellant in 1998 to clear the bush in the suitland after they had also entered Mtabila village.

Basing on the evidence adduced, it is therefore clear that the Respondent acquired the virgin suitland by clearing the bush and

residing onto it for 12 years that is since 1998 to 2010 before this dispute was initiated by the Appellant in the trial tribunal. On the other hand, it is unclear as to whether; one, the suitland, if true, is owned by the Respondent alone or jointly by the Respondent and PW2. Two, whether or not the Respondent is the sole heir of his father's land taking into account he has other 14 siblings whom none of them appeared in the Tribunal to support his case. Third, since the Respondent testified that he was not the administrator of the estate of the late Benard Isango then in what capacity was he suing. Fourth, the Respondent's case was fraught with apparent contradictions as to the actual size of the suitland he alleged to own. The Respondent's evidence was therefore doubtful and contradictory, hence not credible.

The fact that the Respondent did not report to the local authorities within Mtabila village when he entered into the suit land in 1998 could not have been a valid reason for the trial tribunal to disregard his evidence of occupation and development thereof over the same for over 12 years. After all, Mtabila village government had not disowned the Appellant's membership of the village. Equally, the fact that the Respondent denied the existence of the initial Application No.60 of 2010 which was heard *ex-parte* could not have been a valid reason for the

trial tribunal to doubt his evidence. Suffice to state here that, the Respondent failed to lead credible evidence as to how he occupied or owns the suitland.

The original record reveals that the trial tribunal was duly constituted all along during the trial of the land dispute between the parties and that the Assessors' opinions were read over to the parties accordingly in terms of Section 23 of The Land Disputes Courts Act, [Cap 216 RE 2019] and Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 respectively. The Appellant's 2nd ground of appeal and the submissions thereof were therefore moot.

That said, the meritorious appeal is hereby allowed accordingly. The judgement and consequential orders of the trial tribunal in Land Application No. 60 of 2010 between the parties hereof decided in 2022 are hereby severally and together quashed and set aside respectively. The Appellant is hereby declared the lawful owner of the suitland. The parties shall bear their own costs accordingly.



GEORGE M. MASAJU

JUDGE

27/02/2023