

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF KIGOMA
AT KIGOMA**

LAND APPEAL NO. 17 OF 2022

**(Arising from Land Application No.30 of 2016 in the DLHT of Kigoma
delivered on 01.07.2022)**

MIKIDADI JAFARI APPELLANT

VERSUS

**HAMZA SHABAN BURAEZE (Administrator of
the estate of the late Shaban Buraheze) RESPONDENT**

Date of Last Order: 06.03.2023

Date of Judgement: 24.03.2023

JUDGEMENT

MAGOIGA, J.

This is an appeal against the judgement and decree of the District Land and Housing Tribunal for Kigoma (Mwinyi, Chairman), dated the 1st day of July, 2022 in Land Application No.30 of 2016.

In Land Application No. 30 of 2016, the respondent instituted a land Application against the appellant and **Bukuru Moris Mbanakila** (not in this appeal and who did not participate in the lower Tribunal). Briefly, the respondent's claims against the respondents was for; declaration as the lawful owner of the disputed land situated at Plot No.44 Block M.D. Katonga Kigoma, vacant possession, general damages, costs of the suit and any other relief the Tribunal may deem just and fit to grant.



Upon served and in response, the appellant and Mr. Bukuru Moris Mbanakila filed a joint written statement of defence in which disputed all claims by the respondent and stated that, the appellant is the customarily lawful owner of the dispute land and in 1997 the same was allocated to Stamili Hamimu (the late wife of the appellant). Further facts were that in 2013, the appellant sold the disputed land to the Bukuru Moris Mbanakila. After hearing parties on merits, the trial Tribunal found in favour of the respondent and declared him the rightful owner of the disputed land. Aggrieved by the said findings, the appellant preferred this appeal armed with six grounds of appeal faulting the trial Tribunal in the following language, namely:

- 1. That, the trial Tribunal erred in law and fact by declaring the respondent the rightful owner of the disputed land, basing on the letter of offer dated 1998 illegally obtained by the respondent while at the material time the disputed land and all land around it they had no offer, rather from 1997 all land were under Bangwe Boko Village Council, and the village council from 1997 stated to sale the said land to the citizens and it is the time when the disputed land was sold to the appellant after paying eight thousand only (8,000/=) to have village council;***



- 2. That, the trial Tribunal erred in law and facts on determining the matter which is time barred, because the appellant used the land in dispute since 1997 and the respondent came after 12 years to claim the ownership of the land, with forged letter of offer;***
- 3. That, the trial Tribunal erred in law and fact by denying the appellant the right to be represented by advocate, despite the fact that the appellant told the tribunal that his being represented by advocate and his advocate was attending the case at the High Court;***
- 4. That, the trial Tribunal erred in law and fact by not considering the appellant's evidence that he obtained the disputed land since 1997 by sale from village council, and admitting the forged letter of offer dated 1998 of the respondent;***
- 5. That, the trial Tribunal erred in law and fact on determining the matter by denying to admit the appellant's receipt that was used to pay eight thousand only (8,000/=) to be issued with the disputed land by the village council as exhibit;***
- 6. That, the trial Tribunal erred in law and fact by deciding on favour of the respondent by basing on the forged letter of***



offer and living out the evidence of the appellant's witness on JUMA BILALI who was (the village chairman), the person that participated on distributing the disputed land.

When this appeal was called on for hearing, the appellant appeared in person and unrepresented, while the respondent had the legal services of Mr. Sylvester Damas Sogomba, learned advocate.

The appellant a layman had nothing to submit but told the court that this court consider the grounds of appeal and allow his appeal as prayed in his petition of appeal.

Addressing this court in reply, Mr. Sogomba told the court that, this appeal is without any merits and urged this court to dismiss it with costs. Arguing grounds 1, 4 and 6 jointly which their complaint is premised on exhibit P2 that is forged offer and that the appellant is the owner of the disputed plot since 1997. Brief to the point, Mr. Sogomba argued that PW2 proved that exhibit P2 is not a forged document but genuine document and is in the record of the Municipal Council and that his testimony was clear that, the disputed land belongs to the respondent. Further, Mr. Sogomba argued that, the issue of forgery was not an issue in the trial Tribunal, so the arguments are cropping up in this appeal and was not a matter that was decided by the trial Tribunal. On that note urged this court to



disregard it and found these grounds jointly argued are with no merits and proceed to dismiss them.

Not only that but also that, DW2 for the appellant categorically testified that the plot, if any, was given to STAHIMILI but no evidence was tendered to prove this allegation. Or that even if it was tendered but still same could not prove the ownership because it did not mention any plot number.

As regard the second ground of appeal, Mr. Sogomba argued that no evidence was put on record that the appellant has been in occupation of the suit plot since 1997 and as such the suit barred. According to Mr. Sogomba, the suit land since 1998 was the lawful property of the respondent and the dispute started in 2016 which makes this claim within time. On that note the learned advocate for the respondent urged me to dismiss this ground as well.

On the third ground, that the appellant was denied right of legal representation, Mr. Sogomba replied that, is not true because it was the appellant who opted to proceed without his advocate. This ground, as well, Mr. Sogomba urged this court to find wanting in this appeal.

Finally, on the fifth ground, the learned counsel for the respondent argued in rebuttal that, the record of the trial Tribunal is clear that, no such prayer by the appellant was denied to tender exhibits. Failure to tender exhibits,



if any, was due to negligence of the appellant, insisted Mr. Sogomba. Mr. Sogomba pointed out that, even if the said receipt was admitted it could not advance the appellant's case because it had no plot number as alleged.

On the above reasons, Mr. Sogomba invited this court to find and hold that this appeal is without any merits and proceed to dismiss it with costs. In rejoinder, the appellant rejoined that what was submitted by the learned advocate for the respondent is not true and added that his evidence was not taken and reiterated his earlier prayers to allow the appeal with costs.

This marked the end of hearing of this appeal and the duty of this court now is to determine the merits or otherwise of this appeal. The first, fourth and sixth grounds of appeal as correctly jointly argued by Mr. Sogomba revolved around the validity of the exhibit P2 admitted by trial Tribunal. The allegations of this exhibit being a forgery or illegally obtained was raised by the appellant. To this point, and guided by the provisions of section 110 (1) of the Tanzania Evidence Act, [Cap6 R.E,2019] is clear that the burden of proof lies to the person who desire the court to give judgement as to any legal right or liability which he asserts to exists. The said section for easy of reference provides as follows:-



“Section 110(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.”

In this suit, much as it was the appellant who wanted the court to give judgement that the contents of exhibit P2 were forged or illegally obtained he was duty bound to prove the actual forgery or the manner in which was obtained was illegal. This necessitated this court to go through the evidence on record of the appellant on this point and have noted and observed that no iota of evidence of forgery was tendered nor evidence on illegal obtaining of the same by the respondent was proved. It is one thing to allege, and yet another thing to prove the allegation. In the situation at hand, the appellant alleged but utterly failed to put forward evidence on record to prove forgery or illegal obtaining of the disputed plot by the respondent.

On that note, as rightly argued by Mr. Sogomba, these three grounds of appeal together are devoid of any useful merits and consequently are dismissed in the circumstances of this appeal.

This takes this court to ground number 2 that the suit in dispute was to time barred because the appellant used the disputed plot for more than 12 years since 1997 and the dispute arose in 2016. This being appoint of

law, in our jurisdiction, even without citing case law which are abound, is a trite law it can be raised even on appeal as in this appeal. While it is true that the appellant was given the disputed land in 1998 but his pleadings are silent on when the respondents trespassed into the suit plot. But at least the appellant's pleading shed light that at least in 2014 there was legal dispute which sailed to court but was nullified leading to the instant proceedings.

In the instant appeal, I have carefully revisited the record of the trial Tribunal proceedings, and in particular, at page 8 of the typed proceedings where the respondent tendered Building Permit as exhibit P3 dated 2014 and at page 10 of the proceedings, the respondent who testified as PW1 had this to say:

"the invasion started in 2014."

This piece of evidence not contradicted by the appellant together with exhibit P3 corroborate that the invasion was in 2014 and suffices to dispose of this ground that, the instant suit is not time barred and as such this ground is equally dismissed.

As regard to the third ground of appeal whose complaint was that the appellant was denied right to legal representation. Mr. Sogomba argued that no one denied the appellant such an opportunity but it was the



appellant himself and his advocate who denied themselves such an opportunity.

I have carefully and thoroughly gone through the trial proceedings and have noted that on 16/03/2022 when the matter was called for hearing, the appellant's advocate was not present without good cause and the appellant prayed that for another date and was granted and the matter was scheduled on 04.04.2022 but on that day the story was the same, the learned advocate for the appellant was for the second time absent without good cause and was scheduled on 20/04/2022 and the story was the same. On 20/04/2022 being a third time and the trial Tribunal invoked the provisions of Regulation 13 (2) of Land Disputes Courts (District Land and Housing Tribunal and addressed the appellant on the fate of defence and the appellant had this to say:

“ Mjibu Maombi- sina pingamizi nitaendelea mwenyewe.”

For better understanding and easy of reference, Regulation 13(2) provides as follows:

“ Regulation- 13(2) Where a party's advocate is absent for two consecutive dates without good cause and there is no proof that such as advocate is in the High Court or Court of Appeal, the Tribunal may require the party to proceed himself and if he refuses without good cause to lead evidence to establish



his case, the Tribunal may make an order that the application be dismissed or make such other order as may be appropriate.” (Emphasis mine).

In this appeal, the record of the trial Tribunal is clear that the advocate for the appellant absented himself not only twice but thrice consecutively and the trial Tribunal, in my respective opinion, acted within the law and the appellant cannot say was denied but he has himself and his advocate to blame.

With the above findings, this ground is as well with no merit and is hereby dismissed.

Finally, as to the 5th ground was that the appellant was denied right tender the appellant's receipt which he used to pay in the Village Council. Mr. Sogomba denied this complaint and brief and to the point submitted that there was no such denial but was negligence of the appellant for failure to tender the receipt. In the alternative, he argued that even if it was tendered had no plot number and no name of the appellant but the name of STAHEMILI who is alleged to be no more.

I have carefully considered this ground in the light of evidence on record of the trial Tribunal, in particular, when the appellant testified (at pages 35-40) but with due respect to the appellant, there is nowhere in the record where he intimated to tender any exhibit but denied by the trial

Tribunal. This ground was raised out of context in the circumstances of this appeal.

Without much ado, therefore, this ground as well is akin to fail and is dismissed.

Ultimately, based on my findings in the all six grounds of appeal preferred, this appeal is akin to wholly fail, and is hereby dismissed with costs for want of merits.

It is so ordered.

Dated at Kigoma this 24th day of March, 2023.



A handwritten signature in blue ink, appearing to read "S. M. Magoiga", written over a horizontal line.

S. M. MAGOIGA
JUDGE
24/03/2023

