

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

LAND APPEAL No. 33 OF 2022

(Originating from Land Case No. 33 of 2015 at the District Land and Housing Tribunal for Kagera at Bukoba)

SWAIBU KHABDU APPELLANT

VERSUS

1. ANDOCHIUS BYABATO 1st RESPONDENT

2. LAURIAN ANACRET 2nd RESPONDENT

3. KAHABUKA MARICHORI 3rd RESPONDENT

4. MWARABU JULIUS 4th RESPONDENT

JUDGMENT

22nd February & 24th March 2023

OTARU, J.:

SWAIBU KHABDU, the Appellant herein filed a suit as Administrator of Estate of the Late Frederick Muvuni (his father) in the District Land and Housing Tribunal for Kagera at Bukoba against ANDOCHIUS BYABATO, LAURIAN ANACRET, KAHABUKA MARICHORI and MWARABU JULIUS, for encroachment over his fathers' land in Nyakaija in Rugando Village, Bulyakashoji Ward within Muleba District. The matter was decided on 22nd April 2022 in favour of the 1st and 3rd Respondents by declaring them as lawful owners of their respective portions of land. Aggrieved, the Appellant filed this Appeal.

A brief background of this matter is such that, it is on record that in the year 1955 Frederick Mvumi inherited a parcel of land from his father Mvumi Ndahituma. The record further indicates that Frederick was to share the land with his siblings.

M. Olan

Between 1955 and 1966, Frederick Mvumi migrated to Uganda leaving his inheritance in the care of his siblings Jakob Mvumi, Anacret Mvumi and Kashongo Mvumi. Upon their deaths, Reonsia daughter of Frederick appears in the picture. Reonsia later sold part of the land to the 3rd Respondent's mother. The 4th Respondent is Reonsia's son. The 1st Respondent purchased his portion from Anacret Mvumi.

The Petition of Appeal filed by the Appellant contains three grounds which I shall not reproduce as the Appellant argued them together as one ground. He basically challenged the evidence adduced by the Respondents and admitted by the trial tribunal.

On the date set for hearing, the Appellant and 1st Respondent appeared in person and unrepresented. Other Respondents were notified but chose not to attend, thus the matter proceeded *ex-parte* against them. I have also observed that the matter was heard *ex-parte* the 2nd and 4th Respondents even in the trial tribunal.

The Appellant accused the 1st and 3rd Respondents of tendering forged sale documents at the trial tribunal upon which the tribunal wrongly relied upon. In addition, he argued that the Respondents did not buy the suit land. He also argued that Anacret who sold the land to the 1st Respondent had no mandate to do so neither did he follow the required procedures for selling land. He also added that the land sale to the 3rd and 4th Respondents should be nullified as they are not clan members and no proper sale procedures were followed. Thus, he claimed that the suit land be returned to his family.

M. Osumi

The 1st Respondent on the other side contested all claims by the Appellant and stated that he has been their neighbour and knew the boundaries better than the Appellant who lived in Uganda his whole life.

Having heard the rival submissions, I asked myself only one question, whether the Appeal has merits.

I have gone through the case file and observed that members of Mvumi family appear to have participated in sale agreements. There are also testimonies of witnesses concerning acquisition of suit land by the respective Respondents. According to the evidence adduced in the DLHT, the 1st Respondent acquired his portion from Anacret Mvumi while the 3rd Respondent was given his by his mother Getruda John who purchased the same from Reonsia Frederick in 1994. The trial tribunal considered the evidence adduced before it and decided the case in favour of the Respondents. The Appellant was born and raised in Uganda. When he came to Tanzania, he started claiming his father's land. At page 22 of the trial proceedings, the Appellant claimed land that was under joint ownership of his father and two brothers and not his father's only. He did not seem to know the boundaries of each portion and did not want to accept that his father's siblings had already sold parts of their portions. Neither did he bring forward any substantive evidence to prove that his father had a better title to the land than his siblings; that his sister had no right to sell the land; if his father's portion had been unlawfully sold; or he has a better title to the suit land than the Respondents for that matter.

M. O'Connell

The law is certain that *'he who alleges, must prove'*. Sections 110 and 111 of the **Law of Evidence Act** (Cap. 6 RE 2019) are to that effect. In the case of **Anthony M. Masanga v. Penina (Mama Mgesi) & Another**, Civil Appeal No. 118 of 2014 (CAT Mwanza) (unreported) the Court of Appeal stressed this principle in the following phrase; -

'Let's begin by re-emphasizing the ever-cherished principle of law that generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour.'

I also find it necessary to quote Lord Hoffman in **Re B [2008] UKHL 35** when he expounded the principle, that; -

'If a legal rule requires a fact to be proved (a 'fact in issue'), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned and the fact is treated as having happened.'

The Appellant did not utilize his right to prove his allegations, such that he failed to discharge his burden of proof, while the Respondents did prove their ownership. The trial tribunal when analyzing the evidence before it rightly gave the Appellant the value of 0. Having failed to discharge his duty, the Appellant has no one to blame but himself.

Consequently, the Appeal lacks merits and it is hereby dismissed in its entirety. Due to circumstances of this case, no order as to costs is given.

DATED at **BUKOBA** this 24th day of March, 2023.

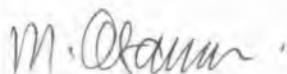


M.P. OTARU

JUDGE

Court: Judgment delivered in the Judge's chamber, in the presence of the Appellant and the Respondent, both in person.

The right of appeal is duly explained to the parties.



M.P. Otaru

Judge

24/03/2023