

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**LAND DIVISION**

**AT MOSHI**

**MISC. LAND APPEAL NO. 11 OF 2022**

(Arising from Land Appeal No. 08 of 2022 of Moshi District Land and Housing Tribunal at Moshi, originating from Shauri Na. 13 of 2020 of Kahe Ward Tribunal)

**DANIEL RALFU..... APPELLANT**

**VERSUS**

**BRYSON SAUL..... RESPONDENT**

**JUDGMENT**

*20/3/2023 & 03/04/2023*

**SIMFUKWE, J.**

This is a second appeal by the appellant, Daniel Ralfu after being aggrieved by decision of the District Land and Housing Tribunal dated 8<sup>th</sup> June, 2022 in Land Appeal No. 08 of 2022, in which the decision of Kahe Ward Tribunal in Application No. 13 of 2020 of which he had lost, was upheld. The appellant raised 4 (four) grounds of appeal as follows:

- 1. That, the 1<sup>st</sup> appellate Tribunal erred in law and facts in failure to ascertain that the trial Ward Tribunal erred in law and facts in holding that the Respondent is the lawful owner of the suit land regardless of the documentary*

*evidence tendered by the appellant which shows that he is the owner of the suit land.*

- 2. That the 1<sup>st</sup> Appellate Tribunal erred in not ascertaining that the trial ward tribunal erred in law and facts by not recognizing that some witnesses of the Respondent to wit Richard Mallya, Elisante Molla and Gaude Njau participated as witness (sic) in Village reconciliation meeting dated 21/04/2003 and 20/03/2004 respectively which at the end recognized the Appellant as the lawful owner of the suit land.*
- 3. That the 1<sup>st</sup> appellate court erred in law in failure to finds (sic) that the trial ward tribunal erred in law and facts in failure to ascertain that the appellant have (sic) been in quite possession of the suit land for almost more than 18 years and in all that time the Respondent was around and never complained.*
- 4. That the decision of the 1<sup>st</sup> Appellate Tribunal lacks legal reasoning as it did not give analytical answer to each and every ground of appeal upon reaching its decision.*

The appellant prayed for the following orders:

- a. That, this appeal be allowed.
- b. That, the decisions of the trial and appellate tribunals be nullified, quashed and set aside.
- c. That, the appellant be declared a lawful owner of the suit land.
- d. Costs to follow the events.

The substance of this appeal is to the effect that, the respondent herein instituted the land dispute before the Ward Tribunal (trial tribunal) against the appellant claiming that the appellant had trespassed in his land measuring two acres located at Ngasinyi Village, Dehu hamlet, Kahe Ward within the District of Moshi. The appellant alleged that he bought the said disputed land from one Godbless Mlay and one Wilbard who were among the youth who were allocated the said land by the village in 2002.

On the other land, the respondent alleged that the disputed land belonged to his father who gave it to him in 1988. Thus, when the village allocated the land to the youths in 2002, their land was not allocated due to its nature.

After hearing the evidence, the Ward Tribunal decided in favour of the respondent herein. The appellant was aggrieved, he appealed to the District Land and Housing Tribunal for Moshi (1<sup>st</sup> Appellate Tribunal). The 1<sup>st</sup> appellate tribunal upheld the decision of the trial tribunal. Still aggrieved, the appellant preferred this appeal.

The appeal was disposed of by way of written submissions. Both parties were unrepresented.

The appellant submitted on the 1<sup>st</sup> and third grounds of appeal only and argued that the other grounds of appeal were disposed in the course of arguing those grounds.

On the first ground of appeal, the appellant challenged the findings of the trial tribunal which were in favour of the respondent, the decision which the 1<sup>st</sup> appellate court upheld. He stated that, it is trite law that a party with strong and genuine evidence has a great chance of winning. To

equate this principle with his case, the appellant submitted that before the trial tribunal the respondent presented 4 witnesses and they never produced any remarkable documentary evidence to show that he was the lawful owner rather than mere words. On his part, he said, he had three witnesses and he produced documentary evidence showing how he acquired the suit land and that the same is on record of the trial tribunal. The appellant mentioned the documentary evidence which he had tendered to wit:

The minutes of Ngasinyi village meeting dated 10/9/2002 which shows that the appellant was number two in the list of people who were distributed the farms measured one acre each while the respondent was also in the list (No. 69) who was also given one acre but not the farm in dispute. He explained that since 2002 he kept on using the suit farm without disturbance until 2020 when the respondent filed claims against him at the Ward Tribunal claiming that the suit farm belongs to him the fact which was not true.

Another document was a reconciliation meeting dated 21/4/2003 which recognized the appellant as the lawful owner of the suit land and some of the respondent's witnesses including Gaude Njau was present during the said meeting.

The appellant also mentioned the minutes of the meeting dated 20/03/2004 which reconciled the dispute between the appellant, Wilbard Kimath and Aloyce Masao over the suit land where the appellant was named as the lawful owner of the farm. He stated that the respondent's witnesses namely: Richard Maya, Elisante Molla and Gaude Njau were all present and testified that the appellant was the lawful owner of the suit

land. Thus, the mentioned witnesses cannot turn to be the respondent's witnesses in the Ward tribunal as it raises questions on their credibility.

The appellant explained further that before the trial Tribunal he tendered the sale agreement dated 19/4/2003. He argued that, the sale agreement show how he purchased part of the suit farm from Godbless Mlay since 2003 and the respondent never complained that the said farm belonged to him as he lives nearby and saw the developments performed by the appellant on the said land.

Another documentary evidence was a letter dated 13/07/2021 which the appellant wrote to the respective trial ward tribunal requesting it to order Elisante Molla (respondent's witness) to bring some of the documents which could be essential in determining the lawful owner of the suit land but the trial tribunal never did so.

From the mentioned documentary evidence, the appellant condemned the 1<sup>st</sup> appellate tribunal for failure to regard the same while they justify him to be the lawful owner of the suit farm. On that regard, the appellant prayed the court to allow his appeal.

On the third ground of appeal, the appellant condemned the lower tribunals for failure to note that he had been in quite possession of the suit land almost more than 18 years and all that time, the respondent never complained. He submitted further that he acquired the suit land in diverse dates in 2002-2003 and since then he has been using the said land for cultivation. That, Despite the fact that the respondent was living near the suit land, he never complained as testified by the appellant before the trial tribunal. It was the appellant's argument that if the respondent had any claim over the suit land, he was supposed to take

action promptly and not waiting until years had lapsed. Also, the appellant opined that this draw inference that the respondent's claims were not genuine rather fabricated.

From what he had submitted, the appellant concluded that the lower tribunals never considered his strong evidence thus ended in giving erroneous judgment in favour of the respondent. He prayed the decisions of the lower tribunals be quashed and set aside and this appeal be allowed by declaring him as the lawful owner of the suit land.

In reply, the respondent gave the history of the dispute which I will not reproduce.

On the outset, the respondent submitted to the effect that he was able to prove ownership by convincing the trial tribunal by giving brief description of the said property. That, his three witnesses were able to prove ownership. He argued that the appellant did not meet the procedural requirements of tendering documentary evidence before the trial tribunal thus failed to prove his case. Thus, the tribunal decided in favour of the respondent not according to the awareness of village leaders but according to the evidence adduced and exhibits tendered before it.

Responding to the contention that the appellant had four witnesses, the respondent elaborated that the argument had no legal basis since the appellant was supposed to know the meaning of witness. According to the respondent, a witness is someone who has relevant information about the cause of action. That, witnesses must make an oath or solemnly state that they will tell the truth in court or tribunal before giving evidence. The respondent expounded that there is no number of witnesses required to

prove a case. He wondered how the appellant insisted that he had four witnesses including the respondent himself.

The respondent highlighted and insisted that in law there is no requirement of specific number of witnesses required to prove either a civil or criminal case. Even a single witness can prove the case depending on how he will convince the court with legal basis, facts, arguments and proper proof before it within the required standard in law. He opined that the lower tribunals had basis of deciding in favour of him as he was able to prove to the requirement of the law.

Moreover, the respondent clarified that the main function of the Ward Tribunal is to secure peace and harmony in the area of its establishment through mediating the parties to the dispute. That, while performing its function, the Ward Tribunal has to consider three main issues namely customary principles of mediation, natural justice and any principles and practices of mediation.

In respect of documentary evidence as submitted by the appellant, the respondent opined that the same is time barred since the appellant was supposed to know that all documentary evidence did not meet the required standards of law that's why they were never considered and never admitted as exhibit before the tribunal.

Responding to the appellant's submission that he acquired the suit land on diverse dates in 2002-2003, the respondent argued that he acquired the suit land and the appellant lies before this court that he acquired the suit land since 2002-2003. That, the appellant did not state who owned the same since 1988.

The respondent referred to **item 22 of the first Schedule to the Law of Limitation Act, Cap 89 R.E 2019** and argued that the period prescribed for a suit to recover land is twelve (12) years. That, the appellant stayed at this juncture wants to be sued while knowing that he was not in physical possession and control of the suit land and the rights of action over the subject matter.

In his conclusion, the respondent supported the judgment of the Ward Tribunal by opining that the same was well reasoned and followed the procedural requirement of the law. That, the trial tribunal had enough time to go through all the arguments, evidence and exhibits and gave its reasons for the decision according to the law and material facts of the case at hand.

On the basis of his submission, the respondent implored the court to dismiss the appeal with costs and uphold the decisions of the lower Tribunals.

I have scrutinized the lower Tribunals' records as well as parties' submissions. Before determining this appeal, it is prudent to make it clear that this being the second Appellate Court, I am refrained from disturbing the concurrent findings of the lower Tribunals unless it is found that there is misapprehension of the evidence, violation of some principles of law and/or practice, miscarriage of justice, existence of obvious errors on the face of the record or misdirection or non-directions on the evidence. This has been stated in numerous decisions including the famous case of **Amrathlar Damadar and Another v. A.H.Jariwalla [1980] TLR 31.**

Turning to the appeal at hand, the appellant has raised four grounds of appeal and submitted on two grounds of appeal. I will take the same route

in determining this appeal, meaning that I will determine the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal and in the due course I will determine the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal since these grounds interrelate.

On the 1<sup>st</sup> ground of appeal the appellant condemned the trial tribunal as well as the 1<sup>st</sup> appellate Tribunal for disregarding his documentary evidence to wit: minutes of Ngasinyi Village dated 10/9/2002, reconciliation meeting dated 21/4/2003, minutes of the meeting dated 20/03/2004 and the sale agreement dated 20/4/2003.

Opposing this ground, the respondent explained that he proved ownership through his three witnesses. Thus, the issue of having four witnesses as propounded by the appellant has no legal basis since no number of witnesses is required to prove the case.

I wish to start with the established principle referred by the respondent in respect of the number of witnesses. I concur with the respondent that it is established principle that no number of witnesses is required to prove the case. However, this principle goes hand in hand with the law that in civil cases whoever wish the court to decide in his/her favour, he/she must provide the court with heavier evidence than the adverse party. In the case of **Ernest Sebastian Mbele vs Sebastian Sebastian Mbele and 2 Others, Civil Appeal No. 66 of 2019** at page 8 it was observed that:

*"The law places a burden of proof upon a person "who desires a court to give judgment" and such a person who "asserts...the existence of facts to prove that those facts exist."*

In the instant matter the lower Tribunals ruled in favour of the respondent. The trial tribunal on the last page of its decision had this to say:

***"Baraza kwa Pamoja lilipitia maelezo ya pande zote mbili Pamoja na Ushahidi na Vielelezo vilivyotolewa kama vilivyo kwenye jalada husika na kujiridhisha pasipo shaka kuwa mwenye haki ya umiliki wa shamba hilo kiasi cha eka mbili lililo katika Kijiji cha Ngasinyi B, Kitongoji cha Dehu ni ndg. Bryson Saul."***

Supporting the above findings, the 1<sup>st</sup> appellate court stated that:

*"Mrufaniwa alieleza alipewa ardhi ya mgogoro na Baba yake. Aliendelea kukiri au kueleza kwamba Serikali ya Kijiji mnamo mwaka 2002 iliwagawia vijana mashamba katika maeneo yaliyokuwa mapori. Ardhi ya mrufaniwa imethibitishwa kuwa ilikuwa inaendelezwa kwa kilimo, hivyo haikuwa pori. Serikali ya Kijiji pamoja na wapimaji walioteuliwa na Serikali ya Kijiji kuendesha zoezi la kukagua maeneo pori kwa pamoja walithibitisha maeneo ya mrufaniwa kutokuwa pori na hivyo kutogawanywa."*

From the quotation above, I disagree with the appellant that his documentary evidence was not considered. Looking at the findings of the trial tribunal, it explicitly reveals that the same considered the documentary evidence. Therefore, I am of considered opinion that there is no misapprehension of evidence and misdirection or non-direction on the evidence for this court to disturb the findings of the lower Tribunals.

On the third ground of appeal, the appellant alleged that the lower tribunals failed to appreciate the fact that he had been in quite possession of the suit land for almost more than 18 years and all that time the respondent was around and never complained. The respondent claimed that he was the one who occupied the said land.

While re-evaluating the trial tribunal's evidence, the 1<sup>st</sup> appellate Tribunal was satisfied through the evidence that, the respondent managed to prove that his land was not distributed during the allocation of the land.

As stated above the one who demand the court to decide in his favour, then he must satisfy the court with enough evidence more than the adverse party.

In the instant matter, as rightly decided by the 1<sup>st</sup> appellate Tribunal, the records are clear that the respondent through evidence, was able to establish that he was given the said land by his father in 1988. This is as per his witness one Gaudence Theofil Njau who at page 14 of handwritten proceedings, testified that he was present when the respondent was given the said land. Another witness was Elisante Shaban Mola who supported the respondent's evidence that they were neighboring the respondent in that particular disputed land.

On part of the appellant, apart from the evidence that he bought the said land from one Godbless Michael Mlay as per his sale agreement, there is no other evidence to support the allegation that he had been using the disputed land for almost 18 years as lamented under the third ground of appeal. Thus, the third ground of appeal has no merit.

Therefore, I firmly conclude that there was no violation of principles of law for this court to disturb the concurrent findings of the two lower tribunals.

All said and done, I hereby dismiss this appeal with costs.

It is so ordered.

DATED and DELIVERED at Moshi this 3<sup>rd</sup> day of April, 2023.



X

S. H. SIMFUKWE

JUDGE

Signed by: S. H. SIMFUKWE

**03/04/2023**