

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MANYARA
AT BABATI**

LAND APPEAL NO. 8 OF 2022

(Originating from District Land and Housing Tribunal at Kibaya application No. 19 of 2022)

ASHA RAMADHANI.....APPELLANT

VERSUS

JANETH NGODO.....RESPONDENT

JUDGMENT

13th June & 19th July, 2023

Kahyoza, J.:

Janeth Ngodo sued **Asha Ramadhani** for trespassing to her piece of land measuring 2.5 acres located at Osteti village within Kiteto. **Janeth Ngodo** (the respondent) won the day. Aggrieved, **Asha Ramadhani** (the appellant) appealed contending that the district land and housing tribunal (the tribunal) erred to rely on an invalid sale agreement, to ignore the appellant's evidence and for its failure to capture evidential gaps in the respondent's evidence.

The appeal raised the following issues-

1. Did the tribunal rely on the invalid sale agreement?
2. Did the tribunal ignore the appellant evidence?

3. Was the respondent's evidence insufficient and incredible?

This is a very interesting case where each party claims he has been in occupation of the suit land. The appellant alleged that she cleared 45 acres of the virgin land including the disputed land in 1981, since that time she has been in actual possession up to 2016 when the dispute arose. On the respondent's part, she claimed that she bought the disputed land from Christopher Lauo in 2009, which she occupied until when the appellant invaded it.

Hearing of the appeal proceeded *ex-parte*. It was alleged and proved by an affidavit of service that, the respondent was served and refused to enter appearance to oppose the appeal. I wish to point out that this is a first appeal, thus, I will answer issues raised by the grounds of appeal as well as review the evidence as a whole.

Did the tribunal rely on the invalid sale agreement?

The appellant complained that the tribunal erred in law and fact by pegging his decision on sale agreement (exhibit P.1) which did meet the requirement under the **Village Land Act** [Cap. 114 R.E. 2019] and other related laws. To substantiate the complaint in the first ground of appeal, Mr. Kyashama, the appellant's advocate, submitted that the sale transaction was a private disposition, for that reason, parties to sale agreement were

required to comply with section 31 of the **Village Land Act**. Section 31 require all private disposition to be approved by the village council. He argued that, the same was endorsed by the hamlet chairman.

He argued further that, the sale agreement was not valid as it had no stamp duty, it violated section 45 of the **Stamp Duty Act**, [Cap. 189 R.E. 2002].

In addition, he argued that, the agreement was not valid for lack of evidence from the seller. The respondent alleged that she bought the disputed land from Christopher but did not summon him to testify.

I reviewed the judgment of the tribunal and found out that the tribunal did not state the reasons of holding that the respondent proved her case. It is not clear whether the tribunal relied on the sale agreement, exhibit P.1 or on the respondent's evidence. I resolved to look at the evidence. The respondent deposed that she bought the disputed land measuring 2.5 acres from one Christopher Lauo in 2009. She tendered the sale agreement. Michael Thomas (**PW2**) deposed that in 2009 he was a chairman of Sugugo hamlet where the disputed land is allocated and witnessed the sale agreement.

A third respondent's witness was Aienea Jackson (**PW3**) who deposed that the respondent purchased the disputed land in 2009. This witness did not state the role he played.

On the appellant's part, she testified and called two more witnesses to support her evidence. She deposed that she acquired the disputed land by clearing the virgin land in 1981. She cleared 45 acres of land including the disputed land. After her husband died in 2015, the dispute arose in the following year, that is in 2016. Rashid Haruna (**DW2**) supported the appellant's evidence that the disputed land was a family property which the family acquired by clearing a virgin land in 1981. He deposed that the dispute commenced in 2019 when the respondent claimed that the land belonged to her as she bought it from Christopher Lauo . He deposed that the father cleared it in 1981.

As shown, Rashid Haruna (**DW2**)'s evidence contradicted the evidence of Asha Ramadhan (**DW1**). Asha deposed that she is the one who acquired the disputed land by clearing the virgin land but Rashidi Haruna (**DW2**) deposed that, the disputed land was the family property. He deposed that the appellant and his father cleared in 1981.

Rashidi Haruna (**DW2**) told the tribunal that he was 30 years in 2022 when he testified, obviously, he was not yet born in 1981 when his father or

mother cleared the land. He did not tell the court how he got that information. I find him not a reliable witness.

A third defence witness, Saddick Idd (**Dw3**), deposed that the land was the appellant's husband property and after he died, he left to her. The third witness' evidence contradicted the appellant's evidence.

It is on record that the appellant was 45 years old in 2022, which means she was born in 1977. Thus, if she cleared the disputed land in 1981, she did so before she was born. This is ridiculous, it renders the appellant's evidence a fabricated and unbelievable story.

I considered the respondent's evidence who was summoned among the witnesses, a hamlet chairman where the disputed farm is located. The record shows that Michael Thomas (**Pw2**), the hamlet chairman was 19 years old when he became a hamlet chairman in 2009. The appellant did not cross-examine Michael Thomas (**Pw2**), as to his age or whether he was a hamlet chairman as alleged. It is now settled that failure to cross-examine a witness implies acceptance of the truth of his evidence. The Court of Appeal held in **Kilanya General Suppliers Ltd & Another vs CRDB Bank Ltd & Others** (Civil Appeal No. 1 of 2018) [2021] TZCA 3529 (20 December 2021) that-

"It is a principle of evidence established upon prudence in this jurisdiction that failure to cross examine a witness on important matter means acceptance of the truth of the witness evidence."

I regarded Michael Thomas (**Pw2**) as a witness of truth. Michael Thomas (**Pw2**)'s evidence proved that the respondent acquired the disputed land in 2009. It is proved that the respondent was in occupation. It negated the evidence of the appellant that she was in occupation of the land from 1981 uninterrupted until 2016 or 2019 as the defence evidence portrayed.

The sale agreement may have been invalid for contravention of section 32 of the **Village Land Act** and section 47 of the **Stamp Duty Act**, still there is evidence that the respondent took possession of the disputed land in 2009. The respondent claim of occupying the disputed land is supported by the leader at the grassroots level. I examined section 32 of the **Village Land Act**, to say the least, I did not see its relevance. I am in agreement that a sale agreement of the land in the village must be approved by the village council.

It is true that the sale agreement had no stamp. It is also true that the sale between the appellant and Christopher was not approved by village council.

It is true that no stamp duty was paid regarding the sale agreement, such omission renders the document inadmissible in evidence. **Zaharia V. Theresia maria John Mubilu** [1995] TLR 211. It should be known that failure to tender stamped exhibit does not make the exhibit worthless. It is an issue of compliance held in **Idd Shaaban (Administrator of Estate of Shaaban Issa) and another V. Moshi Juma Nzungu and Justine Leopold Timetheo**, Land case No. 31 of 2012.

It is trite law that, omission to a pay stamp duty in accordance with section 45 (a) (i) read together with section 5 and the Schedule, both of the **Stamp Duty Act**, rendered the document inadmissible as evidence in court. The position was taken in the case of, among others, **Zakaria Barie Bura v. Theresia Maria John Mubiru** [1995] T.L.R 21. Failure to stamp the document does not render it useless. Unstamped documents are not useless documents, a court may admit such documents and rely upon them after stamp duty is paid, as held in the case of **Zakaria Barie Bura v. Theresia Maria John Mubiru** (supra). It is however, improper for a court to admit and act on unstamped document. For that reason, I find merit in the appellant's advocate complaint that the trial tribunal erred to admit and rely on the unstamped exhibit. Consequently, I expunge Exh.P.1 from the record. I wish to emphasis that even after, expunging the sale agreement, there is

still ample evidence to establish that the disputed land is the appellant's property as demonstrated.

Did the tribunal ignore the appellant evidence?

I will answer the third and second grounds of appeal jointly as they refer to the issue of evidence. The appellant complained that the tribunal ignored her evidence in the second grounds of appeal, whereas in the third ground of appeal she complained that the tribunal relied on respondent's evidence, which was not sufficient or credible.

To support the second ground of appeal the appellant's advocate submitted that the chairman failed to appreciate the doctrine of adverse possession. The appellant acquired the land way back in 1981 and enjoyed advance possession until 2009 when the respondent claimed to have bought it in 2009. He added that the respondent alleged that he bought the disputed land in 2009 but failed to summons the seller to testify.

I passionately considered whether the doctrine of adverse possession would apply in the appellant's favour. Quickly, my answer is that the doctrine of adverse possession cannot be invoked in the appellant's favour for reasons that; **one**, according to the record the appellant who was 45 years in 2022 when she testified, she was not yet born in 1981 when she alleges that she

acquired the suit land; **two**, even if she acquired land by adverse possession, it was against a person who owned the disputed land before 1981.

The doctrines adverse possession as the Court of Appeal observed in Bhoke **Kitang'ita V. Makuru Mahemba**, Civ. Appeal No. 222/2017 CAT (Unreported) stated that a person who occupies someone's land without permission, and the property owner does not exercise his right to recover it within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession. The appellant occupied someone's land in 1981 so she acquired the disputed land by adverse possession.

A **third** reason why the doctrine of adverse possession cannot be invoked in the appellant's favour is that, given the evidence on record, if at all the appellant acquired land in 1981 by adverse possession and occupied the same until 2009. Then, the appellant lost the disputed land by adverse possession when the respondent trespassed onto the land in 2009 and occupied it until 2019 or 2016 when the dispute arose. It does not matter whether the respondent bought the disputed land or trespassed what matters is that the respondent occupied the disputed land from 2009 uninterrupted for a period of more than 12 years. The appellant acquiesced to the respondent's occupation of the disputed land from 2009 till 2019 or

2016 when the appellant recouped it. Thus, if the respondent did not buy the disputed land, she acquired it her long and interrupted occupation of the suit land.

In my considered opinion the doctrine of adverse possession applies in the respondent's favour and not in the appellant's favour.

The appellant's advocate contended that the ward tribunal adjudicated the dispute instead of mediating the parties. He added that the certificate of settlement was not a settlement but a certificate of adjudication. The ward tribunal transgressed its mandate under section 13(4) of the **Land Disputes Court Act**, [Cap. 216 R. E. 2019].

There is no dispute that following the amendment of section 13 of the **Land Disputes Court Act**, the ward tribunal has no mandate to adjudicate, its mandate is limited to mediating the dispute. Section 13 (4) states that-

"(4) Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably:

Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal."

The certificate shows that the ward tribunal reached a settlement that the respondent is entitled to her land measuring 2.5 acres. The ward tribunal's certificate indicated that the respondent accepted the proposed resolution and the appellant refused.

I agree with the appellant's advocate that the ward tribunal may have adjudicated the matter as it took evidence. However, I read the law and found that the law does not provide the procedure on how the ward tribunal ought to conduct mediation. Even if, it is true that the ward tribunal transgressed its mandate, the issue is did that cause any injustice to the appellant. My quick reply is that the appellant did not suffer any injustice. After the appellant refused a settlement or the order of the tribunal, the respondent instituted an application before the district land and housing tribunal. The District Land and Housing Tribunal heard the appellant and respondent afresh as the law requires. It did not hear them as it was entering an appeal.

In addition, I find that the appellant was not prejudiced by what transpired at the ward tribunal, as the decision which determines the parties' right was properly issued by the District Land and Housing Tribunal. Section 45 of **Land Disputes Court Act**, proved that-

"45. No decision or order of a Ward Tribunal or District

Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.

In the end, I find no merit in the three grounds of appeal. Consequently, I dismiss the appeal and uphold the judgment and decree of the District Land and Housing Tribunal. The respondent is awarded costs.

It is ordered accordingly.

Dated at Babati, this **19th** day of **July**, 2023.



A handwritten signature in black ink, appearing to read 'John R. Kahyoza', written over a horizontal line.

John R. Kahyoza,

Court: Judgment delivered in the absence of the appellant and her advocate, and in the presence of the respondent. Ms Fatina (RMA) is present.

A handwritten signature in black ink, appearing to read 'John R. Kahyoza', written over a horizontal line.

**John R. Kahyoza,
Judge
19. 07.2023**