

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

MOROGORO

LAND APPEAL NO. 131/ 2022

*(Arising from Land Appeal no. 5 of 2021, DLHT Kilosa from original land dispute
no.72 of 2020 of Msowero ward)*

MARIAM OMARI SOMWANA.....APPELLANT

VERSUS

SALUM SALEHE MAKWAYA..... RESPONDENT

JUDGEMENT

Last Order: 07/03/2023

Judgement: 12/05/2023

MALATA, J

This is a Judgement in respect of the second appeal originating from Msowero Ward Tribunal where the appellant sued the respondent for the alleged trespass to four (4) acres of land, the land which originally

belonged to appellant's grandfather. On the other hand, the respondent claim to have obtained ownership from his late father.

In both tribunals below, the appellant has consistently lost the case thence this appeal. The dispute was decided in favour of the respondent at ward tribunals as well as on appeal before the District Land and Housing Tribunal (DLHT). Both the Ward Tribunal and the DLHT decided in favour of the respondent and ordered that, the parties should remain in their respective land and respect each other's boundaries. The appellant was still aggrieved, thus filed this appeal clothed with three (3) grounds, that:-

1. The appellate and trial tribunal erred in law and fact when entered its judgement basing on the evidence that do not hold water and on the weak evidence of the respondent.
2. The appellate and trial tribunal erred in law and fact failing to properly analyse and evaluate evidence.
3. The appellate and trial tribunal erred in law and fact by disregarding that no reason for decision is clearly explained by the trial tribunal.

The appellant prayed to this Honourable Court to allow the appeal, quash the judgement and set aside orders by the trial and appellate tribunal and declare the appellant the lawful owner of the suit land. Upon being served

with the grounds of appeal the respondent filed his reply to the memorandum of appeal fervently disputing the appeal.

The matter was disposed by way of written submission and both parties filed their submission accordingly.

Submitting in support to ground one, the appellant stated that, the trial Tribunal erred in law and fact when entered its judgement basing on the weak. The respondent and his witness evidence were not strong to prove that appellant's claims. The respondent's witness testified that, when he went to a disputed area and found a ridge which he placed boundary separating the land of appellant and respondent. At the same time the respondent stated in his evidence that, the boundary between appellant's land was banana tree which existed before the demise of his late father and when he grew up, he witnessed that banana tree as a boundary mark.

Despite of the weak and confusing evidence adduced by the respondent's side, the trial tribunal decided on his favour and further the appellate tribunal overlooked those facts and confirmed trial tribunal decision despite of weak and confusing evidence adduced by the respondent.

On the second ground the appellant submitted that, the evidence adduced by the appellant and his witnesses to support the claims was overlooked by trial and appellate tribunals, in that, it did not discuss and evaluate any

of the strong and satisfactory evidence of the two witnesses that supported appellant claims, first appellant witness stated that due to his understanding regarding the disputed area, respondent invaded appellant land just like respondent brother did to his land after the respondent's father passed away and it has been tendency of respondent's family to extend to their neighbours land which before the death of their father were peacefully owned and there was no any interference. Further he stated that the appellant owned the area peacefully for many years until recent when the respondent trespass to appellant's land.

Furthermore, the second appellant witness stated clearly that appellant owned the land peacefully for over thirty (30) years and she even used to farm in appellant's land and mentioned about the existing banana tree which separate appellant land from respondent which supported appellant's evidence that the banana tree which she has been continually taking care of ever since it was planted by her mother as a boundary mark which is the real boundary mark which separate appellant's land from respondent and the reason why she created a ridge was to avoid flooding water to enter into her house after recent floods which occurred in the area due to heavy rain.

The Appellate submitted further that, the tribunal had a duty to analyse the evidence properly to ascertain if there was misapprehension and

overlooking of evidence by the trial tribunal thence the present appeal unfortunately the appellate tribunal failed to do so thus confirming trial tribunal's decision which favoured respondent.

Finally, the appellant asked the court to set aside the judgment of both trial tribunal and first appellate tribunal.

Replying to the submission by the appellant, the respondent stated that he utilized and respected the boundary of the suit land together, with his family and relatives for many years without any dispute from anybody or from competent authority. He prayed the court to make regard to the case of **Shaban Nasoro vs Rajabu Simba** (1967) HCD No. 233 Said J (as he then was) had this to say to land cases like this one,

" The court has been reluctant to disturb the persons who have occupied land and developed it over a long period."

He further stated that, he has special interest over the suit land as a lawful owner hence justice should be made and the judgment from both tribunals deserve to be upheld and declare the Respondent as a lawful owner for the land in dispute.

On the other hand, the respondent raised the issue of locus standi, however, the same was not raised at the trial and it is necked for want of

evidence as submission is not evidence then, I find no time to waste on the same.

It was the respondent's submission that, his evidence was watertight and proved ownership of land in question as opposed to the Appellant's evidence, hence asked the court to dismiss the appeal with costs.

In nutshell, the appellant is in irreconcilable land dispute each claiming to be the owner of the same, thence the land case and this appeal.

This is the second appeal arising from first appeal from DLHT all originating from the decision of the Ward Tribunal. The appellant was dissatisfaction of the DLHT decision, thence this appeal.

Having summarized the arguments of both parties and upon revisiting the background of this appeal the issue to be determined is whether there is evidence to prove ownership of land of either party.

It is trite law that, this being a second appellate court has to duty to analyse and re-evaluate the evidence and ascertain if the lower courts wrongly arrived to the decision thence demand for interference by the appellate court. See the case of **John Bosco Rwabutiti vs. Sabiti Kainamula**, Misc. Land Application no 60 of 2021.

The burden of proving existence of any fact lies to who he alleges a fact. This is echoed by both statute and precedents. In **sections 110, 112 and 3 (2)(b) of The Evidence Act, Cap 6 R. E. 2022**

In the same line there are various court precedents **Godfrey Sayi vs. Anna Siame as a legal representative of late Mary Mndolwa**, Civil Appeal no. 114 of 2021, court of appeal (unreported) **Anthony M. Masanga Vs. Penina (Mama Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 and **Geita Gold Mining Ltd & Another Vs. Ignas Athanas [2019] 1 T. L. R. 318 [CA]** among the relevant precedents on the burden and standard of proof in civil cases.

I have scrutinized the trial tribunal's records and noted that both parties in the course of proving their claims did not produce any tangible evidence. In a situation where a party is claiming ownership of land, a party has to prove on the balance of probability that, the suit landed property belongs to him. In other words, the claimant must produce cogent evidence against the other party showing that he has better title over the disputed land than any other person.

In our jurisdiction a person acquires and own land through; **one**, clearing unoccupied bush, **two**, by allocation by the land allocating authorities, **three**, gift, **four**, purchase, **five**, inheritance and **six**, adverse possession.

In any way a person claiming ownership of land he has a duty to prove how he acquired ownership of land in dispute.

However, in the present case, neither party produced any evidence be it documentary or oral to prove ownership over the suit land and how either of them acquired.

In that regard, either party claiming to have good title over the land in dispute bears a duty to prove it in strict compliance with section 110, 112, 115 of the Evidence Act, Cap. 6 R. E. 2022

Section 110 elucidate that

(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 exist.

*(2) 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 exist***

section112 provides that;

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence,

unless it is provided by law that the proof of that fact shall lie on any other person.

Section 115 depict that;

*"In civil proceedings when any fact is especially within the knowledge of any person, **the burden of proving that fact is upon him.**"*

From the proceedings of the trial tribunal, I have noted the assertion from the appellant, who instituted the proceedings before the trial tribunal and later appealed to the DLHT. The appellant claimed that the suit landed property originally belonged to her grandfather on maternal side and upon reallocation from Kitete they have been using that land.

The respondent on the other claimed the land belong to his late father, he has been using it since his father was alive.

From those facts, it is undisputed that both the appellant's and respondent's ownership of the land is from their respective deceased parents and grandparents. The issue of inheritance was not raised and proved by either party before the trial tribunal. There is no evidence suggesting that the appellant or the respondent either of them inherited the suit land.

The law as it stands, is that a claim for and on behalf of the deceased may only be instituted by an administrator of the deceased estate. As such, neither the appellant nor the respondent is claiming title as an administrator or a heir whose title was acquired through inheritance. Further, there is no clear explanation as to how they got into possession or ownership in the absence of any proof of either way under which one can acquire ownership of land as stated herein above.

In view thereof, this court finds that, the parties herein have no locus stand to claim ownership of the said land in the absence of any provable good title gathered through any of the ways of acquiring land. The law instructs that, a party to court proceedings cannot prosecute or defend a matter into which he lacks locus standi. Otherwise, the proceedings become a nullity. In the case **Lujuna Shubi Balonzi Senior vs. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203 explained locus standi as;

*"Locus standi is governed by common law, when a person bringing a matter to court should be able to show that **his right or interest has been breached or interfered with.**" (Emphasize is mine)*

In the present case, as stated herein above neither party was able to prove how he/she became to have good title over the land in question. Failure

to establish such interest or right and how either party legally acquired then it is with no iota of doubt that, both of them have failed to prove existence of interest, rights and or ownership of land in dispute. As such, I hold that the parties herein have no locus standi to claim for ownership over the land in dispute.

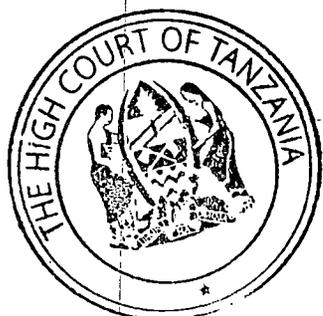
Therefore, the raised issue herein above is resolved in a negative as neither party proved interest, right or ownership over the land in dispute and how he/she acquired the said land.

All said and done, I hereby nullify the proceedings of the trial tribunal and appellate tribunal for the above assigned reasons. Should either party still interested to pursue for any right he may file a fresh application and be able to prove to the balance of probability as to how ownership of land in dispute did fall into his/her hands.

Consequently, I hereby dismiss the appeal with no order as to cost.

IT IS SO ORDERED

DATED at MOROGORO this 12th May, 2023.



G. P. MALATA

JUDGE

12/05/2023