

IN THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MOROGORO)

AT MOROGORO

LAND APPEAL NO. 127 OF 2022

*(Originating from Land Appeal No. 79 of 2020, District Land and Housing Tribunal at
Kilosa)*

JUMA S. MALINGO.....APPELLANT

VERSUS

BALNABAS E. SEMWENDA.....1ST RESPONDENT

HADIJA ABDALLA.....2ND RESPONDENT

ZAINABU KASIM.....3RD RESPONDENT

KIJIJI CHA KONDOA.....4TH RESPONDENT

JUDGEMENT

Hearing date on: 15/6/2023

Judgement date on: 31/7/2023

NGWEMBE, J:

The appellant being aggrieved with judgement and decree of the District Land and Housing Tribunal for Morogoro (the tribunal), decided to exhaust his right to appeal to this court. The background of this land dispute initiated by a complaint of the 1st respondent before Mabwerebwere Ward Tribunal (the ward tribunal) against the appellant and other respondents herein. The complaint is related to plot No. 32 of

a land located at Kondoa village. The plot was issued to the 1st respondent, but also Juma Malingo claimed ownership of same piece of land. Thus, the dispute landed to Mabwerebwere ward tribunal, whereby the 1st respondent sued the appellant and 3 others (Land case No. 4 of 2020). After considering the land dispute, concluded that the suit land is owned by the 1st respondent herein and the building built in that plot of land be removed immediate. As a consequence of that decision, the appellant herein went to the district Land and Housing Tribunal, unfortunate his appeal was dismissed with costs. Thus, paved his way to this house of justice grounded with three grievances which may be summarized into one that, the 1st respondent failed to establish and prove his ownership to the standard required by law.

Tracing the genesis of this dispute, both appeared before the ward tribunal and testified briefly as follows; the 1st respondent claimed ownership of the suit land from year 2015 by way of purchase from the 3rd respondent, but in 2017 another person invaded the suit land and built a house. After his inquiry, he found out that the appellant was the one who invaded his plot of land and sold it to Hadija Abdallah (2nd respondent) who is appellant's daughter who built a house therein.

The 3rd respondent testified that; the disputed land belonged to her as she was allocated plot No. 32 in year 2008 measured quarter an acre by Kondoa village government after paying the required fee of Tsh. 3,000/=. On 2015 she sold the same to 1st respondent for Tsh. 100,000/=. thus supporting the evidence of the 1st respondent.

Appellant herein went on to testify before the ward tribunal that he was given the disputed land by Mohamed Maduila in year 1978 and

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he has been owning the same since then to year 2017 when he decided to give it her daughter (2nd respondent) who built a house.

Further testified that, he has no knowledge whatsoever that the village government re-allocate his land to the 3rd respondent.

Some of the members of the village land allocation committee including village Chairperson by then Mr. Leonard Maile, village executive officer Mr. Rajab Mbachi and Isaya Makasi confirmed that they were among the members of the village land allocation committee, which allocated the suit land to 3rd respondent who in turn she sold it to the 1st respondent. It is on record that the Tribunal visited *locus in quo* with a view to satisfy that, the suit land is well known to them. At the end and due to available evidences, the Ward Tribunal decided in favor of the 1st respondent as a lawful owner of the suit land after lawfully purchasing it from Zainab Kasim (3rd respondent).

On a hearing date of this appeal, the appellant and respondents did not procure services of learned advocates; thus, had no useful arguments to support the appeal and or counter it. Briefly the appellant recapped the background of his ownership that he acquired the suit land since 1978 and the ward tribunals' decision was reached basing on one side of evidence.

Equally the 1st respondent replied briefly that, the suit land is his land through purchase from the 3rd respondent. Thus invited this court to dismiss the appeal with costs, while the 2nd respondent supported the appeal, that the appeal is proper. At the same time 3rd respondent introduced a new legal issue that the appeal is time barred and the execution of the decree of the district land tribunal was completed. Therefore, this appeal is hopelessly out of time. Even the bill of costs



has also been filled in court and that this appeal is irrelevant and abuse of court process. Lastly, she prayed for the dismissal of the appeal with costs.

4th respondent, the Chairman of Kondoa village forcefully, praye this appeal be dismissed forthwith as the land in dispute was allocated by the village government to Zainab Kasim (3rd respondent) who sold it to Barnabas (1st respondent), he added that the appellant is a trouble maker and intends to abuse this court.

Having traced the genesis of this dispute and upon consideration of grounds of appeal in line with the available evidences adduced during trial at the Ward Tribunal, and upon perusal to the records of district land tribunal, I think the crux of this appeal lies on the question of whether the appeal has merits.

First it should always be clear that the courts decide disputes according to available evidences, applicable laws prevailing circumstances and precedents. **Second**, the plaintiff/applicant/claimant in civil related suits has uncompromised duty to establish *locus standi* over the subject matter. That he has to prove that he has right to seek protection from the court of law.


Considering the grounds of appeal, the first issue to determine is the *locus standi* of the appellant to claim ownership of the suit land. According to the available evidences, the appellant alleged before the ward Tribunal and before the Tribunal that he became the owner of the suit land in 1978 after being given the suit land by one Mohamed Maduila. Unfortunate I find nothing on the records supporting his claim. Instead, there is strong evidence from the village government that disputed land was located to 3rd respondent who sold it to 1st

respondent and the first owner was Maduila who accepted his land to be re-allocated to villagers who had no land. Appellant did not even bring Mohamed Maduila to testify whether or not he gave him land.

Apparent the appellant was 2nd respondent before the ward Tribunal, being sued for invading the suit land, later appealed to the Tribunal and finally in this court claiming that he is the owner. Under the circumstances he had uncompromised duty to prove *locus standi* which he failed.

Even if this court decide to disregard the issue of *locus standi* and thoroughly determine this appeal as I just did, yet the evidence adduced during trial at the Ward Tribunal and even after the members of the trial Tribunal visiting *locus in quo*, the whole evidences proved the 1st respondent to be lawful owner. Examining the available evidences, it is undisputed fact, through the evidence of the village government which allocated the suit land in 2008 to 3rd respondent who in 2015 sold the same to 1st respondent but the quarrel stated in 2017. Appellant did not give explanation as to where was he since 2008 where the village allocate the land. Such period is equal to 9 years.

In his first ground of appeal that, the trial tribunal erred in law and fact by failure to analyze and examine properly the evidence on records. Appellant faulted the trial tribunal analyzation and examination of the evidence on records but it is a trite law that, when there is concurrence of two subordinate courts or Tribunals on a point of fact, the second appellate court may, unless there is an apparent error thereon, otherwise, such point of fact will prevail.



The two Tribunals had concurrent decision on the fact of ownership, that due to the available evidences, undoubtedly, the 1st respondent is a true owner of the suit land who bought it from 3rd respondent who first was allocated by a lawful organ of Kondoa Village. Second, 3rd and 1st respondent occupied the land for 7 and 2 years respectively than 9 years undisturbed from whoever.

I am aware of the most cherished principles of law that, generally, in civil cases, including land matters, the burden of proof lies on the party who alleges anything in his/her favour. Sections 110 and 111 of the Law of Evidence Act [Cap 6 R.E, 2002] are quoted hereunder that:-

Section 110. whoever desires any court to give judgement as to any legal righty dependent on existence of facts which he asserts must prove that those facts exist.

Section 111. The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side".

The proper understanding of these two sections is that, there must exist a legal right, which that right has been infringed unlawfully and without color of right by another person. The one who has that legal right seeks assistance of the court to enforce that person out of that right.

When the two parties are in court, the one who claim to have a legal right has also a legal duty to prove that that legal right, actually, existed and the other party has without color of rights infringed it. Mere allegations of ownership of land without proof of it, will always remain allegations.



Second and third grounds both revolves on the issue of evidence before the trial tribunal the issue which is already answered above.

In this appeal and upon deep consideration in totality of grounds of appeal, I am settled in my mind that all do not point any valid error committed by neither the ward Tribunal nor by the Tribunal. Consequently, I find no reason to change the already arrived conclusion by the two Tribunals.

Accordingly, this appeal lacks merits same is dismissed entirety.

I accordingly order.

DATED at Morogoro this 31th July, 2023



P.J. NGWEMBE

JUDGE

31/7/2023

Court: Judgement delivered at Morogoro in Chambers on this 31th day of July, 2023 in the absence of both sides.

A.W. Mmbando

DEPUTY REGISTRAR

31/07/2023

Court: Right to appeal to the Court of Appeal explained.



A.W. Mmbando

DEPUTY REGISTRAR

31/07/2023