

IN THE HIGH OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL No. 41 OF 2022

(Originating from Land Case No. 23 of 2021 of the District Land and Housing Tribunal for Rukwa at Sumbawanga)

ADAMU PATILISIO CHOMA.....APPELLANT

VERSUS

GALASIA MWANISAWA.....RESPONDENT

JUDGMENT

07/06/2023 & 31/08/2023

MWENEMPAZI, J.

Before the District Land and Housing Tribunal for Rukwa at Sumbawanga (Trial tribunal), the respondent herein filed a land application against the appellant herein for vacant possession over a piece of land located at Chang'ombe hamlet in Laela. Having heard the suit on merits, the trial tribunal entered Judgment in favour of the respondent and ordered the appellant to vacate the disputed piece of land.

Being aggrieved by the decision of the trial tribunal, the appellant herein appealed to this court whereas his petition of appeal consisted of eight (8) grounds as reproduced herein;

1. That, the trial tribunal erred in law and facts for deciding the matter contrary to the law of limitation which is unjust in the eyes of the law.
2. That, the trial tribunal erred in law and facts for deciding the matter basing on vague evidence adduced by the Respondent which is unjust before the law.
3. That, the trial tribunal erred in law and facts for deciding the matter without considering the evidence adduced by the appellant.
4. That, the trial tribunal erred in law and facts for deciding the matter contrary to the laws.
5. That, the trial tribunal erred in law and facts for deciding the matter by stating that the disputed land is owned by the respondent.
6. That, the trial tribunal erred in law and facts for deciding the matter by biasness.
7. That, the trial tribunal erred in law and facts for deciding the matter by using false evidence adduced by the respondent which is unjust before the land law.

8. That, the trial tribunal erred in law and facts for deciding the matter by stating that the appellant failed to prove his ownership of the disputed land which is not true in the eyes of the law.

In which, the appellant seeks the orders of the court that, this appeal be sustained with costs, and the proceedings, judgement and decree of the trial tribunal be quashed and set aside and any other relief that deemed fit by this court.

When the matter was scheduled for hearing, both parties had no legal representation meaning they fended off for themselves.

As lay person as he is, when the appellant was invited to argue for his grounds of appeal, he submitted that he appealed because he was not satisfied with the decision of the trial tribunal and that the land in question belongs to their father. That, their father had died in the year 2000, and the respondent claimed for the same in the year 2021. He prayed for this appeal to be allowed.

In response, the respondent submitted that the appellant started the conflict, that the disputed land was given to her by her father as he was sick. She proceeded that; she left the land to Hilalio who asked for the farm at the time he had taken his farm which is at home. She added that she refused to give him, and all that she wants is to remain with the farm.

In rejoinder the appellant added that the farm is only 1^{1/2} acre, and at the trial tribunal the respondent had not given any exhibit.

After keenly reading the records before me and the submissions made by both sides, I am fortified that the only determinant issue in this appeal is ***whether this appeal is meritorious before this court.***

The appellant had filed eight (8) grounds of appeal in which all them suggests that the respondent had not proved her case on the balance of probabilities as required by the law in civil cases.

I am aware of the rule that usually the trial court is best placed to determine the credibility of witnesses (See **AUGUSTINO KAGANYA ETHANAS NYAMOGA AND WILLIAM MWANYENJE v REPUBLIC** (1994) TLR 16 (CA). This is especially so, where the decision of the case is wholly based on the credibility of witnesses such as the present one (See **ALI ABDALLAH RAJABU v SAADA ABDALLAH RAJABU AND OTHERS** (1994) TLR 132.

But it is also settled law that the duty of the first appellate court such as this, is to reconsider and evaluate the evidence and come to its own conclusions bearing in mind that it never saw the witnesses as they testified (See **PANDYA v REPUBLIC** (1957) EA 336.

In the records of the trial tribunal reveals that the respondent and her brothers were given the disputed land by their father and that the respondent exchanged it with the appellant's father upon a request by him and that the respondent had returned the said land to the appellant after his father had died but the appellant never returned the land that the respondent had exchanged with his father before his death.

This fact was supported by the testimonies of **GASTO CHOLE (SM2)** and **SALVATORY CHOLE (SM3)**, who in different turns during their testimonies did submit before the trial tribunal that the disputed land belonged to the respondent's father and he had given to his children, the respondent included. They did testify that, the respondent had exchanged her piece of land with the appellant's father but after he passed away, she returned the exchanged land to the appellant but the appellant did not do the same.

On the other hand, the appellant claimed that the disputed land belongs to him as he was given the said land in 1998 by his father known as Hilalio Kampolyo. But it is in the records that this claim by the appellant was not supported by any of his witnesses that he had summoned at the trial tribunal.

On my part after perusing the evidence on record, I find that the respondent at the trial tribunal had established her case on the balance

of probabilities, and in applying the same principle guided by the evidence of all parties and observations and analysis of the eight grounds of appeal, it is without a speck of doubt that the appellant's evidence at the trial tribunal was weak. I do not think that the appellant had proved to the required standard, that the disputed land belonged to him; a standard higher than the balance of probabilities not even on the balance of probabilities. See the case of **City Coffee Ltd vs The Registered Trustee of Holo Coffee Group, Civil Appeal No.94 of 2018** CAT at Mbeya (unreported).

In view thereof, I hold that the appellant's grounds of appeal are without merit, and therefore, this appeal as whole has no merits.

In the upshot, I find nowhere to fault the findings and decision of the District Land and Housing Tribunal for Rukwa at Sumbawanga in Land Case No. 23 of 2021. Thus, I proceed to dismiss this appeal without costs.

Order accordingly.

Dated at Sumbawanga this 31st August, 2023.



T. M. Mwenempazi
T. M. MWENEMPAZI
JUDGE