IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE SUB REGISTRY OF KIGOMA)

AT KIGOMA

LAND APPEAL NO. 05 OF 2023

(Arising from Kigoma District Land and Housing Tribunal in Land Application No. 131 of 2016)

YONA LAMECK..... .....APPELLANT

VERSUS

PAULO MAHUNDI.....1ST RESPONDENT

JACKLINE N MUJUNGU.....2ND RESPONDENT

Date of last Order: 16/08/2023

Date of Judgement: 01/09/2023

JUDGEMENT

MAGOIGA, J.

The appellant, **YONA LAMECK** aggrieved by the decision of the District Land and Housing Tribunal for Kigoma dated 24/12/2022 in Land Application No.131 of 2016 now appeals against the whole judgment and decree of the trial Tribunal to this Court.

In Land Application No. No.131 of 2016, the appellant herein instituted a land case against the 1st and 2nd respondents herein above claiming for declaration that the appellant is the lawful owner of the disputed land measuring 1.5 acres, restraining the respondents from entering the farm area permanently, vacate from the disputed farm and costs of the suit.

The land in dispute was approximately measured one and a half acre **situated at Itwalu Businde Ward in Kigoma/ Ujiji Municipality.**

The appellant's claims over the said land in dispute was that he customarily owned the dispute land from 1969 to date.

After hearing the parties on merits, the trial Tribunal found in favour of the 1st respondent herein and declared him the rightful owner of the disputed plot.

Aggrieved by the said findings, the appellant preferred this appeal armed with four grounds of appeal faulting the trial Tribunal in the following language namely;

1. *That the District Land and Housing Tribunal erred in law and in fact by basing its decision that the appellant at the time he owned land was a minor of the age of 11 years hence he could not own the land.*
2. *That, the District Land and Housing Tribunal erred in fact by deciding against the appellant by the mere reason that he did not submit the documentary evidence.*
3. *That, the District Land and Housing Tribunal erred in law and in fact for wrongly evaluating the evidence of the appellant's witness.*
4. *That, the District Land and Housing Tribunal erred in law and in fact by pronouncing the judgement while the appellant was not heard.*

On the above grounds, the appellant prayed this court to allow the appeal by quashing the decision of the District Land and Housing Tribunal dated

24th December, 2022 and the declaration that the appellant is the lawful owner of the land in dispute.

When this appeal was called on for hearing, the appellant was present in person and unrepresented whereas the 1st respondent enjoyed legal representation by Mr. Sylvester Damas Sogomba, learned advocate; whilst the 2nd respondent was represented by Mr. Moses Rwegoshora, learned advocate.

The appellant submitted generally that he owned the disputed plot as part of the family of Lameck Mtula, the original customary owner. According to the appellant, the disputed land was bordered by Mgaliwa and Nguranche. Appellant admitted that he was a child by then in 1969 and that he opposes this judgement because he was not heard.

The appellant then prayed his memorandum of appeal to be considered and allow the appeal with costs.

On the other hand, Mr. Sogomba for the 1st respondent replied starting with the last ground of appeal submitted that, the appeal is with no merits and that it should be dismissed with costs because of the reason he stated that there is evidence that the appellant was heard as evidenced at page 27-31 of the typed proceedings. According to Mr. Sogomba, this is a bogus and hopeless ground of appeal. The learned advocate for the 1st

respondent as well prayed the court to adopt the reply to the memorandum of appeal.

On the 1st ground of appeal, Mr. Sogomba argued that the allegation that the appellant owned the land from 1969 while he was 11 years is baseless because he could not have capacity to own land.

Replying on 2nd ground of appeal, Mr. Sogomba submitted that, there is no any family member who was called to support the appellant's bare story and as such prayed this ground to be dismissed.

Replying on the 3rd ground of appeal, Mr. Sogomba argued that all evidence was analysed and the trial chairman was right in his decision because the respondent testified on how he got the disputed plot by showing the history as well as supportive documents while nothing was done by the plaintiff in the disputed land save for bare claims. Mr. Sogomba then invited this court to dismiss the appeal with costs.

On the part of the 2nd respondent, Mr. Rwegoshora had nothing new to submit rather supported the submissions by the counsel for the 1st respondent. He also prayed the court to dismiss the appeal with costs.

In rejoinder, the appellant argued that the respondent's reply is without merits. He reiterated his prayers as prayed in submission in chief.

This marked the end of hearing of this appeal and the duty of this court now is to determine the merits or otherwise of this appeal.

Coming now to the merits of this appeal, in particular, of the 1st ground of appeal, having carefully followed the rivaling arguments of the appellant and that of the counsel for the 1st and 2nd respondents, and considered all argued and the record of appeal, in my considered opinion, found the argument by the appellant that the DLHT was wrong to decide that the appellant at the time he owned land was a minor of the age of 11 years, hence, he could not own the land to be founded. I say so because the appellant at that time was minor, hence, impossible for him to own land by himself. It is on record while under cross examination that he answered that he started owning the plot in question from 1969 while he was 11 years and when further asked about how did he get the said plot, the appellant answered that he was allocated the same, among others, by family members. To my understanding in 1969 when the appellant alleges to have been allocated the plot, the allocating authority could not have allocated the plot in question to the appellant as at that time he had not attained the age of the majority. Allocation of the land is just like other normal contracts.

The Law of Contract [Cap 345 R.E 2019] under section 10 provides as follows;

> *"All agreements are contracts if they are made by the free consent of the parties competent to*

contract, for a lawful consideration and with a lawful object, and are not hereby declared void."

For a contract to be valid, the persons to the contract must be competent to enter into the contract. Section 11(1) says specifically that;

"Every person is competent to contract who is of age of the majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by law to which he is subject."

Section 11(2) of Cap.345 provides that an agreement entered into by a person not competent to contract is void. The Law of Contract does not define the age of majority. However, the Interpretation of Law Act, [CAP.1 R.E.2002] defines the age of minor as a person who has not attained the age of eighteen years.

In the circumstances of this appeal, if the appellant was 11 years in 1969 it means he was born in 1958 as his testimony shows, it also means that in 1969, the time he alleges to have been allocated the plot in question, he was minor and not competent to enter into that agreement just like other agreements.

This brings me to the conclusion that the first ground of appeal has no merits for the reasons already given. I have no reason to fault the trial chairperson's decision on this matter.

This trickles down to the second ground whose main complaint was that the learned Chairperson erred in law in deciding against the appellant by the mere reason that he did not submit the documentary evidence.

Essentially, the burden of proof is a legal standard that sets out how parties have to prove their case to show that a claim is either valid or invalid. In civil cases, the party bringing the action must prove their case on a balance of probabilities. This means that the evidence presented must convince the trial magistrate/ chairperson or judge that it is 50%+ or more likely that the case the plaintiff is presenting is true and correct. The defendant will present evidence to attempt to show that the plaintiff's claim should not succeed. If the plaintiff fails to meet his burden of proof, the court dismisses the claim and finds it in favour of the defendant.

The respondents 'counsels submitted that, there is no any family member who was called to support the appellant's bare story. That means, if the appellant could have at least one witness to prove his ownership the decision would otherwise be different from this.

Proof of a case does not necessarily base on documents but on evidence. The evidence may be orally or by documents. To my understanding, a party to a suit cannot fail his case for the mere reason that he didn't submit in evidence the documents in the evidence. This is as per section 61 of the Tanzania Evidence Act [Cap 6 R.E 2022] provides that;

> *"61 All facts, except the contents of documents, may be proved by oral evidence"*

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. (see section 110 (1) and (2) of the Evidence Act, [Cap.6]. Such fact is said to be proved when, in civil matters, its existence is established by a majority of probability (see section 3 of the Evidence Act, Cap. 6 R.E 2022). The appellant failed to meet the requirement as provided for under section 110 above.

In that regard, I find no reason to fault the trial chairperson in his decision as apart from the appellant lacking documentary evidence which the opposite parties presented, yet he did not bring convincing witnesses to prove his ownership. The second ground is dismissed henceforth.

The next ground is couched that, the District Land and Housing Tribunal erred in law and in fact for wrongly evaluating the evidence of the

appellant's witness. The learned counsel for the respondents submitted that all evidence was analysed and the trial chairman was right in his decision because the respondents testified on how they got the disputed plot by showing the history as well as supportive documents while nothing was done by the plaintiff in the disputed land save for bare claims. This ground will not detain me much. As I have found in ground one and two above, I hold the same view to this ground. I consequently, dismiss the same for being unmerited.

On the last ground which is couched that the District Land and Housing Tribunal erred in law and in fact by pronouncing the judgement while the appellant was not heard. While the appellant laments that on the date of judgement, the trial chairperson did not give him opportunity to be heard, the counsel for the respondents argued that this ground is with no merits and that it should be dismissed with costs because of the reason they put that there is evidence that the appellant was heard as evidenced at page 27-31 of the typed proceedings.

Having considered the rivalling arguments and the evidence on record, without much ado, I find this ground is equally unmerited. I have taken trouble to peruse the record of appeal and found out that at page 27 to 34 of the typed proceedings, the appellant and his witnesses were heard and at page 35, the appellant closed his case. The claims that he was not

given the right to be heard when the trial chairperson was pronouncing the judgement is not even a legal requirement because there is no such obligation that before delivering the judgement parties must be heard. The only requirement is to give notice to the parties as per Order XX Rule 1 of the Civil Procedure Code [Cap 33 R.E 2019] which provides inter alia that;

> *1. The court, after the case has been heard, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their advocates.*

In the instant appeal, the appellant herein is not lamenting to have not been given such notice but that he was not heard. On that note, I find the appellant with no reasonable ground to advance for this appeal to succeed because he was availed with that opportunity, and indeed, use that right effectively.

On the foregoing reasons, I find the entire appeal with no merits and consequently proceed to dismiss it with costs.

It is so ordered.

Dated at Kigoma this 1st day of September, 2023.

S. M. MAGOIGA

JUDGE

01/09/2023