

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 10 OF 2023

(Originating from Land Application No. 07 of 2020 in the District Land and Housing Tribunal for
Rukwa at Sumbawanga)

VENANCE SILILO KAPELE APPELLANT

VERSUS

JOHN LUCAS MSANGANZILA 1ST RESPONDENT
JUMA JEGI 2ND RESPONDENT

JUDGMENT

MWENEMPAZI, J:

The appellant herein named is aggrieved by the judgment and decree of the District Land and Housing Tribunal dated 28/12/2022. He has therefore filed six (6) grounds of appeal to address his grievance in order to challenge the decision of the District Land and Housing Tribunal. For the sake of brevity I will summarize the grounds as follows:

One, that the date of delivery of judgment was changed without his knowledge which led him not to enter appearance when the judgment was delivered. That, earlier it was scheduled on 28/1/2023 but instead

of the date the impugned judgment was delivered on 28/12/2022. **Two**, that the chairperson relied on the hearsay evidence that the respondent's relatives were buried at the dispute area which is not true. **Three**, that respondent's grandfather has never lived at the dispute area but he was buried at Isafu area, China S/Village 60 years. **Four**, that there was no agreement made or signed between John Simtowe and Sililo Thadeo Kantalamba who has occupied the land since 1972 to 2015 when he died. **Five**, that the respondents failed to prove the agreement for borrowing. The dispute land is within Karuko Village and **sixth**, the evidence by defence witnesses is contradictory.

At the hearing of an appeal parties were unrepresented and by counsels they prayed to proceed with hearing by way of written submission. They duly complied to the scheduling order.

Based on the grounds of appeal the appellant submitted in the written submission that he denies that there was fairness in the determination of the dispute between them as shown in the judgment.

The appellant has submitted that it is not clear under which capacity the 1st respondent is claiming the dispute land. He has not shown that he is a legal personal representative of his late father meaning that he was

appointed by the Court with competent jurisdiction as an administrator of the deceased's estate, his late father or grandfather.

The appellant has cited section 44 of the Probate and Administration Act, [Cap 312 R.E 2020]. I believe he did so for the position that *"letters of administration entitle the administrator to all rights belonging to the deceased as if the administration had been granted at the moment after his death"*.

He argues that only the lawful appointed legal representative of the deceased can sue or be sued for or on behalf of the deceased. He argues also that the tribunal failed to consider the letters of administration.

The appellant has also complained that there was a change of date of delivery of judgment without him being notified. Which led the judgment to delivered in his absence.

He has also contented that the issue of contradictory testimonies does not hold water under the circumstances of this case since he inherited the land from his father.

In general, he alleges that the trial chairman failed to analyses the evidence in the trial Court hence arrived at the wrong decision. He prays for the appeal to be allowed.

In the reply submission the respondent submitted that the appellant was not a party in the impugned decision as in the trial tribunal he sued the respondents in his capacity as legal personal representative of the deceased Sililo Thadeo Kantalamba. He therefore prayed that this appeal be dismissed with costs.

On the allegations that the respondent did not establish and prove that he was claiming the land in dispute as a legal representative of his late father the respondent has submitted that it is untenable. The 1st respondent has submitted that he was dragged into the legal wrangle by the appellant and hence he did not bear the duty to establish his status in the suit. He has cited the case of **Madam Mary Silvanus Qorro Vs. Edith Donath Kweka and Wilfred Stephen Kweka**, Civil Appeal No. 102 of 2016 Court of Appeal of Tanzania at Arusha (unreported).

The respondent has submitted/argued that the record is clear that he was born and raised on the dispute land until when the dispute arose in 2020 when the appellant took him to the District Land and Housing Tribunal. Also, that the honourable chairperson considered the letters of Administration, exhibit P1, whereby after assessing the evidence as a whole, decided the way it is in the impugned judgment, that the applicant

has failed to prove his claims hence the application is dismissed with costs.

The 1st respondent is the lawful owner of the dispute land.

The 1st respondent has submitted further that the argument that the chairperson favoured the respondent is absurd. The appellant was present on the date when the date for delivery of judgment was scheduled. He only decided not to enter appearance. Also, the results in the judgment did not depend on appearance or not. It is based on the evidence which was tendered and he argues that he proved his case to the balance of probability. Thus, the tribunal considered the evidence from both sides, visited the locus in quo and after evaluating the evidence, the 1st respondent was declared to be the lawful owner of the suitland.

The 1st respondent's evidence was corroborated by DW3, DW4 and DW5.

Who testified that the suitland belong to the 1st respondent.

Therefore, the respondents are not trespassers of the suitland as correctly ruled by the trial tribunal. There is evidence on record on how the appellant and his witness failed to prove ownership of the suitland.

Neither the appellant nor his witnesses knew how the late Kantalamba got ownership of the suitland since they had contradictory evidence on such crucial matter. In conclusion, the 1st respondent prayed that the suit be dismissed with costs.

I have read the record of appeal, trial tribunal's record and also the memorandum of appeal and the submissions made; the issue to be tackled is whether the appeal is meritorious and deserves to be allowed as prayed by the appellant. This being the first appeal I am aware, from precedents that this being the first appellate Court, my responsibility is to review the facts and law and determine whether the trial tribunal made any errors that affected the outcome of the case. In the case of **Faki Said Mtanda Vs. The Republic**, Criminal Appeal No. 249 of 2014, Court of Appeal of Tanzania at Dar es Salaam (unreported) it was observed that:

"...a first appeal is in the form of re-hearing. Therefore, the first appellate Court, is duty bound to re-evaluate the entire evidence on record by reading together and subjecting the same to a critical scrutiny and if warranted arrive at its own conclusion. (The Court quoted with approval from R.D. Pandya Versus Republic [1957] EA 336)".

Therefore, the first appellate Court is required to address itself to all the issues and decide the case by giving reasons.

Having found and quoted the guidance I would thus come back to the record to revisit the evidence which was tendered in the trial tribunal for

the purpose of reassessing its probative value so far as the contesting claims are concerned.

The appellant was the applicant in the trial tribunal and filed a suit claiming for a 50 acres of land against the respondents herein. That land is located at Karuko Village where the litigants reside. In his claims, he asserted that the land once belonged to his father, who passed away in 2015 and him being a legal representative of his father's estate, he has filed a suit against, the respondents claiming the land. He alleges that the 1st respondent trespassed into the land in 2017 and in 2018 sold the land to the second respondent.

According to the appellant's testimony his father acquired the said land in 1982 at the time the appellant was 24 years old. The land is close to Tailos Sizo and Philbert Kanjele. He also tendered letters of administration as exhibit P1.

The second witness for the applicant (PW2) was Chrisant Peter Sigoma a resident of Matai. Testified that the late Kantalamba was allocated the land by the village land council in 1982 it was 200 acres. Then, it was a bush. The dispute arose in 2017. It was allocated to Sililo Kantalamba.

Moses Msaka testified as PW3. He said Sililo Kantalamba started owning the land in 1976 but it was allocated to him in 1972. They used the farm with his relative Colonel Kantalamba. He denied to have seen the 1st defendant nor his parents cultivating on the dispute land. The 1st respondent trespassed into the land in 2017. The dispute area is 50 acres in size.

On the respondent's side, John Lucas (PW1) testified that he is administrator of the estate of the late John Shamende Msangazila. He testified that his father has been at the dispute land since 1952 and the witness was born in 1974. He has been living at the land until when the dispute arose.

The area has a total of 157 acres and those belong to the 1st defendant and the appellant claims 50 acres. The appellant has failed to describe and locate the area he is claiming especially by showing the boundaries. According to the SU1 (the 1st Respondent, the appellant sold his piece of land in 2017.

Juma Jegi testified as PW2 testimony was that he has not trespassed into the land but he borrowed from SU1. He testified that the borrowing was adduced into writing.

The 1st respondent called John Simtowe, who testified as SU3. He is also a resident of Kamko Village. He testified that he started agricultural activities in 1971. He was welcomed by the 1st respondent, I believe his father.

In 1982 Colonel Kantalamba applied for a piece of land from the village Government. He was given a piece of land (Mbuga Kapamba). They were neighbours. He cultivated in that land for 10 years. Then he became sick. His relatives came and took him to another place. Later the appellant and one Sililo Kantalamba migrated to the area where Coloneli Kantalamba was cultivating, they started creating boundaries against their neighbours. In 2017, the appellant started to make boundaries at the land owned by the 1st respondent. A complaint was filed at the village government by the 1st respondent. He was among people who testified. The land was declared to belong to the 1st respondent.

According to Elia Daniel Paulo (SU4) and Falesi Nachizombwe, both insisted in their testimony that the dispute land belong to the 1st respondent and the 2nd respondent borrowed from the 1st respondent as per SU4. (Elia Daniel Paulo) and that the dispute area borders a plain land (mbuga) Mzee Tailos and SU1. At page 21 of the typed proceedings the borders have been clarified by SU3 John Simtowe.

According to the evidence as summarized herein above the prosecution witness, witnesses for the applicant or appellant in this appeal had their story that the appellant's uncle, one Colonel Kantalamba acquired land on 1982 when he applied to the village government. It is also testimony by the same witness that Colonel Kantalamba occupied the land for ten years, he became sick, relatives took him and later after demise of Colonel Kantalamba, the appellant and his father migrated into the land. They began expanding haphazardly without involving neighbours which has, led to the dispute.

The appellant has complained that the 1st respondent has not been able to show the basis of him defending the land. He testified that he is the legal representative of the estate of his father though he did not adduce a letter of administration. However, the duty to prove the case was on the appellant who filed the application that is also in accord to dictates of section 110(1) of the Evidence Act, [Cap 6 R.E 2010] which provide that:

110(1) "whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist".

Thus, the appellant burden of proof of his case. The 1st respondent was just dragged into Court, he must not establish his locus standi. In the case of **Madam Mary Silvanus Qorro Vs. Edith Donath Kweka and Wilfred Stephen Kweka**, Civil Appeal No. 102 of 2016 Court of Appeal of Tanzania at Arusha was held that:

"the question of locus standi on the part of the respondents was not at issue..."one of the reason is that the respondents were just dragged to the Court by the appellant and hence they did not bear the duty to establish their status in the suit".

The appellant carrying the duty to prove his case failed to do so as found by the trial chairman while PW1 and PW2 adduced evidence that the appellant's father acquired dispute land in 1982, PW3 testified that the land was allocated to the appellant's father in 1972 and started owning it in 1976, this is a material contradiction to show lack of coherence and consistence in the evidence. When the same evidence is compared to that of the respondents, the 1st respondent has adduced a clear and unshaken evidence that Luca Shamende Msangazila lived and occupied the land (137 acres) since 1952 and the dispute arose in 2017. Also that the appellant's uncle had the land allotted to him but not the one in

dispute. It is the land adjacent to that owned by SU3. John Simtowe more to that, the appellant came in after demise of Colonel Kantalamba and started creating borders while expanding the land into the areas owned by other neighbours including the 1st respondent. All witnesses were firm that the dispute land is owned by SU1 the 1st respondent.

Therefore, the appellant failed to prove his claims a duty accorded to him by the provisions of section 110(1) of the Evidence Act, [Cap 6 R.E 2023].

Therefore, I am in agreement with the findings of the trial tribunal that the dispute land belongs to the first respondent. Under the circumstances, the appeal fails and the same is dismissed with costs.

It is ordered accordingly.

Dated and delivered this 20th day of September, 2023.




T.M. MWENEMPAZI

JUDGE

Judgment delivered through video conference in the presence of the appellant and the respondent who were at Kalambo District Court at Matai this 20th day of September, 2023.


T.M. MWENEMPAZI
JUDGE
20/09/2023

Right of appeal explained.




T.M. MWENEMPAZI
JUDGE
20/09/2023