

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE SUB REGISTRY OF KIGOMA)

AT KIGOMA

LAND APPEAL NO. 61 OF 2022

(Arising from Kigoma District Land and Housing Tribunal in Land Application No. 54
of 2018)

RAHEL NKERAME (Administrator of the Estate of

Ntuye Gegama).....**APPELLANT**

VERSUS

MAULID RUGINA.....**RESPONDENT**

Date of last Order: 24/08/2023

Date of Judgement: 22/09/2023

JUDGEMENT

MAGOIGA, J.

This is an appeal against the judgment of the District Land and Housing Tribunal in Land Application No. 54 of 2018.

In a nutshell, in the District Land and Housing Tribunal for Kigoma (Trial Tribunal), the Appellant herein **RAHEL NKERAME** sued the respondent **MAULID RUGINA** for unlawful trespass, seizure and wanton waste culminating in the devastation of the applicant's plot No. 355 BLOCK J. Kumunyika Kagunga within Kasulu District.

The trial Tribunal after hearing the parties adjudged for the Respondent herein.



Aggrieved by the said findings, the appellant preferred this appeal armed with six grounds of appeal faulting the trial Tribunal as summarised hereunder;

- 1. That the trial tribunal erred in law without considering the evidence adduced by the appellant husband owned the disputed Plot No. 355 Block "J" Kumunyika Kagunga within Kasulu District since 1974.*
- 2. That the Trial Tribunal erred in law and fact by deciding in favour of the respondent without considering that the suit was proved by the trial tribunal on balance of probability by the appellant herself and the other witnesses called during the hearing of the case.*
- 3. That the appellate Tribunal erred in law and fact by denying the appellant's witness who adduced before the trial tribunal that the appellant has been using the said disputed plot for more than 48 years their families have been using without being disturbed rather relied on the cooked document which was not even tendered before the honourable tribunal that the respondent bought the said plot from one JUMA SAID MPUMBIYE whom he declared himself that he was just cultivating the said land but did not prove that the land belonged to him and he didn't even bother to visit the land offices to verify the land because he is living nearby the said land.*



4. *That the trial tribunal erred in law and fact by failure to consider the documentary evidence tendered by the trial tribunal during the hearing of the said suit to wit the letter offer rendered by the appellant.*
5. *That the trial tribunal erred in law and fact on relying weak and firmed evidence of the Respondent's witness one ANNATORIA JUMA MPUBIYE who is a daughter of the one JUMA SAID MPUMBIYE who testified that the said plots with the appellant which are mere words without any proof.*
6. *That the trial tribunal erred in law and fact by declaring the respondent the lawful owner of the disputed plot and that the appellant's husband sold the plot to one Juna Said Mpumbiye the facts which was not adduced by neither respondent nor his witness as only the respondent said that he bought the said land from the one Juna Said Mpumbiye testified that his father got the land on exchange with the one Ntuye Gengama the husband of the appellant.*

On the above grounds, the appellant prayed this court to allow the appeal by quashing and setting aside the decision of the District Land and Housing Tribunal and thereof declare the appellant lawful owner of the disputed land plot No.355 Block 'J' Kumunyika Kagunga, Kasulu District.



When this appeal was called on for hearing, the appellant enjoyed the legal services of Mr. Michael Mwangati, learned advocate in the trial Tribunal and in this Court, while the respondent was represented by Mr. Hamis Kimilomilo, learned Advocate in the trial Tribunal and in this Court.

Mr. Mwangati started submitting on the first and fourth grounds jointly by stating that they both concern the documentary evidence admitted during hearing. He told the court that the appellant tendered an offer of plot No. 355 Block "J" Kumunyika Kagunga within Kasulu District given in 1974 to her late husband which offer was admitted without objection while the respondent said he had a sale agreement which was not tendered in evidence. That, the respondent testified that the disputed plot was sold to him by Juma Mpumbiye but Juma Mpumbiye was not called as witness. And never inspected the land before buying.

According to Mwangati, much as the appellant had an offer and had also other evidences, it was wrong for the chairman to decide against such a strong evidence on record. He prayed the two grounds be allowed.

The appellant's counsel prayed to drop the second ground and the same was marked dropped.

On the 3,5 and 6 grounds of appeal, the learned counsel for the appellant submitted that the grounds are based on oral evidence where he argued



that the respondent called a witness by the name Annatolia Juma Mpumbiye who said his father exchanged the disputed plot with the respondent which piece of evidence is contradictory to the evidence of the appellant who testified to have bought the same from the late Mpumbiye reasoning that he was seeing the late Mpumbiye farming the plot. Mr. Mwangati pointed out that the contradiction goes to the root of the matter on how he got the plot.

Contrary to that, said Mr. Mwangati, the appellant called a witness called Elisha Kabulumula who told the Tribunal that he knows the disputed plot for more than 30 years and that he was aware that the late husband of the appellant constructed a house thereon.

The appellant's counsel further argued that, despite the strong evidence versus that of the respondent but the trial tribunal decided against the appellant as such occasioned failure of justice.

On the above reasons, the appellant's counsel prayed the appeal to be allowed, the decision of the trial Tribunal be set aside and the appellant be declared lawful owner of the disputed plot with costs.

On the other hand, Mr. Kimilomilo objecting the appeal, started by arguing first and fourth grounds together as argued by the appellant's counsel by submitting that, in order one to win a case evidence must link and



corroborate each other. The offer which is the subject of this appeal, did not corroborate the oral testimony of the appellant and her witnesses. So, according to Kimilomilo, the respondent's evidence was strong, cogent and corroborated.

Mr. Kimilomilo added further that the appellant did not state when he left and when she came back to the disputed plot. The learned advocate for the respondent, therefore, argued that the 1st and 4th grounds are baseless and urged this court to dismiss them.

On the 3rd, 5th and 6th grounds as argued together Mr. Kimilomilo said that Annatolia testified of what she saw and knew about the plot in dispute. Elisha told the court that he knows the plot for 30 years but do not know when the deceased husband died. This witness did not tell when the husband died and when the appellant came back after vacating the land in dispute which means Elisha knows nothing about the disputed plot.

It was further argued by the respondent's counsel that it was their argument that the decision of the District Land and Housing Tribunal was correct and should be upheld and the appeal be dismissed with costs.

In rejoinder, Mr. Mwangati reiterating his earlier prayers, submitted that the evidence by the respondent is conspicuous, contradictory in its testimony. He argued that the respondent says he bought the disputed



land and Annatolia says they exchanged the plot. According to him. This contradiction goes to the root of the matter.

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 and 4th grounds of appeal as they were argued together by the appellant, having carefully followed the rivaling arguments of the counsels for appellant and the respondent, and considered all argued and the record of appeal, in my considered opinion I found that this appeal must succeed in these grounds to the reasons I am to give. **One**, the appellant tendered an offer in the name of **Ntuye Gengama** whose description is **PLOT no. 355 Block "J" Kasulu Minor Settlement dated 8th February 1974** without any objection and no question was put to her to challenge such evidence at all. Therefore, with this evidence once considered, I agree with Mr. Mwangati learned counsel for the appellant that, the evidence by the appellant was strong, reliable and it was wrong for the trial Chairman to decide case based on pleadings. No document on the part of the respondent was tendered to negate the strong evidence of the appellant on how the respondent got the plot which is surveyed. **Two**, exhibit P2 was corroborating that even relevant land authority still recognized the appellant as still lawful owners of plot No.355 Block "J" Kasulu Minor

settlement. **Three**, cases are not decided on pleadings but on evidence

That said and done, I hereby set aside the judgement of trial Tribunal and thereof declare the appellant lawful owner of the disputed premise and the respondent is a trespasser without any justifications and should be immediately evicted from the suit land. The appellant shall have costs in the appeal and the Tribunal below.

Dated at Kigoma this 22nd day of September, 2023.



S. M. MAGOIGA

JUDGE

22/09/2023.