

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB-REGISTRY OF MWANZA

AT MWANZA

LAND APPEAL NO. 90 OF 2022

*(From Land Appeal No. 14 of 2019 of the District Land and Housing Tribunal for Mwanza
at Mwanza, Originating from Application No. 02 of 2019 of Igalla Ward Tribunal)*

MAGOTI MASANJA-----APPELLANT

VERSUS

MOSES M. MAKANGALA-----RESPONDENT

JUDGEMENT

August 16th & 25th, 2023

Morris, J

This appeal, by Magoti Masanja, is against the judgement of the District Land and Housing Tribunal (DLHT) in Land Appeal No. 14 of 2019. He has two grounds fronted thereof. On the one hand, he alleges that DLHT failed to analyze the evidence on record regarding the exact dispute before it. He also contends that the sale of the suit property was not in accordance with laws governing administration of estates, on the other.

In brief, the parties' dispute is over a farm situate at Igalla Ward, Nansio-Ukerewe District of Mwanza (elsewhere, the "suit property"). It was

alleged by the respondent herein that, one **Nyamanji Masanja** divided farms among his children including the appellant herein. That, the farm given to the appellant was sold it to **Mikael** (sic). Thereafter, the appellant's brother one **Msafiri Masanja** sold his part of the property to one **Veronica Manyasi**. In August, 2018 the latter allegedly sold it to the respondent herein. The appellant was cultivating on the suit property. He was ordered by the Ward Tribunal to stop in vain. Later, he was alleged to encroach the neighboring property by shifting the boundary of the suit property.

On his part, the appellant herein contended that the farms including the suit property were originally owned by his father, the late **Masanja Lugaha** who left the same to their mother **Nyamanji Masanja**. He added that it was his father's wish that among the children no one shall own the farms which were under the mandate of their mother. However, part of the farms was sold by the family to one **Mikaili** (sic) **Manyilizu**. The Ward Tribunal decided in favor of the respondent. Dissatisfied, the appellant unsuccessfully appealed to the DLHT before filing this appeal. During hearing, the appellant was represented by advocate Sijaona Revocatus while



the respondent appeared in person, unrepresented. I will consider the submissions of both parties while determining the grounds seriatim below.

Regarding the 2nd ground of appeal, it was the submissions of Mr. Sijaona that the suit property belonged to one Masanja Lugaha whose estate have never been under a legally appointed administrator. Hence, it could not be legally sold. To him, the sale by Msafiri Masanja to Veronica Manyasi is illegal and the title to suit property never passed to the latter.

In reply it was submitted that the appellant is not an administrator of the estates of the late **Masanja Lugaha**. He thus lacks *locus standi*. Further, Veronica has been on the suit property for over 13 years before selling the same to him. In addition, the appellant's relatives on Msafiri Masanja and Msonge Masanja testified in his favor. He maintained that ward tribunal had no mandate to adjudicate the probate cause.

I have considered the submissions of both parties dispassionately. However, before determining the grounds of appeal, one thing needs to be emphasised. That is, this being the second appeal, I will not interfere with concurrent findings of two lower tribunals. I will only confine myself to matters of law that arise therefrom. I stand guided by a chain of authorities



including cases of ***Hamisa Halfan Dauda v R***, criminal Appeal No. 231 of 2009; and ***Benedict Buyombe @Bene v R***, Criminal appeal No. 354 of 2016 (both unreported).

To the appellant the suit property belongs to the estates of the deceased. The Ward Tribunal did not determine this issue. Only the DLHT did in favor of the respondent herein. There are no concurrent findings over this issue by both tribunals. It is also couched as a matter of law. Therefore, I will determine it. I have carefully read the records of the trial tribunal. In his own evidence (page 5 of the judgement and pages 11 and 12 of the typed proceedings of trial tribunal) the appellant testified;

*"..ninachokumbuka mnamo mwaka 2001 mzee Masanja Lugaha aliugua tulimpeleka Hospitali na kupatikanana Ugonjwa wa kisukari ndipo alituita tukakaa kifamilia akatuambia kwamba wanangu huu ugonjwa sitapona. Ninachokiomba mali yangu **sigawi nitaichia mama yenu** pindi likitokea tatizo la ugonjwa au tatizo lolote linalowasibu hiyo mali mutamushirikisha mama yenu kwa kumuomba."*

Literally, the suit property passed from the deceased *inter vivos* to his wife Nyamanji Masanja. Records reveals further that the latter divided it to

her children including the appellant herein as testified by the respondent, Msonge Masanja and Msafiri Masanja (the appellant's brother). That testimony was further corroborated by minutes tendered by both respondent and appellant herein. Further, by a contract dated 3/4/2009; the appellant herein sold his land to Michael Manyilizu at consideration of Tshs. 250,000/=. In disposing it, he sold the said land as the owner not as representative of the family or administrator of estate. Therefore, the issue of administration of the estates of the deceased in respect of the suit land is misconceived. Accordingly, the 2nd ground of appeal lacks merit.

In the first ground of appeal, it was the submissions for the appellant that, the dispute before the ward tribunal was in respect of the boundaries not the whole suit property. He maintained that parties are bound by own pleadings. In reply it was submitted that what the trial tribunal decided was the appellant's trespass into his land.

In this connection, DLHT was of the view that the dispute before the trial ward tribunal was on boundaries and trespass to the suit property. It was the submissions of the appellant that parties are bound by their pleadings. I have traversed the file of the trial tribunal. Obviously, there was



no any formal plaint/claim/form that was filled in and presented by the respondent regarding his dispute against the appellant. I am also guided by decision of the court of appeal in the case of **Sospeter Kahindi v Mbeshi Mashini**, Civil Appeal No. 56 of 2017 (unreported). In the said case, it was held, *inter alia*, that;

"It is noteworthy that in line with the applicable procedure, the parties did not exchange any pleadings and, therefore, all questions for trial were based upon the claimant's oral statement of claim and the respondent's oral reply as recorded by the tribunal..."

Therefore, the submissions that parties are bound by their pleadings was out of misapprehension of record. The oral testimony of the claimant-respondent before the ward tribunal reveals that the appellant herein was cultivating on the suit property and he has shifted the previous boundary and put another boundary on 02/2/2019. Therefore, as correct held by DLHT, the dispute by the appellant was on boundary and trespass to the suit property. The 1st ground of appeal is equally not merited.



In upshot all grounds of appeal are found to lack merit. They are overruled. Consequently, this appeal is dismissed. I make no orders as to costs. It is so ordered. Right of appeal is fully explained to the parties.



C.K.K. Morris

Judge

August 25th, 2023

Judgement is delivered this 25th day of August 2023 in the presence of Magoti Masanja and Moses Makangala, the appellant and respondent respectively.

C.K.K. Morris

Judge

August 25th, 2023