

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 44 OF 2023

(Appeal from the Judgment of the District Land and Housing Tribunal of Iramba at KIOMBOI, Land Application No. 11 of 2020 dated the 1st Day of March 2023 before the Honourable Mr. B. J. SHUMA, THE CHAIRMAN of the DLHT)

LEVINSON MPANDA 1st APPELLANT

HASSAN MAKOYE 2nd APPELLANT

SAID MAKOYE 3rd APPELLANT

MWANAIIDI ATHUMAN 4th APPELLANT

HALIMA YUSUPH 5th APPELLANT

AZIZA ATHUMAN 6th APPELLANT

GODFREY SELEMAN 7th APPELLANT

VERSUS

MOHAMED GUNDA MALALA (As a representative of

Kinankali Clan)..... RESPONDENT

JUDGMENT

10/7/2023 & 10/10/2023

KHALFAN, J.

The Respondent, Mohamed Gunda Malala, in his representative capacity of Kinankali clan successfully sued the seven Appellants, Levinson Mpanda, Hassan Makoye, Said Makoye, Mwanaidi Athuman, Halima



Yusuph, Aziza Athuman and Godfrey Seleman for trespass on two pieces of lands in the District Land and Housing Tribunal for Iramba at Kiomboi. The two suit lands were therefore declared to be legally owned by Kinankali clan whilst the Appellants were declared to be trespassers hence ordered to vacate the lands. Aggrieved with the trial tribunal's decision, the Appellants have come to this court by way of an appeal. Their Petition of Appeal is comprised of six (6) grounds of appeal.

The hearing of this appeal proceeded in writing at the request of the parties. The Appellants were represented by Mr. Leonard Elias Magwayega whilst the Respondent had no representation.

The 1st ground of appeal, that the trial tribunal grossly erred in law and fact when it decided the matter without considering probate procedures while knowing that the Respondent was not the owner of the suit lands, rather it was the property of the deceased. The Appellants submitted that the evidence reveals that the suit lands were owned by Lunde Malala who cleared it and used it until his death. That, after his death, the suit lands were inherited by Shilunde Malala. That, the Respondent did not tell in the trial tribunal how the suit lands passed from Lunde Malala to Shilunde Malala then to Athumani Malala and finally to Kinankali clan which he purported to represent. To back up their



submissions, the Appellants referred the court to the case of **William Sulus vs. Joseph Samson Wajanga** (CAT) Civil Appeal No. 193 of 2019, Mwanza Registry (unreported). The Appellants argued that the Respondent did not even file a representative suit pursuant to Order I Rule 8 and sections 95 of the Civil Procedure Code [Cap 33 R.E 2019]. They went on submitting that since the Respondent was not the appointed legal representative/administrator of the estate he therefore lacked the necessary authority to sue them. That, the Respondent also lacked a power of attorney to sue for Kinankali clan.

Concerning the 2nd ground of appeal, that the trial tribunal erred in law and fact by failing to consider adverse possession over the suit lands by the Appellants for more than twelve (12) years, rather focused on the fifty (50) years wrongly calculated by the layman Respondent. The Appellants argued that it was on the record that they had jointly been using the suit lands since the life time of Mohamed Shekizungu. That, after the death of Mohamed Shekizungu, the Appellants continued to use the same lands for more than twelve (12) years without interference.

In the 3rd and 4th grounds of appeal, the Appellants submitted that the trial tribunal erred in law and fact as it failed to properly analyse the evidence adduced before it. That, the Respondent failed to explain the



boundaries of the suit lands both in his application and during his testimonies. That, even the Respondents' witnesses heavily contradicted themselves in terms of the location of the suit lands and their size. The Appellants argued that such failure was contrary to Regulation 3(2)(b) of GN No. 174 of 2003 and the court is therefore, invited to nullify the whole proceedings and orders of the trial tribunal as explained in the case of **Daniel Dagala Kanuda (As Administrator of the Estate of Late Mbalu Kushaha Buluda) vs. Masaka Ibeho and Four Others** (HC) Land Appeal No. 26 of 2015, Tabora Registry (unreported).

In respect of the 5th and 6th grounds of appeal, the Appellants submitted that the trial tribunal erred in law and fact to declare the suit lands as the property of Kinankali clan while the same was not a party to the case. That, such declaration was a mistake since Kinankali clan cannot be the beneficiary of the decree of the tribunal. Lastly, the Appellants prayed the court to allow the appeal with costs.

In reply to the 1st ground of appeal, the Respondent submitted that before the trial tribunal, he sued as a representative of Kinankali clan not as the administrator of estate of the late Lunde Malala, Shilunde Malala or Athumani Malala, hence neither the concept of administratorship nor representative suit can rise. That, the Respondent named the previous



owners of the suit lands in an attempt to explain how the ownership of the suit lands had evolved overtime.

That, the Respondent tendered minutes of the meetings of Kinankali clan which had appointed and authorised him to be their representative in pursuing the instant land dispute which is in respect to recovery of their clan land. Under the circumstances, the Respondent argued that such proof of the clan minutes was sufficient to prove his *locus standi* in the tribunal. The Respondent stressed that even the case of **William Sulus** (*supra*) cited by the Appellants supports his contention at page 16 where the Court of Appeal stated that:

"In our view, suing in representative capacity would have saved the day in the circumstances of this case if there was a document showing that the family authorized the respondent to sue on its behalf."

The Respondent further faulted the 2nd ground of appeal by submitting that there was no adverse possession by the Appellants since they were not clear on the duration of when they started using the suit lands. That, some testified that they had been using the suit lands since they were born while others testified that they used the same for over fifty (50) years. The Respondent submitted that the Appellants have never



been in possession of the suit lands until in 2017 when they trespassed into the same following the death of the caretaker of the suit lands (one Athumani Malala).

Responding to the 3rd and 4th grounds of appeal, the Respondent submitted that the trial tribunal properly analysed the evidence before it. That, the Respondent did not in the trial tribunal confuse the size of the suit lands since the same have not yet been measured, hence he only testified on an estimated size, which he consistently testified that the suit lands range between 32 to 36 acres both in examination in chief and during his response to the questions by the tribunal assessors. That, the cited case of **Daniel Dagala Kanuda** (*supra*) is distinguishable from the present case since in that case the Applicant did not in his application state the boundaries of the suit lands.

Replying to the 5th and 6th grounds of appeal, the Respondent submitted that the Appellants did not appreciate that the instant suit is based on representation of a clan and not an application in individual capacity. That, it is not Kinankali clan which is suing, rather the Respondent as the representative of the said clan hence warranting him the necessary *locus standi* under the law. The Respondent submitted that the decree obtained hereof is capable of being executed such as it is in



the case of an administrator of an estate of a particular deceased. Eventually, the Respondent humbly prayed the court to dismiss the appeal with costs.

The court has gone through the record of the proceedings of the trial tribunal and noted that there was neither clear evidence showing that the Appellants had been in undisturbed use, occupation and control of the suit lands so as to entitle them claim adverse possession for over twelve (12) years nor evidence showing the ownership of the same. The evidence by the Appellants was contradictory. For instance; the 1st Appellant in his examination-in-chief testified that they had been using the suit lands since their birth, that they had used the same for over fifty (50) years and that the said lands belonged to his uncle one Mohamed Shekizungu. In cross-examination, the 1st Appellant contradicted himself. Whilst he stated that he does not know when the lands were cleared, he also stated that he was twelve (12) years when Mohamed Shekizungu cleared the suit lands and that it was Mohamed Shekizungu who told him that he cleared the suit lands.

The 4th Appellant only testified in examination-in chief that he used the suit lands for many years which became his after the death of Mohamed Shekizungu. In cross- examination, the 4th Appellant testified



that she inherited the suit lands from his uncle. The 5th Appellant testified in examination-in-chief that he used the suit lands which belonged to Mohamed Shekizungu who cleared the same. In reply to the assessors' questions for clarification, the 5th Appellant stated that she started cultivating the land when he was fifteen (15) years old and that Mohamed Shekizungu died in 1988. The 6th Appellant testified in examination-in-chief that he had been using the suit lands since he was born. In reply to the assessors' questions for clarification, the 6th Appellant stated that the suit lands belonged to his mother but he did not know how his mother obtained the said lands whilst stating that his mother obtained the same from Mohamed Shekizungu.

The Respondent instituted the instant dispute in the trial tribunal on the 5th of June, 2020 as a representative of Kinankali clan and not in his individual capacity. During hearing of the land application in the trial tribunal, the Respondent tendered the minutes of the meeting of the Kinankali clan convened on the 18th of November, 2019 which the same was admitted as 'Exhibit P1'. The said 'Exhibit P1' evidences that Kinankali clan had appointed and authorized the Respondent to be their representative in pursuing the instant dispute.



The Respondent's witnesses also testified to the fact that Kinankali clan had appointed him to be their representative. Taking into account the guidance given by the Court of Appeal of the United Republic of Tanzania in the case of **William Sulus** (*supra*), it can be safely said that the Respondent herein had in the circumstances the necessary *locus standi* to institute the instant dispute before the trial tribunal as argued by him in his submissions.

According to the evidence adduced by both parties in the trial tribunal, the court is of the considered position that since in civil cases the courts of law and the land tribunals have to decide the civil suits basing on the balance of probability, in the instant case, the Respondent's evidence in the trial tribunal was credible and had weight compared to that of the Appellants.



The Respondent and his witnesses i.e. [Ramadhan Kingu (PW2) and Hassan Seleman (PW3)] were consistent in their testimony that the suit lands were cleared by the late Lunde Malala then inherited by Nilunde Malala who after her death, they were left under the care of Athumani Malala who also passed away in 2017. Hence trespassed by the Appellants who now allegedly claimed that they were given the same by the late Mohamed Shekizungu after his death in 1988.



The Respondent's witnesses further consistently testified that, the late Mohamed Shekizungu married the Respondent's grandmother (Nilunde Malala), that is why the Appellants' claim that they were given the same, thus, they are the lawful owners. However, the Respondent's witnesses testified that the late Mohamed Shekizungu was not buried in the said suit lands like Nilunde Malala and Lunde Malala, a fact which was not disputed by the Appellants.

That being said, the court is of the considered position that the trial tribunal rightly decided the land dispute between the parties to this appeal. The grounds of appeal advanced by the Appellants in their Petition of Appeal which formed their submissions in the court, lack merit. The appeal is hereby dismissed for want of merit and the trial tribunal's decision is hereby upheld. The parties in this appeal shall bear their own costs.

It is so ordered.

 
F.R. KHALFAN
JUDGE
10/10/2023