

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA

MISC. LAND APPEAL NO. 23 OF 2022

SHABAN JUMA KISONGA

(As Legal Representative of

The Estate of the Late Pili Selemani Kiula**APPELLANT**

VERSUS

JUMANNE OMARY (As Legal Representative of

the Estate of the late Omary Mjange Dudu)**RESPONDENT**

(Arising from the decision of Iramba District Land and Housing Tribunal)

Dated 4th February, 2020

In

Land Appeal Case No.08/2019

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JUDGMENT

Date of Last Order: 23rd October, 2023

Date of Judgment: 30th October, 2023

SARWATT, J:.

This is the second appeal, while at the Ward Tribunal, one Jumanne Omary, who was the administrator of the estate of his late father, Omary Mjange Dudu, sued the late Pili Selemani Kiula for three-and-a-half (3 ½) acres of land (suit land) which he alleged to belong to his late father. The case ended in the favour of Pili Selemani Kiula. The decision of the Ward Tribunal aggrieved the respondent, hence lodged a Land Appeal no 08 of

2019 before the District Land and Housing Tribunal (DLHT) on the following grounds of appeal;

- 1. That, the Ward Tribunal erred in law and in fact in entering judgment in favor of the respondent.*
- 2. That, the Ward Tribunal erred in law and in fact in alleging that the appellant deserted his case at the ward tribunal while the same was heard on merit.*
- 3. That, the Ward Tribunal erred in law and in fact in entering judgment in favor of the respondent simply because the respondent did not pay the amount of money to enable the tribunal to visit the locus in quo.*
- 4. That, the ward tribunal did not consider the evidence tendered by the appellant and his two witnesses who proved the suit land to be the property of the appellant father.*

The DLHT, having heard the appeal, reversed the decision of the Ward Tribunal and declared the suit land the property of the estate of the late Omari Mjange Dudu. The appellant, being dissatisfied with the decision of DLHT, lodged this appeal on the following grounds of appeal: -

1. *That, the trial tribunal (sic) erred in law and fact to enter decision in favour of respondent while the land in dispute was owned by Pili Sulemani Kiula (the deceased) for several years.*
2. *That, the trial tribunal (sic) erred in law and in fact to enter decision in favour of respondent based on weak evidence adduced by the respondent herein.*
3. *That, the trial tribunal (sic) erred in law and in fact to enter decision in favour of the respondent herein based on contradictory evidence adduced by the respondent.*

On the 23rd October 2023, the appeal proceeded with the hearing. Parties appeared unrepresented. That is, they appeared in persons.

Being a layperson, the appellant urged the Court to adopt his grounds of appeal. He added that the evidence on the respondent's side was weak because all the witnesses who testified during the trial for his side were not residents of the village where the suit land is located.

In his reply, the respondent, who is also a layperson, objected to all the grounds of appeal while contending that the evidence adduced during the trial was watertight and persuaded the decision of DLHT. He further contested the appellant's contention that the witnesses were not residents

of the village where the suit land was located by saying that all the witnesses were Nsonga village residents. He ended his reply by praying for the Court to consider his reply to the memorandum of appeal and dismissal of the appeal.

In his quick rejoinder, the appellant prayed the Court to allow his appeal.

I have carefully reviewed the records, memorandum of appeal as well as the reply by the respondent, the issue for my consideration is to ascertain the merit or otherwise of the appeal.

For the proper determination of the merit of the appeal, this Court shall have a duty to examine what transpired in both the Ward Tribunal and the DLHT. The record entails that the Ward Tribunal decided in favour of the late Pili Selemani Kiula on the ground that she was using the suit land for a long period and for the fact that the respondent herein abandoned the case by not paying fees to enable the Ward Tribunal to visit the suit land by saying the following;

"Kwa kuwa shitaka hili liliwahi kusikilizwa na baraza lilimpa mshtakiwa ushindi. Kutokana na maelezo yake ya kulitumia eneo hilo kwa muda mrefu pasipokuwa na mgogoro wowote pia kutokana na mlalamikaji kutekeleza shtaka kwa kushindwa kulifahamisha

Baraza la Kata Kwenda kujifunza jiografia yae neo hilo lenye mgogoro. Basi baraza linampa haki mshtakiwa kutokana na mwenendo mzima wa shauri hili na baada ya mlalamikaji kukaidi amri ya baraza kuhamisha wajumbe wake."

With this reasoning of the Ward Tribunal, I totally agree with the DLHT on the fact that failure by the party to a suit to bring the tribunal to the *locus in quo* is not a factor to consider in resolving a land dispute, otherwise would occasion miscarriage of justice.

This is because it is not the rule of thumb that the tribunal should visit the locus in quo in every case. See the case of **Nazmin Mohamed Rwambo V Maulid Tagwa & 4 others**, Land Appeal No. 109 of 2020, High Court, Land Division, Dar es Salaam and the case of **Kimonidimitri Mantheakis vs Ally Azim Dewji and Others**, Civil Appeal No. 4 of 2018, Court of Appeal, Dar es Salaam.

In **Kimonidimitri Mantheakis** the Court of Appeal stated the following;

*"Whereas **the visit of the locus in quo is not mandatory**, it is trite law that, it is done only in exceptional circumstances as by doing so a court may unconsciously take a role of witness rather than adjudicator."*

[Emphasis Added]

That being the case, the Ward Tribunal was supposed to weigh the evidence adduced by both parties to reach its decision. However, the DLHT, having realized such an omission, re-evaluated the evidence adduced during the trial and reached its decision in favour of the respondent. The appellant, dissatisfied with the decision of the DLHT, has come to this Court through this appeal. Thus, it is unavoidable for this Court to determine if the DLHT correctly re-evaluated the evidence.

Reading the evidence on record, it is patent that the evidence of the respondent and his witnesses, in particular, PW1, Selemani Rajabu, and PW2, Samwel Ntandu, proves that the suit land belonged to the late Omary Mjange Dudu nonetheless, in 2018 the late Pili Selemani Kiula trespassed the same.

Further, the records reveal that the late Pili Selemani Kiula and her witness, apart from alleging that the suit land belonged to the late husband of the late Pili Selemani Kiula, after clearing the bush with his wife, the late Pili Selemani Kiula, have failed to establish when exact they cleared the bush as contended. During cross-examination, the late Pili Selemani Kiula, being questioned as to when they cleared the bush, ended

up saying that they cleared the same a long time ago, even before the respondent's birth.

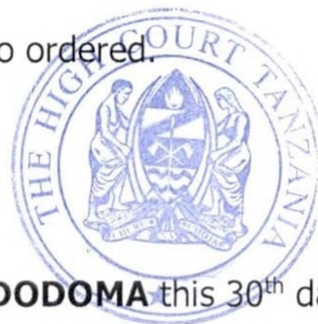
Moreover, it is revealed that one Shabani Juma Kisonga, who supported the late Pili Selemani Kiula's testimony, produced unreliable evidence considering that he was not present when the late Pili Selemani Kiula and his late husband cleared the bush as exposed during cross-examination. Thus, even the fact that the late husband started to use the suit land at the age of 25 years remains unfeasible. Therefore, the contention raised in the first and second ground of appeal lacks substance.

The appellant, on the third ground, has raised the issue of contradiction in the evidence adduced by the respondent during the trial, but with the records, I have failed to grasp the contradiction that the appellant suggests because the respondent and his witnesses adduced evidence to the same effect which identifies the late Omary Mjange Dudu as the owner of the suit land. Consequently, the third ground of appeal also lacks substance.

Given the foregoing, this appeal lacks merit. Thus, I concur with the findings of the District Land and Housing Tribunal for Iramba at Kiomboi, which declared the suit land to form part of the estates of the late Omary

Mjange Dudu. Accordingly, I hereby dismiss the appeal. Each party to bear his own costs.

It is so ordered.



A handwritten signature in blue ink, appearing to be "S. S. Sarwatt".

S. S. SARWATT
JUDGE
30/10/2023

DATED at DODOMA this 30th day of October 2023



A handwritten signature in blue ink, appearing to be "S. S. Sarwatt".

S. S. SARWATT
JUDGE
30/10/2023