

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL CASE NO. 60 OF 2022

(Originating from Land Application No. 6 of 2022 of District Land and Housing Tribunal at Kondoa)

IDDI RAMADHANI DUDU APPELLANT

VERSUS

HALIMA HATIBU ISSA RESPONDENT

JUDGMENT

6/6/2023 & 8/9/2023

KHALFAN, J.

The appellant herein, being aggrieved and disgruntled by the decision of the Kondoa District Land and Housing Tribunal (hereinafter referred to as trial tribunal) appeals against the whole decision and decree basically on ten (10) grounds.

On 2nd May 2023, both parties agreed that, this appeal be disposed of by way of written submissions. In his submission, the appellant started by explaining the grounds for his appeal. On the first ground, he stated that, the trial tribunal erred in law and fact to proceed with the determination of the land in dispute without instructing the respondent to join the local government authority (Kondoa Town Council) in the main case as the necessary party to the case. This is due

to the fact that, the Kondoa Town Council is the Local Government Authority with powers to grant building permit to the appellant. Therefore, it would be a necessary party to the case to prove the ownership of the said land so granted to his client.

On the second ground, the appellant argued that, the Hon. Chairperson of the trial tribunal erred in law and in fact by declaring the building permit granted by the local government authority to be void (*ab initio*) without giving credible reasons for being void in the eyes of law. The trial tribunal would instruct the applicant or grant leave to the respondent to join the third party in the land application No. 6 of 2022 who could prove the authenticity of the permit so granted. The Chairperson of the tribunal on his own desire simply declared the building permit to be void without giving concrete reasons in his judgment.

If he may quote, "jambo jingine Mdaiwa alipewa kibali cha ujenzi – building Permit iliyosainiwa tarehe 17/03/2016 na Halmashauri ya Wilaya ya Kondoa ikiwa ni Kinyume na batili." Hence, based on this statement, as stated by the Chairperson of the tribunal, it suffices to say that he acted with bias.



On the third and fourth grounds, the appellant argued jointly and stated that, the Chairperson of the Tribunal erred in law and in fact for ignoring all primary evidence adduced by the appellant without stating the grounds for refusal. Since such documents were obtained from the local government authority, it would be for the interest of justice if the tribunal was to call/summon the authority to prove the documents claimed to be forged by the appellant.

The Chairperson's opinion regarding the rights of the parties to the case which does not bear any law must be condemned by this honourable court. "ni Imani yangu kubwa kwamba vilelezo vilivyotolewa kwa pamoja na Mdaiwa ni vilelezo vya kutengenezwa yaani (forged documents) kwa nia ovu." Also, the tribunal failed to realise that the respondent herein claimed in the ward tribunal that the disputed land was the family property but when she came before the trial tribunal, she claimed the same to sole rightful owner; so, it is the duty of the tribunal to observe properly the locus standi of the respondent by referring to the proceedings from the ward tribunal.

During the site visit, the trial tribunal erred in law and in fact by establishing a new boundary. The appellant submitted that the respondent in his application No. 6 of 2022 clearly stated its boundaries



but after hearing both parties, the tribunal opted to conduct a site visit. For reasons known by the Chairperson, it did establish a new boundary which was different from what was stated by the respondent in her application.

The trial tribunal erred in law and in fact by contradicting the disputed land; in tribunal judgment and its proceedings. It would be discovered that the document referred to as KDC/C/L.50/5/VOL IV/344 which mentions the valuation of land Block 'II' and Block 'JJ' *Bicha Magodauni* has no name of the respondent therein while the disputed land is Block 'B' *Bicha Magodauni*. Therefore, the land in dispute is different from what was stated in her documents adduced before the tribunal.

The appellant concluded by contending that the trial tribunal Chairperson acted with bias when determining the matter. Therefore, he insisted that, the learned trial Chairperson erred in law and fact in the determination of the land in dispute, and he prayed for this Court to quash the entire decision and the whole proceedings of the trial tribunal and the appellant's instant appeal be allowed with costs.

In reply, the respondent stated that, based on the proceedings, it is clear that, the documents that were used by the appellant were



adduced during the day of hearing the appellant's case (who was the respondent in the trial tribunal). This means that, the respondent had no knowledge of the nature of the defence that the appellant was going to adduce including the fact that, the land in dispute was sold to him by the Kondoa District Council. This fact was clearly shown in the judgment at page 8 where the tribunal stated that:

"wakati SU1 anajibu maswali kutoka kwa mdai, alieleza kwamba hizi nyaraka zote alizozitoa (kielelezo D2) hakuziambatanisha kwa hati ya utetezi..."

The respondent was not aware that, the Kondoa Town Council and/or Kondoa District Council were supposed to be joined. Without prejudice to the foregoing, the appellant ought to bring the said Local Government Authorities as his witnesses to prove that they sold the said plot of land to him. Failure of the appellant to bring the Kondoa Town Council and/or Kondoa District Council as his witnesses; draws negative inference on his case taking into account that the documents were not annexed in his defence as stated in the case of **Hemed Said v Mohamed Mbilu** [1984] TLR 113. In this case, the court stated that: "where, for undisclosed reasons, a party fails to call a material witness on his side, the court is entitled to draw an inference that if the



witnesses were called, they would have given evidence contrary to the party's interests."

Since the building permit issued in 2016, shows that it was issued by the Kondoia District Council, while the land is situated at Kondoia Town, and fees were paid to the Kondoia Town Council (page 14 of the judgment paragraph 2, exhibit D2), it is clear that if the Kondoia District Council and Kondoia Town Council were called as witnesses; they would have given evidence contrary to the appellant's interest that is the reason the appellant did not call them as his witnesses.

On the other hand, the appellant argued that the Kondoia Town Council had power to grant building permit. However, the evidence adduced by him shows that the building permit was issued by the Kondoia District Council and not the Kondoia Town Council. It is clear that there are a lot of contradictions which leave doubt on the appellant's documentary evidence.

On the second ground, the Chairperson of the tribunal erred in law and fact to declare that the building permit was void or ab initio without stating credible reasons of being void in the eyes of the law. By looking at exhibit D2, it shows that the building permit was issued by the Kondoia District Council but the land in dispute is situated at Kondoia



Town Council and fees were paid to the Kondoa Town Council (page 14 of the judgment paragraph 2, exhibit D2). Therefore, based on this evidence, it is clear that the Kondoa District Council issued a building permit in the area where it had no jurisdiction.

Section 122 of the Local Government (District Authorities) Act, CAP. 287 when read together with its first schedule, provides that the local government authority shall perform its functions within its area of jurisdiction. The Chairperson of the tribunal was right in saying that for the appellant to build a house in a plot located within the area of the Kondoa Town Council, was void since the Kondoa District Council exceeded its area of jurisdiction.

The Chairperson clearly explained the reasons for his decision at page 14 paragraph 2 of the judgment "building permit ni batili "ab initio" kwa sababu ilitolewa na Halmashauri ya Wilaya ya Kondoa, ambayo haina mamlaka ya kutoa kibali cha ujenzi yaani "building permit" katika ujenzi wa kiwanja ambacho kipo ndani ya mipaka ya Halmashauri nyingine, kwani building permit hiyo ilitolewa kwa ujenzi kufanyika ndani ya mamlaka ya Halmashauri ya Mji wa Kondoa eneo la Bicha Magodauni kinyume na sheria." Therefore, he was right to state that the permit was



void or ab initio. However, the appellant overlooked the judgment although the reasons were clearly stated.

On the third and fourth grounds, the respondent stated that, it is trite law that who alleges must prove. Since the appellant argued that the documents were proper documents issued by competent Local Government Authorities; to wit, the Kondoa District Council and the Kondoa Town Council, the appellant had a duty to prove to the trial tribunal that all the documents were genuine and not forged documents and that all the local government authorities had mandate to issue such documents taking into account that the land is situated at Kondoa Town Council. Failure of the Appellant to bring the witnesses from Kondoa District Council and Kondoa Town Council to prove the validity of the documents; proves that the documents were forged.

On the fifth, sixth and seventh grounds of appeal, in his reply, the respondent stated that there were no contradictions whatsoever on the respondent's evidence. The appellant argues that there was contradiction of the respondent's evidence in the ward tribunal. However, it is now the law that the ward tribunals do not adjudicate cases, rather, they mediate disputes as per Written Law (Miscellaneous



amendments) Act No. 3 of 2021, which amends section 13 of the Land Dispute Courts Act, 2003.

Thus, the case before the Kondoa District Land and Housing Tribunal was a fresh case and could not take any evidence or records adduced at the ward tribunal. The veracity of the fact adduced by the appellant can never be proved by his mere allegations.

On the appellant's eighth and ninth grounds, the respondent, by looking at page 9 of the judgment, shows that the respondent made application for the tribunal to visit the disputed plot of land "... na huo ukawa mwisho wa Ushahidi wa mdaiwa. Mdai akaomba baraza liweze kutembelea kiwanja ambacho kinagombaniwa, ombi ambalo lilikubaliwa, kiwanja kikatembelewa..." Therefore, it is not correct that the tribunal made the move to visit site suo moto. Rather, all persons were given opportunity to show their boundaries as shown on page 10 and 11, of the judgment, "...kwa upande wa mdaiwa (SU1) Idd Ramadhani Dudu, alionesha kiwanja ambacho alieleza kukipata..." Hence, it is not true that the appellant was denied the right to be shown the boundaries of his plot.

Regarding the appellant's tenth ground of appeal, the respondent answered that it should be noted that, the valuation number should not



necessarily match with the surveyed plot and block number. This is so since valuation is normally done before the surveying process begins and he prayed that this appeal be dismissed with costs and the proceedings of the trial tribunal be upheld.

The appellant, in rejoinder, stated that, the document produced by the appellant in the tribunal was adduced during the day of hearing while the production of evidence was actually produced during the hearing stage and he supported his case with genuine document which he obtained from the local government authorities. Then the respondent cited the case of **Hemedi Said v Mohamed Mbilu** [1984] TLR 113 which he claimed was wrongly cited in the context of the respondent's submission because the case itself states, that, "it is not the duty of the court to find evidence but of the parties, that the party whose evidence is heavier than the other is the one entitled to win the case."

This means that the evidence adduced before the tribunal makes it obvious that the appellant is the one who was supposed to win the case because he provided all the necessary documents whereas the respondent did not produce any document in the tribunal. Rather, the only document she produced was the non-conciliation certificate from the ward tribunal. See the case of **Frank Safari Mchuma v Shaibu**



Ally Shemndolwa, [1988] TLR 279, where it was held that, the ownership of land can be determined by either offer of occupancy or title deed.

Also, the tribunal Chairperson acted with bias by rejecting the document of the appellant which was genuine as given by the local government authorities by saying that it was a forged document by claiming that he had mandate to make a thorough research on the said document but he did not do that. He cited the case of **Mathias Erasto Manga v MS Simon Group Limited**, Civil Appeal, No. 43 of 2013. By looking at the whole proceedings and the judgment, it can be seen that the one who produced the real documents was the appellant. However, the Chairperson in his own interest, decided to give the respondent the wining status without looking at the evidence adduced by the appellant.

The Chairperson of the tribunal failed to evaluate the appellant's evidence and exhibit properly. That he denied justice to the appellant and gave the respondent the wining situation despite the fact that she was not supposed to win. He cited the case of **Issack Mwamasika and 2 others v CRDB Bank**, Civil Revision No. 6 of 2016.

The issue of building permit raised by the respondent in her submission at that time is that the one issuing the building permit was



the Kondoa District Council before the division which resulted into the Kondoa Town Council and Kondoa District Council. Therefore, the building permit issued by the Kondoa District Council at that time, that is 2016, was very genuine because at that time, there was only the Kondoa District Council.

Lastly, regarding the issue of boundaries, the appellant said that the on-site visit made by the Chairperson of the tribunal had some defects; simply because, this on-site visit was done according to the Chairperson's interest and that the appellant was denied the right to be heard. As a result, he humbly submitted that the appeal be allowed with costs and the decisions and orders of the trial tribunal be quashed.

Having gone through the grounds of appeal, submissions of both parties against and in support of the appeal plus the records, I find only one issue which requires this Court's determination. That is, who is the lawful owner of the suit land between the appellant and the respondent? This Court is of the view that, this dilemma arose on the issue of double allocation; that the suit on the plot of land is that it was allocated to both the respondent and the appellant, but during the trial, there was no issue of double allocation that was revealed. No party raised that

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issue of double allocation rather each party stated that it was the lawful owner of the said land.

The respondent contended that he had inherited the said land from his father Hatibu Issa who gave it to his daughter since 2005. So, the respondent owned the said land by way of customary ownership ("umiliki wa kimila") whereas the appellant claimed to have genuine documents, which he obtained from the local government authorities which proved him as the lawful owner of the said piece of land.

The appellant at the trial tribunal submitted his documents which were admitted as exhibits in this case. As a result, the appellant in his submission insisted that the evidence that he adduced before the tribunal showed that he was the one who was supposed to win the case because he provided all the necessary documents whereas the respondent did not produce any document in the tribunal. Rather, the only document she produced was the non-conciliation certificate from the ward tribunal.

Unexpectedly, the tribunal Chairperson in his Judgment at page 15 said that the documents which were tendered by the appellant were fabricated and forged documents. He stated at page 15, that:

"Ni Imani yangu kubwa kwamba vielelezo (exhibit 'D2') vilivyotolewa kwa pamoja na Mdaiwa (SU1) ni vielelezo vya



kutengenezwa yaani vya kughushiwa (Fabricated and Forged documents) kwa nia ovu kujipatia eneo la Kiwanja kutoka katika eneo la kiwanja cha mtu mwingine ambaye ni Mdai (SM1) Halima Hatibu Issa.”

This Court might agree with the tribunal Chairperson simply because, the appellant at the trial tribunal failed to call the possessor of those documents to prove that he was the one who owned them and was the one who gave them to the appellant. The appellant failed to prove that those documents were original documents from the local authorities' offices. He failed to call any officer from the land office to verify that those documents were genuine and authentic from the Land office and that the Land office was the one that gave them to the appellant.

However, according to the first ground of appeal, the appellant stated that, it was the tribunal's mistake to proceed with the determination of the land in dispute without instructing the respondent herein to join the Kondoia Town Council in the main case as the necessary party to prove the whole evidence adduced by the appellant carrying the name of the Council before the Tribunal.

In reply to the said ground, the respondent said at first that she had no knowledge of the nature of the defence that the appellant was



going to adduce. Also, she was not aware that the land in dispute was sold to the appellant by the Kondoa District Council. However, without prejudice to the foregoing, the appellant ought to have brought the said Local Government Authorities as his witnesses to prove that they sold the said plot of land to him. Failure of the appellant to bring the Kondoa Town Council and/or Kondoa District Council as his witnesses draws negative inference on his case taking into account that the documents were not annexed in his defence and the tribunal Chairperson named them as fabricated and forged documents.

As it was stated in the case of **Aziz Abdallah v Republic** [1991] TLR 71, the Court stated that:

"...the general and well-known rule is that the prosecutor is under a prima facie duty to call those witnesses who from their connection with the transaction in question are able to testify on material facts. If such witnesses are within reach but are not called without sufficient reason being shown, the court may draw an inference adverse to the prosecution..." (See the case of **Hamisi Ramadhani Lugumba v The Republic**, Criminal Appeal, No. 565 of 2020, CAT at Dodoma).

Lastly, the issue to be settled regards the time when the appellant claimed to get the building permit from the Kondoa District Council in



2016 before the division of the District Council which gave birth to the Kondoia Town Council. Thus, the issuance of the building permit by the Kondoia District Council at that time that is, in 2016, was correct. But this Court made the appellant know that; The Kondoia Council was established with effect from 2015 July vide a certificate of establishment under the terms of the provisions of sections 8 & 9 of the Local Government (Town Authorities) Act 8, 1982. The Town lies between latitude 40 12" to 5° 38, 5" south, and longitude 350 6" to 360 2" east. Much of the Town is plateau rising gradually from 900 m above sea level to 2,190 m above sea level. In the North, the Town borders with the Kondoia District Council and Chemba District in the South.

So, for him to have a building permit from the Kondoia Town Council in 2016 and assuming it to have been given by the Kondoia District Council is wrong. Therefore, he was supposed to elaborate more how and where did he get the said building permit or it might be that it was fabricated and forged as the Hon. tribunal Chairperson stated.

In that way, this Court finds that, there are many unanswered questions and confusion which have been brought by the appellant. Hence, there is a need of reasonable answers to be submitted to him to prove that the defendant is the real owner of the said land, to prove the



ownership of it with evidences and the authenticity of the said evidences.

In the upshot, I find nowhere to fault the findings and decision of the trial tribunal in Land Application No. 20 of 2022. Consequently, I hereby dismiss the appeal. In the circumstance, I make no order as to costs.

It is so ordered.

Dated at Dodoma this 8th day of September, 2023.




F. R. KHALFAN

JUDGE

8/9/2023