

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SUMBAWANGA DISTRICT REGISTRY

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 23 OF 2022

(Appeal from the Decision of the District Land and Housing Tribunal for Rukwa District at Sumbawanga in Land Appeal No. 28/2021 and Original Land Dispute No. 7 of 2021 of Kate Ward Tribunal)

BETWEEN

GODFERY SONGALELI.....APPELLANT

VERSUS

IMELDA MWANISAWA.....RESPONDENT

JUDGMENT

MRUMA, J.:

This is a second appeal. The matter originates from Kate Ward Tribunal. In that tribunal the Appellant herein unsuccessfully sued the Respondent Imelda Mwanisawa claiming that he was the owner of un-described piece of land locatable at Kate Village in Kate Ward. His appeal to the District Land and Housing Tribunal for Rukwa was dismissed and hence this second appeal which is based on the following grounds:-

1. That the appellate tribunal erred in law to entertain the matter which was nullity ab initio for failure to show members who

heard the matter day to day as well as the gender of the members

2. That the appellate tribunal erred in law and fact in evaluating the evidence on ownership of the disputed land which was adduced by the parties hence reached to wrong decision.
3. That the appellate tribunal erred in law by holding that respondent was the administratrix of her late father while there was no proof on the same.

At the hearing of this appeal the Appellant was represented by Mr. Peter Kamyalile learned advocate while the Respondent appeared in person, unrepresented. The appeal was argued by way of written submissions.

Submitting in support of the appeal, Mr. Peter Kamyalile submitted because the 1st ground of the appeal is based on a point of law, the second appellate court has the duty to address and determine it even if it was not raised and determined before the first appellate court further. He said that an appellate court is duty bound to take judicial notice of matters of law relevant to the case even if such matters were not raised in the memorandum of appeal. He fortified his stance by referring this court to the decision of the Court of Appeal in the case of **Adelina Koku and Another vs Byarugabaalex**, Civil Appeal No. 46 of 2019,

[CAT at Bukoba]. He said that the legal point at issue is that in the case at hand the proceedings do not show members and their genders who heard the matter on every day of hearing. It is the learned counsel view that in the case at hand the Ward Tribunal was not properly constituted as per the section 11 of the Land Dispute Court Act, Cap 216. He made reference to the case of **Edward Kubingwa vs Matrida A. Pima**, Civil Appeal No. 107 of 2018, CAT at Tabora, and submitted that in such circumstances the remedy is to quash proceedings and set aside the resultant judgment.

As to the second ground, Mr. Kamyalile submitted that the first Appellate tribunal was wrong to quash the decision of the trial tribunal which divided the 25 acres of land and instead declared the Respondent lawful owner of the whole land without showing the size demarcation/boundaries of the disputed land and owners of neighboring lands. He emphasized that it was incumbent upon the complainant to state clearly description of the land he was claiming in order to distinguish land in dispute from other lands and enable proper execution of any decree that would be passed. Further to that Mr. Kamyalile submitted that it was wrong for the first appellate tribunal to declare the Respondent (who was sued personally and not as administrator of the deceased estate) as the owner of the disputed land. He is of the view

that no executable relief could be granted to the Respondent personally. He insisted that the remedy in such a situation is to render the proceedings and decision a nullity and therefore legible to be strike out as the defendant would be improperly joined. He fortified his position by citing the case of **Abdullatif Mohamed Hamis vs Mehboob Yusuf Osman and Another** Civil Revision No. 6 of 2017, [CAT at Dar-es-salaam Unreported].

Submitting on the merits of the appeal Mr. Kamyalile contended that the allegation that Appellant's borrowed the disputed land from Respondent's were not true but rather the evidence on record would suggest that the land was given to him to occupy and use for good as it was decided in the case of **Barelia Karangirangi vs Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 [CAT at Mwanza Unreported]. The learned counsel is of the view that the act of the trial Tribunal to put boundaries implies that the land was not borrowed.

In reply, the Respondent maintained that the first ground lacks merit because it was a new issue which was not raised at the lower tribunal. He cited the decision of this court in the case of **Juma Said Luhombero and Another vs Aisha Hamad Luhombero** Land Appeal No. 21 of 2022, HC at Morogoro, where the court observed that the practice of the court has been to strike out any new ground raised at

appellate level which were actually not raised at the trial court/tribunal. He insisted that members of Ward Tribunal were duly constituted as there were three women as required by the law.

As to the second ground, the Respondent submitted that on the evidence on record the disputed land was originally owned by the her father and she maintained that the Appellant's father was a mere invitee despite the fact that he used it for more than 12 years. She cited as an authority the case of **Samson Mwambene vs Edson James Mwanyingili** [2001] TLR 1, **Makofia Meriaananga vs Asha Ndisia** [1969] HCD No. 204 and **Swalehe vs Salim** [1972] HCD No. 140.

As regard the legal capacity of the Respondent to be sued personally and not as administrator of the estate, the Respondent submitted that the ground was a new issue raised at the appeal level. He said that the Appellant had a duty to cite the Respondent as legal representative in the dispute.

I have gone through the grounds of appeal, the arguments of the parties and the entire proceedings of the tribunals below. Let me, first start by addressing the first complaint by the counsel for Appellant which is to the effect that the first Appellate Court erred in law to entertain the matter which violated section 11 of the Land Disputes

Court Act, Cap 216. Section 11 deals with the composition of a Ward Tribunal and it states:-

11. Composition of the Ward Tribunal:

"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a ward committee as provided for under section 4 of the Ward Tribunal Act."

The term composition is not defined in the Act. However, in the context of the provision of section 11 quoted above it simply refers to the makeup or creation of a Ward Tribunal which is by way of election by a Ward Committee commonly known as Ward Development Council or WDC, hence the use of the words "elected by a Ward Committee". In my view Section 11 of the Land Courts Act is in no way related to the quorum (i.e. the minimum number of members of the Tribunal required for the Tribunal to transact its business) of a Ward Tribunal for purposes of hearing land disputes. Quorum of a Ward Tribunal is provided under section 4 (3) of the Ward Tribunals Act (Cap 206 R.E. 2006) which provides that:-

"The quorum at a sitting of the tribunal shall be one half of the total number of members"

Once again the term quorum is not defined under the Ward Tribunal's Act, but **Black's Law Dictionary 10th edition by Bryan A. Garner at page 1446** defines the word quorum as:-

"The smallest number of people who must be present at a meeting so that official decision can be made..."

Thus, in terms of section 4 (3) of the Ward Tribunal's Act, the smallest number of members of a Ward Tribunal who must be present at a meeting so that a valid decision could be made is half the total number of the members of the Tribunal which according to section 4 (1) (a) of the Ward Tribunals Act and section 11 of the Land Disputes Courts Act [Cap 216 R.E. 2019] is eight. There is no law which requires the quorum of the Tribunal to specify gender of each member present. Gender (and to be specific the inclusion of three women in the tribunal) is a requirement in the making up or creation or formation of a Ward Tribunal and not in the formation or creation of a quorum for purposes of sitting in discharging its adjudication functions. I thus, find the first ground to have no merits and I dismiss it.

As regards to the 2nd ground, the Appellant testified that his father one Visent Songeli acquired the suit land by clearing a virgin bush in 1995. In 1998 he temporarily gave it to one Stephano Silanda who used it up to 2000 when a portion rear to it was borrowed by one Georgina

Kusaya who used it for sometimes and returned it to the Appellant's family in 2021, the Respondent invaded it claiming that it was part of the estate of her late father. In addition to himself, the Appellant called one witness on his side. This was Chrisant Kauzeni who swore that the suit land was acquired by him but he later on left it to Visent (i.e. the Appellant's father). He stated in cross examination that the Appellant's father (i.e. Visent) did not acquire any land in the disputed area but in other areas. On her part Georgina Kusaya testified that the Appellant's father (Mzee Sangeli) found her using her husband's (Mzee Mwaniwasa's) land and promised to give her a fertile land in place of the land she was given by her husband. However before the Appellant's father could give her the land he promised she was moved to other side of the farm where she stayed for one year before her husband passed away. Stephano Silanda was not called as a witness and he did not there for give evidence in the case.

In her defence during the trial the Respondent (Imelda Mwanisawa) stated that when the Appellant's father Visent Songaleli was chased from Nkana she went to Kate village and borrowed a farm from her father. Her father Mzee Mwaniwasa gave him a piece of land for use as an invitee and he showed him all boundaries. After sometimes the Appellant's father trespassed upon her father's land. Her father

complained to the village land council which resolved the dispute and left two acres in the possession of the Appellant's family. After the demise of her father she reclaimed the land but the Appellant's family refused to surrender it. No member of the village council or any document was produced from that council to show how the dispute was resolved.

I have carefully gone through the records of both tribunals below, and as correctly submitted by Mr. Peter Kamyalile advocate for the Applicant the records of the trial tribunal do not show not only the size and demarcations or boundaries of the disputed land, but also the exact location in terms of the administrative area such as hamlet/neighbourhood commonly known in Kiswahili as Kitongoji and the village where the disputed land is locatable. In such circumstance it is unrealistic to say that the dispute could be conclusively determined and the right of the parties ascertained.

That ground alone is sufficient to dispose of this appeal by quashing all proceedings of both tribunals below for being ambiguous and uncertain with respect to location, size, boundaries and the administrative jurisdictional area of the suit land.

On the issue of locus standi, of either of the parties, let me say that in view of the definition of the term legal representative of a

deceased person as per section 3 of the Civil Procedure Code [Cap 33 R.E. 2019] which includes any person who intermeddles with the estate of the deceased and a person on whom the estate of the deceased devolve (i.e. a person who inherits the estate of the deceased) a grant of formal letters of administration by the court before one can acquire locus stand over the estate of the deceased is not mandatory requirement of the law and particularly so where the estate does not involve a registered property. Under the **Local Customary Law Declaration (No. 4) Order GN No. 436 of 1963** which notice contains in its schedules declared customary law on guardianship, inheritance and wills just to mention a few, inheritance or distribution of the estate of a deceased person are legally done without involving court action and the property legally passes to the heirs. Such heirs cannot be estopped from bringing court actions on the property they had inherited on the ground that there was no grant of letters of administration before they acquired them. There is no law which mandatorily requires that one can't inherit from his descendants until he obtains letters of admiration or that he/she acquired the property through court's initiated or supervised distribution processes. I thus find that the Respondent being a person to whom the estate of her deceased father devolved after his death was rightly sued.

That said, the appeal is allowed. The proceedings and all orders of the District Land and Housing Tribunal for Rukwa in Land Appeal No. 28 of 2021 and that of Land Dispute No. 7 of 2021 of Kate Ward Tribunal are quashed and set aside. For proposes of clarity parties shall revert to their positions and status as they were before the institution of Land Dispute No. 7 of 2021 before Kate Ward Tribunal. Either party is at liberty to institute a fresh claim in the appropriate forum and state clearly the suit land he/she is claiming, its size, location, boundaries and approximated value. Each party shall bear own costs.

It is so ordered.




A.R. MRUMA
JUDGE,
22. 11. 2023