

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. LAND APPEAL NO. 2 OF 2023

(C/F Land Appeal No. 46 of 2021 in the District land and Housing Tribunal for Arusha at Arusha, Originating from, Land Complaint No. 7 of 2020 at Sambasha Ward Tribunal)

ELIUS KRETON.....APPELANT

VERSUS

MELIYO KRETON.....RESPONDENT

JUDGMENT

19/10/2023 & 19/12/2023

GWAE, J

This is the second appeal. The parties herein are brothers from the same father (the late Kreton) but different mothers. In most cases where blood relatives find themselves in conflicts as the one in the present appeal, among the reasons for such conflicts frequently "**Land**" is one of them.

The respondent herein filed a suit at Sambasha Ward Tribunal against his brother, Elius Kreton (the appellant) claiming his land, which he placed to the appellant as security. According to him, he wanted to redeem his land back from the appellant by paying him five calves, 30

pieces of iron sheets and Tshs. 140,000/=. Nevertheless, the appellant refused to release the said land to the respondent claiming that, the respondent had no right over the said land as the land belonged to his parents and he has also been using the same for a quite long time. In proving his case, the respondent summoned seven (7) witnesses who testified that, the respondent inherited the land from his mother who was the second wife to the late Kreton. From the witnesses' testimonies, it is also established that, the respondent's mother was not leaving with his late husband (the father of the respondent) as she left and went back to her father's homestead together with the respondent.

Nevertheless, the respondent later on came back to the house of his late father and he was shown his mother's land, which is now the land in dispute. It was further testified that, the respondent placed the said piece of land as security to the appellant until 2016 when the dispute arose as the appellant did not want to give back the said land to the respondent. It was their stand that, the land in dispute belonged to the respondent who inherited the same from his mother.

On the other hand, the appellant and his witness testified that, the land in dispute belonged to the appellant as his late father gave him the same.

Hearing of this case was followed by a visit to the locus in quo and the following were observed by the trial tribunal; on the west 12 feet, on the south 172 feet, east 16 feet and south 15 feet. The following were also found in the land; a house, banana plants (148), 14 trees of different fruits, 26 trees.

After evaluation of the evidence adduced by both sides and in consideration of what was observed at the locus in quo, the trial tribunal was of the finding that, the land in dispute belong to the respondent and that it was placed as security to the appellant.

Dissatisfied by the decision of the trial tribunal, the appellant filed his appeal to the District Land and Housing Tribunal for Arusha at Arusha (appellate tribunal) where his appeal was dismissed for want of merit accordingly. Still aggrieved, the appellant has now filed this appeal with six grounds of appeal namely;

1. That, the appellate tribunal erred in law and fact by upholding the decision of the trial tribunal which failed to evaluate the evidence of the appellant.
2. That, the appellate tribunal erred in law and fact by not considering that the trial tribunal gave its decision out of the issue as the source of conflict at hand.

3. That, the appellate tribunal erred in law and fact for not considering the evidence adduced by the appellant and his witnesses.
4. That, the appellate tribunal erred in law and fact by declaring the respondent as the lawful owner without proof of ownership or transfer of the disputed land.
5. That, the trial tribunal erred in law and fact by visiting the locus in the absence of the appellant and his witness.
6. That, the trial tribunal erred in law and fact for lacking legal reasoning

When the matter was called on for hearing before me, the appellant appeared in person unrepresented, on the other hand, Mr. Fredrick Isaya, the learned counsel represented the respondent. With leave of the court, the hearing of the appeal was conducted by way of written submissions.

Supporting the appeal, the appellant submitted grounds number 1, 3 and 4 jointly where he stated that, the respondent herein claimed to have inherited the land in dispute from his mother but there is no enough evidence to justify that, the respondent was given the said land. He went on to state that, the respondent also failed to establish as to how the disputed land came into occupation and supervision of the appellant. He went on arguing that the respondent has also not shown the existence of

probate and administration to justify ownership by way of inheritance of the estate of their late father.

The appellant further submitted that he adduced evidence at the trial tribunal that his late father gave him the land in dispute since 1977 and that, he has been using the same until 2016 when the respondent started to claim that the land belonged to him. According to him, the land in dispute has never belonged to the respondent and he has never used or occupied it.

Arguing on ground number 6, the appellant faulted the decisions of both the trial tribunal and the 1st appellate tribunal for delivering the judgment without legal reasoning. It was the argument of the appellant that, the decision of the court should contain legal reasoning as stated in the case of **Ikindila Wigae vs. Republic** [2005] TLR 365. The appellant also submitted that the appellate tribunal chairperson upheld the decision of the trial tribunal, which did not cite the provisions of the law, legal reasoning and evaluation of evidence by the parties.

Apart from arguing the grounds of appeal presented, the appellant also submitted on the composition of Sambasha Ward Tribunal where he argued that, the proceedings and judgment of the trial tribunal did not disclose the gender of the members as provided by the law. More so, the

appellant argued that, the secretary of the tribunal participated in decision-making and signed under the column of the members of the tribunal. It was his submission that, under the provision of section 4 (2) of the Ward Tribunal Act, the secretary of the Ward Tribunal is restricted to participate in decision-making. Supporting this argument, the appellant cited decisions of this Court in the following cases; **Lucas Mwaruka vs. Clemence Mwaruka**, Misc. Land Appeal No. 27 of 2012 (HC-Arusha), **Nada Qori vs Isaki Gilba**, Misc. Land Appeal No. 2 of 2013 (HC -Dar es Salaam). The appellant thus prayed the appeal be allowed.

Responding to the appellant's submission, Mr. Fredrick strongly supported the decisions of both the trial tribunal and the appellate tribunal where he stated that both decisions were reached after evaluation of evidence from both parties. The learned counsel also argued that, there was sufficient evidence from the respondent and his witnesses showing how the ownership passed to him. According to him the issue that, there should be a probate cause is misleading and that each case must be decided depending on its facts.

As to the 6th ground of appeal it was the respondent's submission that, the same is also meritless on the reason that both the trial tribunal and the appellate tribunal did evaluate the evidence adduced and further

gave reasons as reflected on page 3 paragraph 2 of the judgment of the 1st appellate tribunal. The counsel for the respondent similarly faulted the appellant's submission by raising a new ground in his submission on the issue of composition of the trial tribunal and the involvement of the tribunal secretary in decision-making. It was his contention that the court is not entitled to consider any ground that was not raised previously. He supported his argument with the case of **Abdul Athuman vs. Republic** (2004) TLR 151. The respondent's counsel finally prayed for the dismissal of the appeal with costs.

Having summarized the rival submissions of the parties, it is now time for the determination of the appeal by this court and in doing so, the grounds of appeal shall be determined the same way as they were argued by the parties. However, this court has noted that, the appellant submitted in all grounds except on grounds number two (2) and five (5) which this court considers them abandoned by the appellant and shall not form part of my determination.

Starting with the grounds number 1, 3 and 4 in these three grounds of appeal, the appellant is essentially challenging the evaluation of evidence by the trial tribunal. In the matter at hand, having closely followed and examined the testimonies of the parties, together with their

respective witnesses. It was the evidence of the respondent and his witnesses that the land in dispute belonged to the respondent's late mother, which was later on given to the respondent. The testimonies further reveals that, the respondent being the owner of the suit land pledged the same to the appellant who is his brother for the following items; 5 calves, 30 pieces of iron sheets and Tshs. 140,00/=. It was further stated by the witnesses that, the respondent took those items from his brother (the appellant) and pledged his land and that, when he wanted to recover back his land from the appellant, the appellant declined to give it back to him and receive the properties that, he borrowed the respondent. Among the witnesses of the respondent were his brothers including PW7, PW5 and PW1.

On the other hand, the appellant, DW1 testified that, the suit land was given to the appellant herein by his father. Unfortunately there was no other testimony to support the appellant's version because even the said Saigarai Kreton who was mentioned by DW1 as a witness did not testify to support the ownership of the land by the appellant. Failure to bring the key witness as the one who witnessed the appellant being given the land by his father weakened the credibility of his testimony compared to that of the respondent and on the balance of probability. Therefore,

this court is satisfied that the respondent's case was stronger than that of the appellant. In that regard I find no merit in ground number 1, 3 and 4 and proceed dismissing it.

Coming to ground number 6, the appellant contended that, the decisions of the trial tribunal had no legal reasoning and that there was no evaluation of evidence. I also find no merit in this ground of appeal as reading from the judgment of the trial tribunal; it was founded after the evaluation of evidence adduced by the witnesses of both parties. More so, as to the legal reasoning, I find this complaint absolutely misplaced taking into account the nature of the personnel forming the composition of the Ward Tribunal who are not legal experts to make legal opinions or reasoning.

As to the new grounds raised by the appellants in his submissions, I do agree with the respondent's counsel that, the principle that, parties are bound by their pleadings also includes the grounds of appeal. The Court of Appeal of Tanzania in the case of **Bahari Oilfield Services FPZ LTD vs. Peter Wilson**, Civil Appeal No. 157 of 2020 stated this position CAT at Mtwara (Reported Tanzlii) where it was stated that;

"We therefore agree with Mr. Mushi that the principle that requires parties to be bound by their pleadings extends to grounds of appeal in an appeal. On that basis our

conclusion is that an appellant's written and/or oral submission must be in consonance with the grounds of appeal."

For the foregoing reasons, this appeal is not meritorious. I therefore find no reason to fault the concurrent findings of the tribunals below. The appeal is accordingly dismissed in its entirety. I refrain from giving orders as to costs considering the nature of the relationship that exists between the parties.

It is so ordered.

DATED at **ARUSHA** this 19th December 2023




M. R. GWAE
JUDGE