

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)**

AT BUKOBA

LAND CASE APPEAL NO. 76 OF 2023

(Arising from the District Land and Housing Tribunal for Muleba at Muleba in Land Application No. 25 of 2020)

FERDINAND NGAZI.....APPELLANT
(Administrator of the estate of the late Bugere Babyenagisa)

VERSUS

JOSWA KIIZA 1ST RESPONDENT

SOSPETER BAJWAHUKA.....2ND RESPONDENT

BYARUGABA NGAZI RENATUS 3RD RESPONDENT
(Administrator of the estate of the late Lidia Kashangaki Renatus)

JUDGMENT

8th May & 17th May 2024

Mwenda, J.

Before the District Land and Housing Tribunal for Muleba at Muleba the appellant (Mr. Ferdinand Ngazi) filed a claim against the respondents for trespass to land. After a full trial the tribunal dismissed the application on the ground that the appellant failed to prove his case on the standard required. The tribunal also declared the late Renatus Ngazi as the rightful owner of the land in dispute which is subject to division among his heirs.

Aggrieved by the said decision the appellant filed the present appeal with eight (8) grounds of appeal. The said grounds read as follows,

- 1) That the trial tribunal's chairman required higher standards of proof from the appellant when he demanded to prove on how the appellant's

grandmother was given the Suitland by her late husband Babyenagisa by writing without regard to the literacy of the said parties and the circumstances on the remote rural areas. (sic)

- 2) That the learned chairman further erred in law and fact when he held that the appellant did not summons the clan witnesses to support his title whereas his witnesses PW2 Leocardia Colonel, PW3 Georgina Andrea and PW4 Verdiana Nganzi, confirmed the said giving of title. (sic)
- 3) That the holding by the trial chairman that the evidence in respect of how the appellant got the said land in dispute was arrived at without enough evidence on record and if any was minor to affect the tendered evidence of the appellant. (sic)
- 4) That the evidence of the appellant in respect of sale of land by the late Renatus Ngazi to other people including Theodori Benedicto and 2nd respondent which was supported by the appellant's witnesses was wrongly rejected by the chairman alleging that it was not proved for wants of documents to the effect.
- 5) That the trial chairman applied double standard in assessing the evidence on the part of the appellant and respondent when he did not question the evidence of DW4 Sospeter Bajwahuka in respect of distribution done without production of any document.
- 6) That further the learned chairman erred in law and fact for believing the witnesses of the respondents in respect of the root title of the land in

dispute without assigning the reasons for not believing the witnesses of the appellant.

- 7) That the assessor's opinion was not recorded in the proceedings thus resulting into the determination of the dispute without the aid of the assessors.
- 8) That the suit was decided against the weight of evidence.

When this appeal was called on for hearing both parties appeared in person without legal representation and upon being invited to submit in respect of the grounds of appeal, the appellant prayed the grounds of appeal to be adopted to form part to his oral submissions.

On their part, the 1st, 2nd and 3rd respondents also prayed their reply to the grounds of appeal to be adopted and form part to their oral submissions.

Having considered the evidence on record and the ground of appeal, the issue for determination is whether this appeal is meritorious.

Regarding the first, second and eighth grounds of appeal regarding proof ownership of the land to the appellant, it is apposite to point out that in law, he who alleges must prove. This principle has its foundation under section 110(1) of the Evidence Act, [Cap 6 R.E 2019] and was applied by the Court of Appeal in the case of STANDARD CHARTERED BANK (T) VS SAMWEL NYALLA NGHUNI, CIVIL APPEAL NO. 45 OF 2020, CAT at MWANZA (unreported) where it was stated that:

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, he must prove that those facts exist."

Guided by the above principle, this court went through the trial tribunal's records only to find that what the appellant testified before the trial Tribunal is that he inherited the said land in dispute from his grandmother one Bugera Babyenagisa through oral will. Apart from his oral evidence, he also summoned PW2 (Leorcadia Colonel), PW3 (Georgina Nganzi) and PW4 (Verdiana Nganzi) to support his claim. I have gone through the evidence in totality only to find it wanting to substantiate the appellant's claim. Starting with PW2, this witness did not testify in any way that the appellant was allocated the land in question by his grandmother. On their part, PW3 and PW4 testified that the appellant was allocated a farm by his grandmother. They however did not specify when was that, which farm were they talking about and of what size. Even if they happened to give answers to those questions, that by itself would not do any good as there was no evidence on how the said appellant's grandmother acquired that land. With such evidence it is unsafe to conclude that the land which was referred to by the PW3 and PW4 is the land in dispute and belonged to the appellant's grandmother. Guided by section 110(1) of the TEA, the trial tribunal was correct to find that the evidence adduced by the appellant fell short of proving the fact that the land in dispute is the property of his late

grandmother. Due to the above reasons, I find no merit on the first, second and eight grounds of appeal raised by the appellant.

Regarding the 3rd ground that the trial tribunal found the evidence by PW2 one Leorcadia Colonel differs with the appellant's evidence in respect of how the appellant acquired the said land in dispute, this court went through PW2 testimonies and noted that, truly the said two pieces of evidence differ. This is so because PW2 testified that when her husband got sick, he convened a clan meeting and informed them that upon his demise they should take care of Ferdinand Nganzi. In her testimonies she did not testify if the appellant was given the said land in dispute by his grandmother and further, she did not testify if there was any oral will from the appellant's grandmother. This shows contradictions between the appellant's evidence and that of PW2, thus I find no merits on this ground of appeal.

Regarding the 4th ground complaining about lower tribunal's rejection of evidence about the sale of land by the late Renatus Nganzi to Theodori Benedicto and Sospeter Bajwahuka this court is of the view that the trial tribunal was justified to reject it because there is no any document to prove the same. That said, this ground is hereby dismissed.

Coming to the fifth ground of appeal alleging that the trial chairman applied double standards in assessing the evidence on the part of the appellant and respondent when he did not question the evidence of DW4 Sospeter Bajwahuka

in respect of distribution done without production of any document, this court went through the tribunal's record and noted that both parties aired out their respective evidence in respect of the land in dispute and the same was assessed by Trial chairman in deciding the case. That being said there is no double standards in evaluating the party's evidence. What the appellant was required to prove is if the land in dispute is the property of the late Bugere Babyeganisa (his grandmother) and how it changed hands from his grandmother to him. On that regard I find no merit on this ground of appeal.

Regarding the 7th ground of appeal that the assessor's opinion was not recorded in the proceedings, this court went through the tribunal records and noted that the records are clear, at page 72 of the typed proceedings, that the assessor's opinion were clearly and well recorded. That said this ground is also unmerited.

From the foregoing observation this appeal lacks merits and it is hereby dismissed. Consequently, the decision of the trial tribunal and the orders made are hereby upheld. However, considering the nature of the case at hand, I make no order as to costs.

It is so ordered.


A.Y. Mwendu
Judge

17.05.2024

Judgment delivered in chamber under the seal of this court in the presence of the appellant Mr. Ferdinand Nganzi and in the presence of the 1st respondent Mr. Joswa Kiiza, 2nd respondent Sospeter Bajwahuka and 3rd Respondent Byarugaba Nganzi.



A.Y. Iwenda
A.Y. Iwenda

Judge

17.05.2024