

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

SUMBAWAGA DISTRICT REGISTRY

AT SUMBAWAGA

LAND APPEAL NO. 13 OF 2023

(Appeal from the judgment and decree of the Land and Housing Tribunal for Katavi at Mpanda in Land Application no. 33 of 2019 delivered on 28. 2. 2023 before G. K. Rugalema, learned Chairman)

BETWEEN

TAUSI KORONGO.....APPELLANT

VERSUS

NASSORO KORONGO.....RESPONDENT

JUDGMENT

MRUMA, J;

In the District Land and Housing Tribunal for Mpanda District at Katavi Region, **Nasoro Korongo** the Respondent herein successfully sued his daughter **Tausi Korongo** the Appellant herein claiming ownership of a premises standing on Plot No 14 Block J Mpanda Urban area at Mpanda Municipality. Initially the dispute was heard and decided by the tribunal but upon an appeal to this court, this court (Ngigwana RM with Extended Jurisdiction) ordered a retrial.

Upon the re-trial the present Respondent was declared the rightful owner of the suit premises.

Being aggrieved the Appellant **Tausi Korongo** has appealed to this court on the following grounds;

1. That, the trial tribunal erred in law after failing to endorse the chairman's signature after every part of witness statement during examination in chief, cross examination and after re-examination which is contrary to the law.
2. That, the trial tribunal erred in law by providing the assessors opinion and the judgment and decree on the same day which is contrary to the laws of procedure.
3. That the trial tribunal erred in law and fact by delivering judgement and decree in favour of the Respondent without considering the fact that the land in dispute is registered under the law and is currently recognised as the Appellant's property.
4. That, the trial tribunal erred in law and in fact after delivering judgment which was unjustifiable, exaggerated and not genuine for being contradictory, misconceived and overlooked after ignoring the material explanation by the appellant witness one Ezekiel William

Bichuro who is a land officer and who testified that the land is a property of the appellant.

On those grounds the Appellant prayed for the appeal to be allowed with costs.

At the hearing of this appeal the Appellant was represented by Mr **Tumsifu Chengula** learned advocate whereas the Respondent was represented by Ms **Sekela Amulike** also learned advocate, the appeal was argued by way of written submissions.

Arguing the first ground of appeal counsel for the Appellant contended that in law when a witness is testifying her/his testimony must be properly taken by the adjudicator and in order to authenticate that she/he had taken the testimony of a particular witness the chairman is duly bound to append his signature after completion of witness's evidence. He said that the position was stated by the Court of Appeal in the case of **Chacha Ghati @ Magige vs. Republic**, Criminal Appeal no. 406 of 2017, unreported. The learned counsel further submitted that the said anomaly goes to the root of the matter as the rules of taking evidence were not followed which renders to the question of authenticity of the evidence so tendered.

Submitting in support of the second ground the learned counsel submitted that the tribunal erred in law by providing the assessor's opinion, judgment and decree on the same day, he cited Regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003 and contended that taking into consideration that assessors opinion was given the same day in which the judgment was delivered one may be tempted to ask when was the judgment composed? And whether the chairman had time to consider assessors' opinion. The learned counsel cited the case of **Tubone Mwambeta vs. Mbeya City Council**, Civil Appeal no. 287 of 2017 as authority. He concluded that what was done would suggest that the chairman had no time to consider assessors opinion in the final verdict and it is not clear as to how and what stage the said opinion found their way in the tribunal's judgment. He said that, that was contrary to the law of procedure.

Reverting to the third ground, the learned counsel faulted the trial tribunal for delivering judgment and decree in favour of the Respondent without considering the fact that the land in dispute is a registered land which, according to him is recognized as the Appellant's property, a thing which is contrary to section 2 of the Land Registration Act [Cap 334 R.E 2019], citing the case of **Leopold Mutembei vs. Principal Assistant**

Registrar of Titles, Ministry of Land, Housing and Urban Development and Another, Civil Appeal no. 57 of 2017 as an authority.

On the last ground, the learned counsel stated that the judgement delivered by the trial tribunal was contradictory, misconceived and overlooking for ignoring the material explanation given by the Appellant's witness (Ezekiel William Bochuro) the Land Officer who testified that the land in dispute is the property of the Appellant.

In her reply to the counsel for the Appellant's submissions in respect of the first ground, the learned counsel for the Respondent submitted that, the Appellant claims that the trial tribunal erred in law didn't substantiate the law which was erred and that the case of **Chacha Ghati** (supra) cited is inapplicable because it is a Criminal Case which uses different procedure to wit the Criminal Procedure Act which is different from the procedure used in civil and land cases in general. He submitted further that the Appellant's counsel did not state how failure to endorse the chairman's signature after every part of witness statement has occasioned failure of justice and how she was prejudiced. He said that even if there was an error, it should not vitiate the proceeding as it occasioned no injustice as was observed in the case of **Judge In-Charge High Court Arusha v.**

N:LN Munuo Ng'uni [2004] TLR 44 at page 49 where it was stated that Procedural irregularities should not vitiate proceedings if no injustice has been occasioned.

Responding to the second ground of appeal the learned counsel submitted that Section 23 (1) of the Land Disputes Court Act and Regulation 19 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulation of 2003 provides for the composition of the District Land and Housing Tribunals, and they are to the effect that every assessor must at the conclusion of hearing give his opinion. He said that Regulation 19 (1) of the said Regulations requires the Chairman to pronounce judgment on the spot or reserve it and pronounce it later. She said that the tribunal's proceeding clearly show that the opinion of assessor was read in open in presence of the parties and their respective advocates. Therefore there was no error committed by the trial tribunal.

On the third ground counsel for the Respondent conceded to the fact that title in land is prima facie evidence of ownership but only when there is no allegation of fraud or collusion in line with section 33 (1) of the Land Registration Act [Cap 334 R.E. 2019]. She said that the Respondent's name was registered in Land registry as owner of the disputed land and he paid all land rents from 1976 up to 2019 and tendered in evidence

Exhibit NKI, the receipts evidencing the payments. She said that the entry of the Appellant's name in the Land registry was not proper as it contained flaws that cannot be maintained. It's the learned counsel's contention that in the first place the Appellant claimed that she was given the disputed land by Respondent as a gift the fact which was denied and he failed to establish when and how the Respondent gave her the disputed land. She said that the Respondent managed to tender various receipts used in paying land rents (Exhibit NK I) as the owner of the said land and therefore proving his ownership and how the dispute land came into his possession. Further to that, it is the submissions of the counsel for the Respondent that the Appellant never signed any document related to the said land in as required by Section 91 of the Land Registration Act which requires that all deed executed in relation to land must be executed by all person and attested in accordance with the law. She said that the Respondent did not sign the Transfer Form nor did the attestation officer contrary to the law and that the only fact relied in her claim of ownership is the presence of her names in the incomplete documents which alone proves that his name in the registry was not properly entered.

Counsel for the Respondent concluded that it was clear from the records and judgment of the trial tribunal that the trial Chairman considered the

evidence on record as required by law and pronounced Judgment after evaluating the same and found that the evidence of the present Respondent was heavier compared to that of Appellant as was held in the case of **Hemedi Saidi v. Mohamed Mbilu** (1984) TLR 113.

I have carefully gone through the evidence and considered the rival submission by the counsel for the parties. The only question for determination by this court is whether this appeal has merit.

On the first ground of appeal, the trial tribunal is faulted on the failure by the trial chairman to append signatures at the end of each witness's evidence. Upon perusal of the record of appeal, I find this complaint to be misconceived. Firstly the record shows that the trial chairman did sign after the evidence of all witnesses who testified.

Secondly, there is no provision and the rules governing proceedings at the District Land and Housing Tribunal, that is to say the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 (GN No. 174/2003), which mandatorily requires the chairman to append his signature on each witness's testimony. However in terms of section 51 (2) of the Land Disputes Courts Act where there is a lacuna in the Regulations or the Regulations are silent on the specific matter, the tribunal may apply

the Civil Procedure Code [Cap 33 R.E. 2019]. Section 51 (2) of the Land Disputes Courts Act provides;

(2) The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code.

Thus, when there is inadequacy in the regulations the Land Disputes Court Act allows District Land and Housing Tribunal to seek refuge in the Civil Procedure Code and the provision of the Civil Procedure Code which is relevant in the matter is Rule 5 of Order XVIII which provides that:-

*The evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the judge or magistrate, not ordinarily in the form of question and answer, but in that of a narrative and the **judge or magistrate shall sign the same. [emphasis added]***

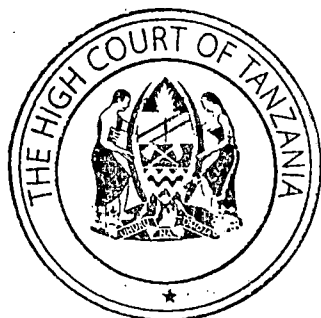
However, as stated earlier, this ground of complaint was misconceived as the chairman did sign after every witness's evidence. But even if it was true that he didn't sign the question would be

whether the Appellant was prejudiced by the omission. An allegation of being aggrieved is a fact and like any other fact it has to be proved. In the case at hand no prejudice was pleaded and proved.

On the analysis of evidence having reviewed the trial tribunal's judgment, I am convinced that the learned chairman evaluated the evidence adduced and was of the view that the Respondent's (i.e. father's) evidence was much heavier than that of the Appellant (i.e. the daughter). Even common sense would so depict. Here is the father who is said to have given his daughter a piece of land as a gift, but who is the same father who has gone to challenge the allegation that he gave his land to the Appellant. Gift being a voluntary transfer of a property to another without compensation (See Black's Law Dictionary Bryan A. Garner 10th Edition page 803), can be withdrawn before the property passes to the donee. In the case at hand the transfer documents tendered by the Appellant during the trial **Kiapo cha Kuuziana Nyumba/Jengo** and the **Transfer of A Right of Occupancy of Plot No 14 Block J Mpanda Urban Area** together with the **Notification of Disposition of Land** all are not signed by the transacting parties i.e. the parties in these proceedings. In the circumstances no property could pass. The fact that the Appellant

admitted that originally the suit plot belonged to her father, the Respondent coupled with the fact that the father was paying land rents from 1976 through 2019 is an indication that ownership of the Plot did not pass to the Appellant.

That said and having found that the irregularities complained didn't occasion any miscarriage of justice to either party, I find and hold that this appeal was preferred without any justifiable ground, accordingly it is dismissed with costs.




A.R. MRUMA

JUDGE

29. 2. 2024

Judgment delivered online from the High court of Tanzania Morogoro

District Registry this 29th day of February 2024


A. R. MRUMA

JUDGE

29. 2. 2024.