

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 23 OF 2022

*(Originating from the decision of the District Land and Housing Tribunal for Rukwa at Sumbawanga in
Land Application No. 41 of 2020 before Hon. J. Lwezaura, Chairperson)*

ABELI MIZIZI.....APPELLANT

VERSUS

ERNEST KATUCHA.....RESPONDENT

JUDGMENT

18th December & 28th February, 2024

MRISHA, J.

The appellant **Abeli Mizizi**, has approached this court with a view of requesting it to quash and set aside the judgment and decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga (the trial tribunal) which, after hearing the evidence from both parties before it, determined the Land Application No. 41 of 2020 in favour of the respondent, **Ernest Katucha**.

Before the trial tribunal, the appellant who was the applicant whilst the respondent had the same status as in the case at hand, sued the

respondent for allegedly invading his three (3) acres piece of land (the suit land) which is located at Mpenge Village, Kabwe area within Nkasi District of Rukwa Region. He claimed that he acquired the suit land in 1986 by purchasing it from one Klizesto Maninka and Rozalia Jwangi.

In a bid to make the trial tribunal enter judgment in his favour, the appellant who testified as Sm1 (First Applicant's witness), marched two witnesses namely Kapele Mapangu and Rozalia Jwangi who testified as Sm2 and Sm3 respectively, whereas his counterpart who entered his defence as SU1 (First Respondent's Witness), summoned one Raimundi Manyundo who testified as SU2 in order to support him in disputing the claims levelled against him by the appellant.

In his testimony, the appellant told the trial tribunal that he purchased the suit land in 1986 which had seven (7) acres, from SM3 and her son called Klizesto Maninka and began to cultivate part of it and reserved another part for livestock keeping. He added that the respondent invaded the suit land in the year 2017.

That thereafter, the respondent sued him in the Ward Tribunal whereby after a full trial his counterpart was declared to be the lawful owner of the suit land. Aggrieved by that decision, the appellant appealed against the such decision. He however, did not describe the appellate forum

which entertained his appeal, nor did he tell the trial tribunal about the outcome of the said appeal.

On being cross examined, the appellant said that initially the suit land had been acquired in 1970 by one Thabit Mbende who later on sold it to one Manyundo, then thereafter the latter sold it to the so called Msukuma who then sold it to Klizesto. When examined by the trial tribunal, the appellant said he purchased the suit land with three (3) acres in consideration of 1,800/= (One thousand and eight hundred shillings).

His second witness (Sm2) testified that on 2015 he received a dispute regarding the suit land when he was the Chairman of Mpenge Village Land Committee and visited the *locus in quo* with members of the said committee, but they failed to solve the dispute. Later on, he was informed that the said dispute had been filed with the Ward Tribunal. Upon being cross examined, the said witness responded that the Village Land Committee failed to make its decision in respect of that dispute.

The last appellant's witness (Sm3), informed the trial tribunal that he knew the suit land as well as the land dispute between the appellant and the respondent whom he alleged to have been the invader of the

suit land. He also told the trial tribunal that he was involved in showing its boundaries.

During cross examination, he said that the dispute between the parties herein had been determined by the Ward Tribunal and he participated in showing the boundaries of the suit land. When examined by the trial tribunal, the said witness responded that he gave the suit land to the appellant.

On the other side, the respondent testified that he was given the suit land by his late brother one Adam Katucha in 1972. He added that initially, his late brother and one Raphael Manyundo had acquired lands at Mpenge Village and began to cultivate therein, then later on his late brother decided to call and give him the suit land which he began to cultivate up to the moment he was testifying before the trial tribunal.

The respondent testified further that the suit land is demarcated by another land belonging to Raymond Manyundo and that the appellant had exceeded the boundary. During cross examination, the respondent said he began to cultivate the suit land in the year 1972 and has been using the same since then.

When examined by the trial tribunal, he said he was given the suit land by his late brother. His evidence was followed by his sole witness (SU2)

who testified that in 1966 he acquired his land which was demarcated by the suit land, but thereafter the appellant invaded the suit land. He tried to reconcile the parties, but in vain. During cross examination, the said witness responded that the Village Land Committee did not resolve the appellant's complaints against the respondent.

From the above evidence, the trial tribunal found that between the two, it was the respondent who had been in possession of the suit land for a long time up to the moment it was handling the Land Application No. 41 of 2020; because of that, it refrained from disturbing the respondent's long occupation of the suit land and relied on the principle stated in the case of **Shaban Nassor v. Rajab Simba** [1967] HCD 233 to decide the matter in favour of the respondent.

As indicated above, the appellant herein is aggrieved by the decision of the trial tribunal. His memorandum of appeal against the said trial tribunal's decision, is composed of one ground of grievance namely: -

1. That, the Trial tribunal erred in deciding the dispute without Analysing (sic) and considering evidence adduced by the Appellant.

From the above sole ground of appeal, it is the appellant's humble prayer that this court be pleased to grant him the following reliefs: -

- i. That, the appeal be allowed.
- ii. That, the decision of the District Land and Housing Tribunal be quashed and set aside and the appellant be declared as the lawful owner of the suit land.
- iii. Costs be borne by the respondent.
- iv. Any other relief this honourable court may deem fit and just to grant.

When the present appeal was called on for hearing, both the appellant and respondent appeared in person, unrepresented and though being laymen, they at least tried their level best to submit for and against the appellant's ground of appeal. As the practice of this court demands, it was the appellant who began to make his submission in chief.

Submitting in support of his sole ground of appeal, the appellant stated that the trial tribunal erred in law by agreeing with the evidence of the respondent which was contradictory. He clarified that while in his testimony the respondent claimed that he was given the suit land by his late brother, his witness who was Raimund Manyundo, stated that the suit land was given to the respondent by one Raphael Manyundo in 1966, which shows that the suit land was given to the respondent by two persons.

The appellant went on submitting that due to the above contradiction, it is apparent that the trial tribunal did not consider properly the evidence of the respondent as well as the one adduced by him and his witnesses which according to him, shows clearly that he acquired the suit land since the year 1986 by purchasing it from Rozalia Jwangi and had been using it peacefully until 2017 when the land dispute between him and the respondent, arose.

In conclusion, the appellant urged the court to allow his appeal with costs, quash and set aside the impugned judgment of the trial tribunal. He also, implored me to order the respondent to pay costs of the present appeal. On the adverse side, the respondent submitted before this court that he was given the suit land by his late brother one Adam Katucha in 1972 for him to develop it.

He also submitted that by the time the suit land was given to him, the appellant was not there as he was residing in another place called Kauchwi. That, after being given the suit land by his brother, the respondent continued to cultivate the same with the son of Raymond Manyundo since 1972 up to the time he was making his submission before the court.

Having submitted as such, the respondent was emphatic that the suit land belongs to him. He thus, requested the court to dismiss the instant appeal with costs and allow him to continue using the suit land. In rejoinder, the appellant reiterated his previous prayer to this court that his appeal be allowed with costs and the suit land be returned to him.

I have carefully read the records of the trial tribunal as well as the impugned judgment of the said tribunal. I have also read the rival submissions of the parties before me and considered the single ground of appeal on which the two have locked horns on. In my view, the present appeal can be disposed of by only one issue which is whether the lower court considered properly the evidence adduced by the appellant before finding in favour of the respondent.

Before I delve into determining the above issue, I wish to lay a foundation of my discussion by reaffirming the principle of law that normally the appellate court will not interfere with the findings of the lower court unless it is shown that there are mis directions or non-directions; See **DPP v Jaffari Mfaume Kawawa** [1981] TLR 149.

Although the above principle emanates from a criminal case, I am certain that it applies mutatis mutandis even to civil cases like the instant one. In the present case, the appellant has complained that the

trial tribunal erred (probably in law) when it decided the land dispute between him and the respondent without analysing and considering the evidence adduced by the him.

Admittedly, it is a trite law that failure to consider the defence case is as good as not hearing the accused and is fatal; See **Godfrey Richard v. R.**, Criminal Appeal No. 365 OF 2008 CAT and **Biloza Robert vs DPP**, Criminal Appeal No. 9 of 2019, CAT (both unreported). I may also add in passing, that failure to consider the plaintiff, prosecution or defendant's case has the same legal consequence as the one stated in the case of **Godfrey Richard** (supra).

Back to the flow, it is my considered opinion that the complaint the appellant has brought to this court is unfounded because in my careful scrutiny on the typed judgment of the trial tribunal, it is crystal clear that the said tribunal properly considered not only the appellant's evidence, but also it went far by considering the evidence adduced by the respondent.

In order to fortify the above court's position, I find it opportune to reproduce the relevant part of the said judgment particularly at pages 5 to 6, which shows how the honourable trial chairperson of the said

tribunal considered the appellant's evidence before finding in favour of the respondent, as hereunder:

"Kimsingi suala linalobishaniwa hapa ni nani mmiliki wa eneo lenye mgogoro lililopo katika Kijiji cha Mpenge, Kabwe Wilaya ya Nkasi. Katika shauri hili, mleta maombi alidai kuwa ni mmiliki halali wa eneo gombewa baada ya kuwa amelinunua eneo hilo kutoka kwa Klizesto Maninka na Rozalia Jwangi (Sm3) mnamo mwaka 1986.

Hakuna ushahidi wowote uliotolewa na upande wa mleta maombi kuthibitisha ununuzi wake wa eneo gombewa. Hata Rozalia Jwangi (Sm3) hakulieleza hili Baraza kama yeye alimuuzia Sm3 (sic) eneo gombewa. Upande wa utetezi unadai kuwa Su1 ni mmiliki wa eneo gombewa toka mwaka 1972 na kuwa analitumia eneo hilo mpaka hivi leo.

*Kwa kuwa mjibu maombi ametumia eneo lenye mgogoro kwa muda mrefu sioni sababu ya kuingilia matumizi yake yae neo gombewa ya muda mrefu. Na hii ni kwa mujibu wa maelekezo katika shauri la **Shaban Nassoro vs Rajab Simba** [1967] HCD 233 ambapo ilitamkwa na mahakama kwamba, ninanukuu;*

"The court is reluctant to disturb persons who have been in occupation of the land for a long period..." [the underlining is mine]

The excerpt above clearly depicts that before finding in favour of the respondent, the trial chairperson properly analysed and considered the evidence of the appellant along with the one adduced by the respondent. In the circumstance, and due to the reasons, which I have assigned hereinabove, it is my finding that the appellant's ground of appeal has no merit.

Having addressed and determined the appellant's ground of appeal, I am therefore in a good position to answer the above issue positively that the lower court considered properly the evidence adduced by the appellant before finding in favour of the respondent.

The above deliberation would definitely suffice to dispose of the present appeal. However, I think it is very important to comment a little bit about the evidence which the appellant has blamed the trial tribunal for not considering before making its decision. If I have understood him well, he is of the view that had the trial tribunal properly considered his evidence, it would have decided otherwise. Is that correct? I think the answer to that question is in the negative.

I say so because first, it is obvious as indicated above, that the trial tribunal properly considered the evidence of both parties before arriving to its decision, but the second and most important reason is that the evidence adduced by the appellant and his two witnesses before the trial tribunal, never outweighed the one adduced by the respondent.

Times without number, it has been the law that in cases of civil nature, the burden of proof lies on the party who would want the court to enter judgment in his favour; he/she must prove that certain facts which he asserts actually exist. The basis of that principle of law, stem from the provisions of section 110 (1) (2) of the Evidence Act, Cap 6 R.E. 2019. It was also stated in the case of **Industrial Gases and Chemicals Ltd & 2 Others vs Azania Bank Limited**, Civil Case No. 02 of 2020 (unreported) whereby my learned brother Dyansobera, J. stated that,

"Generally, there is no dispute that the burden of proof in civil cases is on balance of probabilities. In fact, the burden of proof lies on the party who asserts the truth of the issue in dispute."

Reverting back to the case at hand, it is on record that when adducing his evidence before the trial tribunal, the appellant claimed that he purchased the suit land from Rozalia Jwangi (Sm3) and Klizesto Maninka. However, his evidence is silent as to how he purchased the

said suit land. Did he enter an oral sale agreement with the two? or did he enter a written sale agreement with Sm3 and Klizesto Maninka?

Unfortunately, all the above crucial questions lack answers from the appellant's evidence which is on record. Worse still, even his third witness who is Rozalia Jwangi (Sm3), did not bear him out by testifying that she sold to him the suit land, rather she said she gave him the suit land something which in my view makes a confusion on the appellant's evidence because if we have to buy the assertion of that witness that she gave the suit land to the appellant with love and affection, then one would not have expected the appellant to tell the trial tribunal that he purchased it from that witness and one Klizesto Maninka.

I have also gone through the evidence of the respondent who has maintained that the suit land belongs to him for it was given to him by late brother way back in 1972 and has been using the same peacefully. Going by the records of the trial tribunal, it is obvious that his evidence was well corroborated by his sole witness one Raimundi Manyundo (Su2). Thus, it is not true that the same was contradictory as it has been claimed by the appellant at this appellate stage.

In the circumstance, and due to the foregoing reasons, I am of the settled view that the appellant failed to discharge his legal duty of

proving his claim against the respondent on the balance of probabilities, and I do not find any pressing reason to fault the findings of the honourable trial chairperson who decided in favour of the respondent.

Having said the above, I am therefore holding that the present appeal is without merit. Consequently, I dismiss it in its entirety and upheld both the respective judgment the trial tribunal and all orders made thereto.

Costs in this court and the court below to be borne by the appellant.

It is so ordered.


A.A. MRISHA
JUDGE
28.02.2024

DATED at SUMBAWANGA this 28th day of February, 2024.




A.A. MRISHA
JUDGE
28.02.2024