

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA SUB - REGISTRY

AT IRINGA

LAND APPEAL NO. 3569 OF 2024

(Originating from the District Land and Housing Tribunal for Njombe at Njombe in Application No. 19 of 2020)

GEOFREY ALIPIPO KINGILO APPLICANTS

VERSUS

MARIO MRISHO MKUSA1st RESPONDENT

SEMENI YUSUPH UDUMBE.....2nd RESPONDENT

JUDGMENT

Date of last Order: 21/03/2024
Date of Judgement: 30/05/2024

LALTAIKA, J.

The Appellant herein **GEOFREY ALIPIPO KINGILO** is dissatisfied with the decision of the District Land and Housing Tribunal for Njombe at Njombe (the DLHT) in Land Application No. 19 of 2020. He has appealed to this Court by way of a memorandum of appeal containing the following grounds:

- 1. That, the Trial Tribunal chairperson erred in law and facts by failing to conduct the visit of the locus in quo properly and hence arrived at a wrong decision.*
- 2. That, the Trial Tribunal chairperson erred in law and facts for raising and determining new issue of time limitation and continued determining it without availing the parties right to be heard.*
- 3. That, the Trial Tribunal chairperson erred in law and facts for deciding that the application is time barred.*
- 4. That, the Trial Tribunal chairman erred in law and facts when it failed to evaluate the evidence on record and reached at a wrong decision without considering that the weight of the Appellant's evidence is heavier than that of the Respondent.*

When the appeal was called on for hearing on the 9th of April 2024, the appellant appeared through Mr. **Rutebuka, Samson Anthon** (learned Advocate). The Respondent on the other hand enjoyed the legal services of **Mr. Jerome Njiwa**, (learned Advocate) who entrusted his brief for the day to his learned brother in the bar **Cosmas Masimo**.

Following the parties' prayer to proceed with hearing of the appeal by way of written submissions, leave was accordingly granted, and the following

schedule ordered: Filing of the appellant's written submission: 24/04/2024, Filing of the Respondent's reply: 14/05/2024, Filing of the Appellant's rejoinder if any: 21/5/2024, Mention to ascertain compliance of this order and fix the date of judgement: 21/05/2024. I hereby register my commendations to the learned Counsel for spotless compliance with the court order thus paving the way for this judgement equally on time. The next part is a summary of submissions by both parties.

In his detailed submission in support of the appeal, Mr. Rutebuka embarked on a comprehensive analysis of each ground of appeal, leaving no stone unturned as he meticulously dissected the proceedings of the trial tribunal.

Beginning with the first ground of appeal, Mr. Rutebuka delved into the procedural irregularities surrounding the locus in quo visit. Drawing from the recorded proceedings and citing page 23 of the trial tribunal's records, he pointed out the failure to adhere to established protocols, particularly in light of the guidance provided by the Court of Appeal in the recent case of **KIMONIDIMITRI MANTHEAKIS VS ALLY AZIM DEWJI AND 7 OTHERS**, CIVIL APPEAL NO.4 OF 2018.

The learned Counsel for the Appellant highlighted the discrepancies in the conduct of the locus in quo, emphasizing the pivotal role of this exercise in land disputes. Referring to the guiding principles outlined by the Court of Appeal, Mr. Rutebuka emphatically argued that the failure to follow prescribed procedures constituted a grave miscarriage of justice, warranting the nullification of the proceedings and the quashing of the judgment for a fresh trial, as stipulated **in S.13(4) of the Land Disputes Courts Act.**

Transitioning seamlessly to the second ground of appeal, Mr. Rutebuka launched into a fervent critique of the Trial Tribunal chairperson's actions. With eloquence, he underscored the fundamental right to be heard, enshrined in article 13(6)(a) of the 1977 Constitution of the United Republic of Tanzania, which he alleged, had been egregiously violated.

Drawing from the precedent set in the case of **SAID MOHMED SAID VS MUHUSIN AMIRI & MUHARAMI JUMA**, Civil Appeal No. 110 of 2020, Mr. Rutebuka articulated the importance of procedural fairness and the detrimental impact of denying parties the opportunity to address emergent issues during trial proceedings. He argued that this denial rendered the

proceedings null and void, necessitating a critical reevaluation of the judgment.

As he delved into the intricacies of the third ground of appeal, Mr. Rutebuka exhibited a profound understanding of the legal nuances surrounding the application's alleged time-barred status. Drawing upon relevant sections of the Law of Limitation Act and precedent established in the case of **YUSUPH SAME AND ANOTHER VS HADIJA YUSUPH** (1996) TLR. 347, he meticulously dismantled the chairperson's decision, demonstrating unequivocally that the application had been filed within the prescribed time limit. With meticulous attention to detail, he adeptly navigated the complexities of the disputed land, debunking any misconceptions or misinterpretations that may have influenced the chairperson's erroneous decision.

In conclusion, Mr. Rutebuka passionately appealed to the court's sense of justice, urging a thorough examination of the compelling arguments presented. With unwavering determination, he implored the court to rectify the errors of the trial tribunal and uphold the principles of natural justice, thereby ensuring a fair and just resolution for all parties involved.

Mr. Njiwa, on his part, engaged with the arguments put forth by Mr. Rutebuka in an equally comprehensive manner.

Addressing the first ground of appeal, Mr. Njiwa countered that this ground of appeal was misinterpreted, emphasizing that the locus in quo visit was intended to provide the trial tribunal with a broad understanding of the disputed land rather than to reevaluate evidence. He contested the assertion that the land shown during the visit differed from the appellant's claim, pointing out the lack of concrete evidence in the records to support this contention.

Expounding further, Mr. Njiwa delved into the legal precedent set by the case of **EDWIN WILSON MTUTA AND HAWA MENARD MWIGUNE VS HEZRON MTUTA AND 3 OTHERS**, Land Appeal No. 46 of 2022, where procedural irregularities during the locus in quo did not invalidate the proceedings due to sufficient evidence presented in court. This position, he argued, demonstrated that violations of procedural guidelines during the visit may not necessarily impede a fair determination of the case.

Transitioning to the second ground of appeal, Mr. Njiwa countered the appellant's claim that the trial tribunal erred in introducing and deciding upon

a new issue of time limitation without affording the parties an opportunity to be heard. Referencing the case of **INTERNATIONAL COMMERCIAL BANK LTD VS. JADECAM REAL ESTATE LTD**, Civil Appeal No. 446 of 2020, he highlighted the court's discretion to base decisions on issues arising from the evidence on record. Moreover, he pointed out that evidence presented during the trial clearly indicated the time-barred nature of the suit, justifying the tribunal's decision.

Expanding upon the third ground of appeal, Mr. Njiwa refuted the appellant's argument that the suit was not time-barred, reiterating that the trial tribunal correctly based its decision on the date of the appellant's father's death, as per the Law of Limitation Act. He cited the case of **HAJI SHOMARI VS ZAINABU RAJABU** to reinforce this legal interpretation.

Lastly, regarding the fourth ground of appeal, Mr. Njiwa engaged with the appellant's contentions regarding the evaluation of evidence by the trial tribunal. He argued that the tribunal's assessment was grounded in the evidence presented and highlighted the appellant's failure to provide substantial proof of ownership of the disputed land. Concluding his

submission, Mr. Njiwa prayed for the dismissal of the entire appeal on grounds of lacking merits.

In his rejoinder submission, Mr. Rutebuka asserted that the case cited by the appellant's counsel, **KIMONIDIMITRI MANTHEAKIS VS ALLY AZIM DEWJI AND 7 OTHERS**, (supra) was distinguishable from the current case and concluded that any noncompliance with guidelines did not prejudice the appellant's rights. He referenced the decision of this Court in EDWIN WILSON'S case to support this.

Mr. Rutebuka proceeded to counter these arguments by highlighting the purpose of visiting a locus in quo, citing the Court of Appeal's guidance in **KIMONIDIMITRI MANTHEAKIS VS ALLY AZIM DEWJI AND 7 OTHERS (supra)**. He emphasized the importance of parties and their witnesses demonstrating physically and adducing evidence at the locus in quo. He pointed out instances from the proceedings where the Respondents provided evidence about their residence on the disputed land, indicating the necessity for a proper examination at the locus in quo. He also stressed the need for the tribunal to adhere to specific procedures during such visits to ensure a fair trial.

Addressing the issue of showing different land during the visit, Mr. Rutebuka argued that the absence of a record of the proceedings at the locus in quo left room for parties to make claims about what transpired, leading to potential misunderstandings.

On the 2nd ground of appeal, he disagreed with the Respondents' counsel's assertion that the issue of time limitation was not framed, citing relevant sections of the law and evidence from the proceedings to argue for the applicability of Section 24(1) of the Law of Limitation Act. Regarding the 3rd ground of appeal, Mr. Rutebuka contested the interpretation of Section 9(1) of the Law of Limitation Act, presenting evidence from the proceedings to support his argument.

Finally, on the 4th ground of appeal, he challenged the Respondents' counsel's dismissal of the discrepancy **between 35 acres and 35 hectares**, pointing to evidence from the trial tribunal's evaluation and emphasizing the importance of proper understanding of the disputed land. Throughout his rejoinder, Mr. Rutebuka relied on case law and evidence from the proceedings to support his arguments and counter the Respondents' submissions.

I have dispassionately considered the rival submissions in the light of the grounds of appeal. I have also taken a rather keen interest in examining the records of the trial Tribunal. Apparently, the appellant, through meticulous arguments of his Counsel, strongly challenges various aspects of the tribunal's decision. After careful consideration, I will narrow down my analysis to three issues namely visit in *locus in quo*, time limitation and analysis of evidence to find out whether shortfalls and alleged procedural irregularities warrant quashing of the proceedings and setting aside of the judgement of the trial Tribunal.

On locus in quo visit, the appellant contends that the visit to the locus in quo was not conducted in accordance with established guidelines, potentially compromising the fairness of the proceedings. While the respondent argues that the visit served the purpose of providing a general overview of the disputed land, the appellant's reliance on legal precedent including very recent decision of the apex Court was meant to underscore the importance of adherence to procedural norms during such visits.

While I commend Mr. Rutebuka for his meticulous submission on this, I subscribe to Mr. Njiwa's submission that although the visit was not perfect,

it served the purpose of providing a bird's eye view on the suit land. The court finds merit in the respondent's argument that the decision of the tribunal was not based solely on the locus in quo visit.

On time limitation, the appellant challenges the tribunal's decision on the basis of time limitation, arguing that it was not properly framed and that relevant statutory provisions were not correctly applied. However, the respondent maintains that the tribunal's decision was justified based on the evidence presented. After careful review, the court finds that the tribunal's handling of the time limitation issue was procedurally sound and in line with applicable legal standards.

Central to the appeal is the evaluation of evidence, particularly regarding the size and boundaries of the disputed land. The appellant alleges discrepancies in the tribunal's findings and challenges the credibility of the respondent's evidence. However, the court finds that the tribunal's evaluation of evidence was thorough and impartial, and its decision was supported by the record.

The art and craft of evaluating evidence, which is not peculiar to lawyers or courts involves evaluating, among other things:

- (i) *The source of the evidence (where it comes from, who took over from who and who has tendered it in court)*
- (ii) *The nature of the evidence (whether primary or secondary)*
- (iii) *How the evidence compares with the rest of evidence in the same transaction/matter (whether there is corroboration)*
- (iv) *How current is the evidence (whether it is still valid, or another evidence makes it redundant),*
- (v) *The scope of the evidence (whether it proves a specific or a general item, direct versus circumstantial aspects)*
- (vi) *What the evidence suggests (inference)*
- (vii) *Whether the evidence is a part of common knowledge or new scientific/technological findings.*

(See generally Damaska, Mirjan **Evaluation of Evidence: Pre-Modern and Modern Approaches** (Cambridge: Cambridge University Press 2019).

In conclusion, I am inclined to state that Mr. Rutebuka's submission may be characterized as a desire for "law as it ought to be" rather than "law as it is". His arguments, including citation of relevant authorities, place on the shoulders of the learned trial Chairman higher standards than those currently provided by the law. I see no major irregularity to warrant reversal of the decision of the trial tribunal.

In the upshot, the appeal is hereby dismissed. The decision of the trial tribunal is upheld.

It is so ordered.



E.I. Laltaika

E.I. LALTAIKA
JUDGE
30.05.2024

Court

This judgement is delivered under my hand and the seal of this Court this 30th day of May 2024 in the presence of **Mr. Rutebuka Samson Anton**, Counsel for the Appellant and **Mr. Jerome Njiwa** Counsel for the Respondent.



E.I. Laltaika

E.I. LALTAIKA
JUDGE
30.05.2024

Court

The right to appeal to the Court of Appeal of Tanzania is fully explained.



E.I. Laltaika

E.I. LALTAIKA
JUDGE
30.05.2024