

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

SUMBAWAGA DISTRICT REGISTRY

AT SUMBAWANGA

LAND APPEAL NO. 13 OF 2023

(Appeal from the decision of the District Land and Housing Tribunal for Mpanda at
Katavi) in Land Application No. 33 of 2019)

BETWEEN

TAUSI KORONGO.....APPELLANT

VERSUS

NASSORO KORONGO.....RESPONDENT

JUDGMENT

MRUMA, J.

In the District Land and Housing Tribunal for Mpanda District of Katavi Region the present Respondent who was the Applicant therein Nasoro Korongo successfully sued the present Appellant Tausi Korongo through Land Application No. 33 of 2019. The said Application was heard and determined by Honourable P.I. Chinyele learned chairman. Aggrieved by the decision of the trial tribunal the present Appellant appealed to this court. The appeal was heard by Honourable Ngigwana RM with extended jurisdiction (as he then was) who ordered a retrial of the matter before a

different chairman and different set assessors. During the retrial the Applicant (now the Respondent) had prayed for the following orders against the Respondent;

1. Declaration that the suit land to wit Plot No. 14, Block J Mpanda Urban area is the applicant property.
2. Costs for this application.

The matter was heard by honourable G.K. Rugalema Chairman, and the present Appellant lost again. Aggrieved by the judgment and decree of the trial tribunal the Appellant Tausi Korongo has once again come to this court on appeal 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 judgement 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 judgment 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 judgement 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.

In order to appreciate the gist of the matter it necessary to revisit albeit briefly the historical background of the matter. In a nutshell the factual background leading to this appeal can be summarised as follows; the Appellant and the Respondent are a father and daughter. Before the trial tribunal the present Appellant sued the Respondent for alleged unlawful transfer of his property on Plot No. 14, Block J to herself. The evidence was adduced for and against the application and at the end the trial tribunal was satisfied that the Applicant (i.e. the present Respondent) had proved his claim on the balance of probabilities and went on to declare him as the lawful owner of the land in dispute. The Appellant was aggrieved and hence this appeal.

At the hearing of this appeal, parties were represented. The Appellant was represented by Mr Tumsifu Chengula whereas the Respondent was represented by Ms Sekela Amulike both learned Advocates. The appeal was argued by way of written submissions.

Arguing the first ground of appeal counsel for the Appellant submitted that according to the procedural law testimony of every witness testifying in court or tribunal must be properly taken by the presiding chairperson and in order to authenticate it the chairman must append his signature. To support his stance the learned counsel cited the case of **Chacha Ghati @ Magige vs. Republic**, Criminal Appeal no. 406 of 2017, [unreported]. It was further submissions of the learned counsel that failure to append the signature goes to the root of the matter and that since the rules of taking evidence were not followed the authenticity of the testimony so recorded is questionable.

Submitting on the second ground of appeal, the learned counsel contended that the tribunal erred in law by receiving assessor's opinion and hand down the judgment and decree on the same day. He contended that given that short time the learned trial chairman could not have time to consider assessor's opinion and give judgment on the same day. He cited Regulation 19 (2) of The Land Disputes Courts (The District Land

and Housing Tribunal) Regulations of 2003, and the case of **Tubone Mwambeta vs. Mbeya City Council**, Civil Appeal No. 287 of 2017 [CAT Mbeya), and contended that the trial chairman had no time to consider assessor's opinion before giving final verdict of the matter.

Reverting to the third ground, counsel for the Appellant faulted the trial tribunal for delivering judgment in favour of the Respondent contrary to the provision of section 2 of the Land Registration Act, Cap 334 R.E 2019 and without considering the fact that the land in dispute is a registered land which is registered in the name of the Appellant therefore her property. He cited 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.

On the last ground, the learned counsel stated that the judgment delivered by the trial tribunal was contradictory, misconceived and it overlooked material explanation by the Appellant's witness one Ezekiel William Bochuro the land officer who testified that the land in dispute is the property of the Appellant.

It was the learned counsel's conclusion that all evidence adduced before the court of law has to be evaluated, assessed and determined by the court of law and he cited the case of **Leonard Mwanashoka vs.**

Republic, Criminal Appeal no. 226 of 2014, CAT, Bukoba (unreported) to support his argument.

Responding to the counsel for the Appellant's submissions, counsel for the Respondent submitted that the Appellant's assertion that the trial tribunal erred in law is misconceived because he failed to state the law which was faulted. He said that even the case cited as authority is misconceived because it is a criminal case which uses different procedure under the Criminal Procedure Act which is different to procedure used in civil and land cases in general. The learned counsel further submitted that the Appellant 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 cited the case of **Judge In-Charge High Court of Tanzania at Arusha Versus N.L.N Munuo Ng'uni** [2004] TLR 44 where it was held that procedural irregularities should not vitiate proceedings if no injustice has been occasioned.

Submitting on the second ground of appeal, Section 23(1) of the Land disputes court act fortified by Regulation 19(2) of the Land disputes court (District Land and housing tribunal) Regulation of 2003 provides for the composition of the district Land and housing tribunal, the same provides. provides that Every assessor at the conclusion of hearing must give his

opinion. Regulation 19(1) of the said Regulation require Chairman to pronounce judgement on spot or reserve the judgement and pronounce the same later. the trial Chairperson sat with assessors and did consider assessors' opinion before reaching its decision, the same can be seen at page 5 of the Tribunal Judgment. The Tribunal proceeding clear show that the opinion of assessor was read in open before parties and their respective advocate.

On the third ground, the Respondent conceded to the fact that a title in land is prima facie evidence of ownership but he contended that it is only so when there is no allegation of fraud or collusion. He said that in the present case there was fraud in transferring the property to the Appellant. He said that there is evidence that the Respondent's name is registered in Land registry as the owner of the disputed land and that he paid all rents and fees from 1976 up to 2019 as required by law. The receipt evidencing the said payments were tendered before tribunal and admitted as exhibit NKL. The learned counsel contended that the entry of the Appellant's name in the Land registry was not proper as it contained flaws and tainted with frauds on the following grounds;

1. First that the Appellant claimed that she was given the disputed land by Respondent as a gift but she failed to establish when and

how the Respondent gave her the said land as gift the fact which was denied by the Respondent. The Respondent managed to tender various receipts he used to pay land rent as the owner of the said land, and admitted collectively as exhibit Nkl, and therefore managed to prove how the dispute land came into his possession.

2. Secondly, the Appellant never signed any documents related to the said land in conformity with Section 91 of the Land Registration Act, that all deed executed in relation to land must be executed by all person and attested in accordance with the law. The Respondent did not sign the said transfer nor did the attestation officer contrary to the law. The fact which alone prove that her name in the registry was not properly entered.

Counsel for the Respondent contended further that it is clear from the records of the trial tribunal and the judgment that the trial chairman considered evidence as required by the law and pronounced its judgment after evaluating the evidence adduced and found that the Respondent's evidence was heavier compared to that of Appellant as observed in a case of **Hemedi Saidi v. Mohamed Mbilu** (1984) TLR113.

Having considered the rival submission of the learned counsel and after carefully examining the submission of the parties, I note that the

Appellant's complaints is basically on the procedural aspect of the matter. She complains that the Chairman didn't endorse his signature on every page of the proceedings, however upon perusal of the record of the appeal, I find that the trial chairman did sign at the end of every proceeding contrary to the complaints raised under the first ground therefore ground one of the appeal is misconceived.

Secondly as correctly submitted by the counsel for the Respondent the Appellant's counsel didn't cite any law which mandatorily requires the chairman to sign at the end of every witness's testimony. In the case of **The Judge In-Charge High Court of Tanzania Arusha District Registry Vs Lord Nguni Munuo** (supra), it was held that it is not all procedural irregularities that vitiate proceedings, but only those irregularities which has occasioned miscarriage of justice that will vitiate the proceedings. In the present appeal assuming that there is a requirement that chairman of the trial tribunal must sign every page in the proceedings (which is not the case), the fact that he/she omitted to sign the same can only vitiate the proceedings where it is shown that the omission has caused injustice to the parties or any of the party. That is not the case in present matter. Article 107 A (2) (e) of the Constitution of requires courts to dispense justice without being tied up with

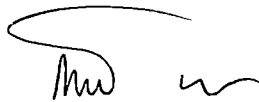
technicalities. Under Section 3A (2) of the Civil Procedure Code [Cap 33 R.E. 2019] require courts in exercise of its powers under the Act or interpretation of any of its provisions to seek to give effect to the overriding objective specified in subsection (1) of Section 3A of the Civil Procedure Code. An overriding objective principle is a principle which requires courts to deal with cases justly and at proportionate costs.

On the analysis of the evidence on record, I note that the learned trial chairman evaluated the evidence of the parties and concluded that payment of Land Rent alone is not evidence of transfer of ownership of a landed property. I agree with the findings of the learned trial chairman on this point and particularly so because of the relationship of the parties in this matter which is that of a daughter and her father. The father (i.e. Respondent) denied in toto to have had given his property to the daughter as a gift and to substantiate his denial he tendered in evidence receipts evidencing payments of Land rents over the disputed plot from 1976 to 2019 showing that he has been paying rents and taxes for the said property all along. If it was true that he had given the property to the Appellant since 1984, then he would have stopped paying land rents. Thus on the evidence

on record the Respondent is the lawful owner of the property located on Plot No 14 Block J Majengo Street Mpanda Municipality.

Thus, having found that the complained irregularities didn't occasion any miscarriage of justice to either party, and having found that the trial chairman did evaluate the evidence correctly I conclude that this appeal was preferred without any justifiable grounds, accordingly it is dismissed with costs.

It is so ordered.

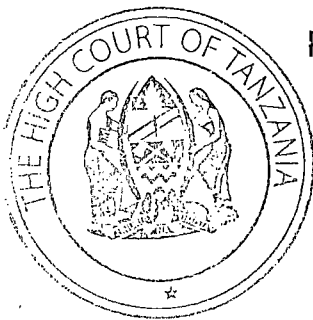


A.R. MRUMA

JUDGE

29.2. 2024

Delivered online from the High Court of Tanzania Morogoro District



Registry this 29th Day of February 2024.



R.F.A. Explained,

A.R. MRUMA

Judge.