

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB REGISTRY OF MANYARA

AT BABATI

LAND APPEAL NO. 1 OF 2024

(Arising from judgment and decree of the District Land and Housing Tribunal for Babati at Babati, in Land Appeal No. 33 of 2020, originating from Laghanga Ward Tribunal Land Case No. 5 of 2019)

SIDETA SHABAQUTI.....APPELLANT

VERSUS

GINYOKA GICHENOGA.....RESPONDENT

JUDGEMENT

29th April & 18th June 2024

Kahyoza, J.:

Sideta Shabaquti (the appellant) sued **Ginyoka Gichenoga**, (the respondent) before Laghanga Ward Tribunal (the trial tribunal) for trespassing. The appellant claimed that the respondent invaded a parcel of land measuring one acre. The respondent vehemently opposed the claim. The ward tribunal decided in favour of the respondent. Aggrieved, the appellant, unsuccessfully, appealed to the District Land and Housing Tribunal for Babati (the appellate tribunal).

Dissatisfied still, the appellant appealed to this court, raising three grounds of appeal, which culminated into three issues, thus-

1. Did the appellate tribunal properly evaluate and consider the appellant's evidence?
2. Was the ward tribunal properly constituted? if not, was the appellate tribunal justified to uphold its decision?
3. Is the appellate tribunal's judgment marred with irregularities?

The appeal was heard by way of written submissions. It is well settled that, the second appellate court will ordinarily deal with points of law and not facts.

Did the appellate tribunal properly evaluate and consider the appellant's evidence?

Mr. Kuwengwa Ndonjekwa, the appellant's advocate expounded that the trial tribunal's decision touched exhibits that showed that the disputed land did not belong to the appellant but failed to mention them. That, the tribunal relied on the minutes that were not tendered and that trial tribunal visited *locus in quo* and spoke to the neighbours but never discussed it in the decision. On the part of Mr. Lengai, advocate for the respondent, explained that there was ample evidence that the suit land belonged to the respondent and that this court should not interfere with the concurrent findings of the lower courts.

I had a cursory review of the trial tribunal's records, and my mind is well settled that, the trial tribunal properly evaluated and analysed the evidence properly. According to section 13(3) of **the Land Disputes Courts Act** [CAP. 216 R.E. 2019] (the LDCA) requires the Ward tribunal, when discharging its functions to have regard to: -

- (a) any customary principles of mediation;*
- (b) natural justice in so far as any customary principles of mediation do not apply;*
- (c) any principles and practices of mediation in which members have received any training.*

From these standards set by the enabling statute, it is obvious that the tribunal did its best in the bid to serve justice to the parties and adherence to a simplified mode of justice machinery, for it heard parties and their witnesses, there was no objection on partiality and they entered the decision. And that is the spirit of section 13 of the LDCA. And I find no any good reason to fault the trial tribunal. What is alleged by the appellant's advocate, with regards to the first ground of appeal, are mere unfounded allegations and the same ground of appeal is dismissed for want of merit.

Was the ward tribunal properly constituted? if not, was the appellate tribunal justified to uphold its decision?

It was the substance of appellant's complaint that the tribunal's secretary though did not give his opinion, he signed the proceedings. In the case of **Yakobo Magoiga Kichere vrs. Peninah Yusuph**, Civil Appeal No. 55 of 2017 (unreported), when the Court of Appeal of Tanzania was confronted with a similar situation, it had this to say-

"we are of the decided view that the court should not read additional procedural technicalities into a simple and accessible way Ward Tribunals in Tanzania conducts their daily businesses."

Reading the substance of section 11 of the LDCA and what transpired at the trial tribunal, I see no injustice that was occasioned by the extent of secretary's involvement in the proceedings. Had the secretary given opinion, the proceedings would have been a nullity but the secretary's act of signing the proceedings to which he was the author is not an irregularity for the appellant to complain against. The second ground of appeal suffers a natural death as well.

Is the appellate tribunal's judgment marred with irregularities?

It was alleged by Mr. Ndonjekwa that members who heard the witnesses are not the ones who composed the judgment. He submitted that, the tenure of members who heard the evidence came to an end and the successor panel went on to compose a decision. As rightly submitted by Mr. Lengai, at page 56 of the handwritten proceedings, the new panel asked respective parties as to whether the matter was to start afresh or continue where it ended, the appellant and the respondent prayed to continue with the matter where it ended and they duly signed to signify their accord the matter proceed from where it had ended. I find this in compliance to the law. I see nothing wrong for the ward tribunal to proceed from where the matter had ended before another panel of the same ward tribunal.

Finally, I am of the considered view that, if flaws or irregularities do exist, they are saved by section 45 of **the LDCA, [Cap. 2016 R.E 2019]** which provides-

"S. 45. - No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on

account of the improper admission or rejection of any evidence unless such error; omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice."

In the upshot, I dismiss the appeal with costs.



It is ordered accordingly.

Dated at Babati this 18th day of **June**, 2024.

J. R. Kahyoza

JUDGE

Court: Judgment delivered in the presence of Mr. Ndonjekwa, the appellant's advocate and in the absence of the parties. Ms Fatina (RMA) is present.

J. R. Kahyoza

JUDGE

18/06/2024.