

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 25 OF 2010

(Originated from the decision of the District Land and Housing
Tribunal of Iringa District at Iringa in Land Case Appeal No. 74 of
2009 and Original Ward Tribunal of Mlolwa Ward in
Application No. 6 of 2009)

FRANCE KIBIKI APPELLANT

VERSUS

ATILIO MPANGILERESPONDENT

JUDGMENT

MKUYE, J

The appellant having being dissatisfied by the decision of the District Land and Housing Tribunal, when exercising its appellate jurisdiction has appealed to this court. The appeal is grounded on two grounds:

These are: One, the District Land and Housing Tribunal Chairperson erred in fact and law by relying only on the

testimony of the three relatives. Two, the District Land and Housing Tribunal Chairperson erred in law by his failure to accord a chance to the Village Authority to adduce evidence on sale transaction as far as land matter was concerned. Generally speaking the above grounds centres on the issue of evaluation of the evidence on record.

When the case was called up for hearing the parties appeared in their personal capacities and made their submissions.

Briefly, this appeal has its genesis from the Mlowa Ward Tribunal. The facts constituting the case are simple in the sense that: The respondent had filed his case against the appellant at the Ward Tribunal, with the intention of enforcing the sale agreement in respect of the suit property. The whole case at the tribunal was based upon three (3) witnesses for the complainant (respondent) and one witness for the defence (appellant).

During the hearing of the appeal, the appellant contended that he had never sold a suit property (house) to the respondent, and there is no document. On top of that, neither the village authorities nor the appellants' neighbours witnessed the sale. The fact that his children still reside in that house, they could have the knowledge of the alleged disposition.

In reply the respondent contended that, the appellant together with his brother told him (the respondent) that they were selling a house. They said they were selling it because they wanted to solve a problem. The respondent contended further that the appellant said he had no children, because they were dead. At the Ward Tribunal three (3) witnesses, that is Mhenga, Atilio Kibiki and Jane Mabarango testified. Their testimonies proved the respondent's case against the appellant.

Having dwelt upon the evidence on record it is true that all the three witnesses who were called by the respondent testified that the appellant actually sold the house to the respondent. When the appellant was called upon to defend his interest he only said he was not familiar with the respondent and the allegation was not true.

The burden of proof lies on the side who is alleging, and in civil case the standard is on balance of probabilities. Parties were too general in arguing the grounds of appeal, with their intention to either prove or disprove that whether or not the appellant sold the suit house to the respondent. Atiliyo Kibiki (PW2), a relative of the appellant, a brother for that matter, testified that the appellant asked him to escort him to someone where he can lend some money to solve his financial problems with a promise of giving whoever lends him money, a house. He said they went to Atiliyo Mpagike and they were given Tshs. 1,000,000/= to that effect. His testimony corroborates the

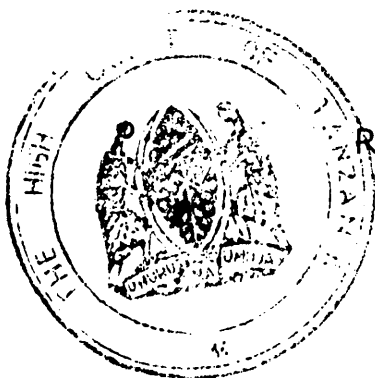
testimony of PW1, Atiliyo Mpangike and PW3, Jane Mabalayo. The appellant was in good relationship with the said Atiliyo Kibiki who is his brother, and the rest of the arguments by the appellant during the hearing of his appeal amounted to new evidence in addition to what he had testified at the Ward Tribunal.

I am convinced by the evidence adduced by the respondent at the Ward Tribunal that the appellant sold the suit house to him. Henceforth the appeal is hereby dismissed with costs.

R.K.MKUYE

JUDGE

23/8/2012



Right of appeal explained.

A handwritten signature in black ink, appearing to read "R.K. Mkuye".

R.K.MKUYE

JUDGE

23/8/2012