

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT IRINGA

MISCELLANEOUS LAND CASE APPEAL NO. 19 OF 2012

(From the Decision of the District Land and Housing Tribunal of
Iringa District at Iringa)

In Land Case Appeal No. 59 of 2011 and Original
Ward Tribunal of Ihalimba Ward in Application No. 70 of 2011

RETUS MSIGWA APPELLANT

VERSUS

LETUS KALINGA RESPONDENT

(Date of Last Order 8/11/2013
Date of Judgement 6/12/2013)

JUDGEMENT

MADAM SHANGALI, J.

This matter stated before the Ihalimba Ward Tribunal in Land Application No. 70 of 2011 where the present respondent Letus Kalinga sued the present appellant Renatus Msigwa claiming for a piece of land measuring about 6 acres. After

hearing the evidence from both sides the trial ward tribunal unanimously deliberated in favour of the respondent and declared the peace of land in dispute the lawful property of the respondent. The appellant was not satisfied with that decision. He exercised his right of appeal to the Iringa District Land and Housing Tribunal (hereinafter first appellate tribunal) vide Land case appeal No. 59 of 2011. Having heard the appeal arguments from both parties, the first appellate tribunal deliberated in favour of the respondent and dismissed the appeal with costs.

Still aggrieved by that decision of the first appellate tribunal, the appellant Renatus Msigwa has filed this second appeal intending to impugn the decision of the lower tribunals.

According to the evidence on the record of the proceedings of both lower tribunals the respondent purchased that piece of land from Raphael Msigwa, the very father of the appellant. The land was purchased in two transactions namely 1.5 acres in 1997 and 4.5 acres in 2002. The transaction was duly reduced in writing and witnessed by village leaders including village Executive Officer one Moses Kaguho.

The respondent continued to use the alleged piece of land peacefully and openly until 2007 when he was imprisoned on another matter. According to the evidence on record, it was from that period of imprisonment when the appellant and his family decided to trespass the land in dispute and occupied the same on claims that the land is the family or clan property which

was left behind by his late grandfather, one Baiskeli Safari Msigwa. Before the lower tribunals the appellant attempted to challenge the sale agreement between Raphael Msigwa and the respondent to the extent of marshalling his several relatives to adduce evidence on his side. He completely and totally failed to prove his assertion before the lower tribunals,

Before this court, the appellant is still insisting on the same matter by repeating the same claim on the same assertions. With due respect to the appellant, the mandate of the second appeal court like this one on the re-evaluation or re-assessment of evidence is only based on where there is misdirection or non-direction by the lower tribunals. Where there is no misdirection or non-direction on the assessment of evidence the second appeal court is bound to concentrate on points of law if any (See (PC) Civil Appeal No. 34 of 2003, Medy Keney Vs Hassan Nkusa Dodoma Registry (Unreported)).

Secondly the appellant has not raised any new issue deserving attention of this court because in his written submission he has repeated what has been thoroughly canvassed and resolved by the lower tribunals.

I totally and completely agree with Mr. Onesmo, learned advocate for the respondent that there is no evidence whatsoever to establish or even to suggest that the piece of land in dispute is a family land or clan land as claimed by the appellant. The fact that the said piece of land was once upon a

time the property of their late grandfather Baiskeli Safari Msigwa does not mean or pre suppose the same to be the family or clan property. There must be cogent evidence to establish that the land in dispute was actually a family or clan property. There must also be available evidence to prove that the appellant was officially appointed to represent the alleged family or clan. The appellant has totally failed to give explanation as to why he did not claim for the said piece of land since 1997 when the respondent started to occupy and cultivate it until 2008. There is abundance of evidence to establish that the alleged piece of land was sold openly by Raphael Msigwa, the father of appellant to the respondent in 1997. The sale agreement dated 4/11/2002 (second sale transaction) was duly witnessed by village leaders and no objection was raised by the appellant and his relatives for a long period of eleven years. The appellants father, Raphael Msigwa who sold the land has never complained nor come forward to challenge the sale agreement executed between him and the respondent.

In my opinion the respondent should be commended for taking crucial legal steps of suing the appellant who greedily and without any colour of right trespassed into the piece of land which was lawfully acquired by the respondent. The appellant must be very crafty and unscrupulous person because he swiftly grabbed the land after the demise of his grandfather Baiskeli Safari Msigwa and the imprisonment of the respondent. Thanks to the system of administration of justice in this jurisdiction which has been protecting the interests of the respondent up to this stage.

Finally, and once again, the two decisions of the lower tribunals are upheld and this appeal is hereby dismissed with costs.

M.S.SHANGALI

JUDGE

6/12/2013

Judgment delivered in the presence of the appellant in person and in the absence of the respondent and his advocate.

M.S.SHANGALI

JUDGE

6/12/2013