

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT TABORA

MISC. LAND CASE APPEAL NO. 41 OF 2012

(From the Decision of the District Land and Housing Tribunal of Tabora District at Tabora. In Land Case Appeal No. 38 of 2011 and Original Ward Tribunal of Urambo Ward in Application No. 2 of 2011)

NOEL RODRICK NDEGAHE.....APPELLANT

VERSUS

NASSORO SHAURITANGA.....RESPONDENT

JUDGMENT

25th July, & 12th Aug.2013

S.M. RUMANYIKA,J.:

This is a 2nd appeal. On 19.06.2012, the district land and housing tribunal – Tabora (DLHT) dismissed appeal by Noel Rodrick Ndegache (the appellant) challenging the decision of Urambo ward tribunal earlier on instituted by himself. It was against Nassor Shauritanga (the respondent). For recovery of a parcel of land situated at Matangimanne cluster thereat. He is aggrieved, hence this appeal. Parties appear in person.

The appellant had a seven (7) point petition of appeal. In essence they are 4 (four) of them with hints as hereunder:-

- (i) the purported owner Magreth William Itebo never appeared and testify at the tribunals.

- (ii) The respondent not lawful owner of the disputed plot but was, without proving it beyond reasonable doubts, declared the true owner.
- (iii) misjoinder of parties. Namely Magreth the alleged owner of the disputed plot.
- (iv) Failure by the lower tribunal to evaluate the evidence properly.

On the hearing date, each one of them had nothing material to add to the petition and or to reply to the petition of appeal. They asked to adopt the contents thereof and asked me to proceed pronouncing judgment.

However, it is evident that the appellant had the disputed land dully allocated to him by the material village council on payment of Shs. 20,000/= being allocation fee. But both agent of the village council and the local ten cell leader alleged, disowned the allegations. That the respondent bought it on 23/02/2009 at Shs. 400,000/= from one Yasin Mikidadi @ Kacheche. The cluster chairman and the secretary witnessed the transaction. The vendor was Magreth William Iteba, his sister, then staying and working for gains at Kigoma. He paid a 2,500/= approval and or transfer fee to the village authority. I suppose. On commencement of some construction, the appellant emerged. Hence the dispute.

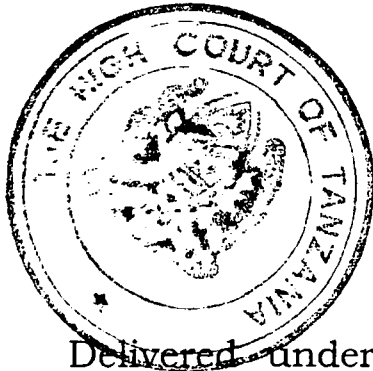
Still the issue revolves around who is between them, the lawful owner of the disputed land. As such it is all about credibility and evaluation of the evidence. Unlike in criminal justice, civil ligations are not proved beyond reasonable doubts as suggested by appellant. But only on the balance of probabilities. Not only the appellant's evidence was shaky but also was completely disowned by all witnesses depended upon by himself. Leave alone his no attempts to controvert the respondents' evidence. The respondent appears to have had proved the case to the standards required at law. Grounds number 1 -4 dismissed.

It could be coincident or otherwise, but the fact remains that both tribunals' findings were based on credibility of the evidence. I will with great caution, and in deed I don't think I am prepared to fault them. This one being an appeal court.

Again on the issue like the appellant questioning the respondents' *locus standi*, this was never ever raised before or at all. It is now pleaded as a mere aforethought. Nevertheless, asuming the said Magreth William was supposed to be joined, but now that she was not, the appellant can not now use the omission as a sword. He can only use it as a shield. As basically, the question was whether the disputed land belonged to the appellant or else body be it the respondent, the said Magreth, mention any body. Grounds 5 & 6 are also unsuccessful.

As said, the respondents had proved his case on the standards required at all. Decision of the DLHT upheld. Appeal dismissed entirely with costs.

R/A explained.




S.M. RUMANYIKA

JUDGE

3/08/2013

Delivered under my hand and seal of the court in chambers, this 12/08/2013. In the presence of the parties.




S.M. RUMANYIKA

JUDGE

12/08/2013