IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT TANGA

MISCELLANEOUS LAND CASE APPEAL NO. 32 OF 2012

[From the Decision of the District Land and Housing Tribunal of Korogwe District at Korogwe in Land Case Appeal No. 16 of 2012 and Original Ward Tribunal of Misima Ward in Application No. 26 of 2011.]

ABDI MZALU.....APPELLANT

VERSUS

ATHUMAN HAMZA.....RESPONDENT

JUDGMENT

U. MSUYA, J.

This is second appeal. The subject matter in this appeal is a farm which is located at Misiwa Ward within Handeni District in Tanga Region. Briefly, the history of this case is summalized as follows. In the year 2011, the Respondent, Athumani Hamza filed Land Application No. 26 of 2011 in the Ward Tribunal at Misima complaining that the appellant Abdi Mzalu invaded his farm the subject matter of this appeal. The trial tribunal received evidence and visited the locus in quo. On the balance of

probability, the ward tribunal determined the matter in favour of the Respondent. Dissatisfied, the appellant lodged the appeal in the District Land and Housing Tribunal of Korogwe District at Korogwe. The appellate tribunal upheld the decision of the tribunal and dismissed the appeal for want of merits. Still aggrieved, the appellant has filed this second appeal. Basically, the appellant in this appeal faults the appellate tribunal for failing to evaluate or re-evaluate the evidence on record and determine the rightful owner of the farm in dispute.

At the hearing of this appeal, the appellant appeared in person unrepresented while the respondent was absent but reported sick. In the circumstances, the court allowed the parties to argue the appeal by way of written submissions and the accordingly complied with the scheduling order.

In his written submissions; the appellant contends that there is no evidence on record which proves that the Respondent is the rightful owner of the farm in dispute. The appellant further points out that since the Respondent's father-Hamza Mabewa adduced evidence that the Land in dispute belongs to him, then the appellate tribunal erred in law to affirm the decision of the trial tribunal. In conclusion, the appellant urged the court to allow the appeal.

In his written submissions, the Respondent replied that the evidence on record demonstrates that the appellant's father borrowed the farm in dispute for the appellant of which the appellant was required to use it for 2 years. In that regard, the Respondent pointed out since the land in dispute was temporarily borrowed, then an invitee cannot claim title over the farm

in dispute. The Respondent pointed out further that the evidence of his father which he adduced at the trial tribunal indicates that the Respondent is the rightful owner of the suit land. In conclusion the respondent urged the court to dismiss the appeal with costs.

In his brief rejoinder, the appellant insisted that no where on record, there is indication that his farther borrowed the land temporarily, lastly, he urged the court to allow the appeal and declared him the rightful owner. .

As revealed earlier, this is a second appeal which is based on concurrent findings of facts by the trial and appellate tribunals. In that regard, it is a cardinal principal of law the court can only interfere the concurrent finding of the lower tribunals/courts where there are misdirections or non-directions emphasized in the ***case of Mussa Mwaikunda V. R [2006] T. L. R. 387.***

In the present case, there is no misdirection or non-direction by the lower tribunals in evaluating the evidence on record. On that basis, the appellant's complain that the evidence was improperly evaluated by the lower tribunals has no merit because of the following reasons:

In the first place there are ample evidence on record which shows that the farm in dispute belongs to the Respondent. On the balance of probability, the Respondent together with his witnesses at the trial court demonstrated that the farm in dispute was the property of Respondent's grandfather. By way of inheritance, it passed to the Respondent's father – Mzee Hamza Mabewa. Mzee Hamza Mabewa was a witness in the trial court and he confirmed that the property in dispute was his property. In his submission, the appellant insisted that basing on the evidence of Mzee

Hamza Mabewa one may conclude that the property in question is not the property of the Respondent. I do not associate with this kind of argument due to the reason that during trial and in the presence of Mzee Hamza Mabewa, the Respondent testified that his father-Mzee Hamza Mabewa transferred the farm in dispute to the Respondent in 1990.

Secondly, the trial tribunal visited the locus in quo and in the presence of the parties together with their witnesses, it was shown the boundaries of the farm in dispute. The trial tribunal draw a sketch map which shows some Respondent's neighbours who have plots around the farm in dispute. Among of those Respondent's neighbours was Ibrahim Zuberi who confirmed at the trial that the farm in dispute is the property of the Respondent.

On the other hand, there is no evidence on record which indicates that the farm in question is the property of the appellant. This is because no where in the trial court record where the appellant demonstrated any mode in which he acquired the farm in dispute. Thus, during trial, the appellant did not give evidence to prove that he acquired the farm in dispute either through inheritance, purchase or gift.

Since there is enough evidence on record to prove that the Respondent is the rightful owner of the farm in dispute, then I find this appeal devoid of merit. It is therefore dismissed with costs. It is so ordered.

THE HIGH COURT OF TANZANIA

U, MSUYA, J.
10/3/2014