

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT MBEYA

MISCELLANEOUS LAND CASE APPEAL NO. 7 OF 2015

(From the Decision of the District Land and Housing Tribunal of Mbeya District at Mbeya, Land Appeal No. 45 of 2014 Originating from Mabatini Ward Tribunal, "*Kesi ya Madai ya Nyumba No. 2/2014*")

NELUSIGWE MWALILINO.....APPELLANT

VERSUS

PETRO JACKSON.....RESPONDENT

JUDGMENT

Date of last Order: 02/11/2015

Date of Judgment: 03/11/2015

A. F. Ngwala, J

This is an Appeal against the Judgment and Decree of the District Land and Housing Tribunal for Mbeya Region which upheld the decision of Mabatini Ward Tribunal.

Under Land Appeal No. 45/2014 the appellant complained that the said Ward Tribunal had ignored her evidence, and did not give reasons for differing with the opinion of other tribunal assessors. That the decision lacked the main requirements on what the judgment must contain.

In this second Appeal, the appellant is still complaining that both the trial and appellate tribunals did not consider the clear fact that the respondent and his relatives, who were named as Daniel Jakob, Rehema Jakob and Issa Jakob were not owners of the disputed premises. There was no proof of the locus standi of the Respondent.

At the hearing, the Appellant pointed out that the tribunal did not consider the fact that the late father of the respondent, her late brother was an invitee in the disputed house, and he could not override her interest or possession of her land as the lawful owner of the disputed house.

In reply the respondent stated that their father died in 1994. They only lived in that house when they were very young. Thereafter they left the house with their auntie, the Appellant, who occupied and owned the house and started to claim that the house is hers.

The Respondent's left the said house in occupation of the Appellant and went to live at "Stereo" area in Mbeya, at their Maternal grandmother's house. The respondents were never concerned with this house until April, 2013 when the villagers of Senjele (Wanakijiji cha Senjele) instituted a dispute at the Ward Tribunal of Mabatini. They called them, and told the respondent and his said relatives to dispute the sale of the house by their auntie, the Appellant.

The Respondent stated categorically that, He did not know if the villagers had produced any evidence to show that the house did not belong to their auntie. All what the respondent knew is that their auntie the appellant was leasing the said house for years, and that the disputed house is under the Appellant who collects rent from her tenants in the said house. They have never used the money collected from the said house, as their mother found the said house. Their mother could not follow up the said house because she feared to die or to be bewitched. The respondent insisted that since 1994 when their father died they have never gone to the said house as the relatives from their maternal side did not allow them to go and see or greet their auntie, the Appellant.

Upon perusal of the proceedings in the records of the two tribunals, I see merit in this Appeal. Both the two tribunal did not evaluate well the evidence and did not consider the evidence in order to decide who is the real owner of the disputed house. In fact both the tribunals grossly erred both in law and fact when it granted ownership of the disputed premises without proof of ownership. There was no proof that the Respondent and or the Respondents had letters of Administration of the estate of their late father Jackob Mwatulango. There was no proof that the disputed premises belonged to their late father, the deceased.

More so, I have noted that the proceedings are muddled up. They are saturated with illegalities which make the Judgment and Decree of the District Court a nullity.

Turning to the submissions, of the parties before this court, it is quite clear as argued on appeal that the appellant has been in occupation of the disputed house since 1994. She is the landlady of the suit premises. In the circumstances I am satisfied that everything that has been stated by the parties before this court points to the probability that such evidence which is available that the appellant who is the owner of the disputed house has been in occupation of the suit premises as stated by the Respondents. The "*Uongozi wa Kijiji cha Senjele*" or Village leadership of Senjele had no locus standi and cause of action, or right to sue the appellant over the suit premises, and instigate the respondents to claim ownership over property which did not belong to them.

In the end result. The appellant, NELUSIGWE NTEMANIE MWALILINO is declared the landlady, and or owner of the disputed house. The appeal is allowed with no orders as to costs given the relationship between the parties.



A.F. NGWALA

JUDGE

03/11/2015

Date: 03/11/2015

Coram: A. F. Ngwala, J

Appellant: Present

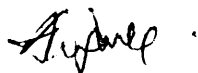
Respondent: Present

B/C: Mr. Japhet

Court: Judgment delivered in open court in the presence of the parties.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.




A.F. NGWALA
JUDGE
03/11/2015