

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC LAND APPEAL NO. 165 OF 2016

*(From the decision of the District Land and Housing Tribunal of Ilala in
Land Case Appeal No. 13 of 2016 and Original Ward Tribunal of Pugu in
Ward Complaint No. 6 of 2016)*

**PROCHES SHIRIMA APPELLANT
VERSUS
SAID KAMBI KITIKE..... RESPONDENT**

Date of Last Order: 05/04/2018

Date of Judgment: 11/05/2018

JUDGMENT

MZUNA, J.:

This appeal originates from the Ward Tribunal of Pugu Stesheni in which the respondent herein one **Said Kambi Kitike** instituted a complaint against the appellant **Proches Shirima** for encroaching into his land.

The dispute centers on the fact that the respondent owned his piece of land whereupon he invited three people (the appellant inclusive) to construct his small building/ a hut. Since then he developed close relationship with the respondent. The respondent upon noticing that the appellant never wanted to leave instituted the application alleging that he was a trespasser.

The appellant contends that the respondent allocated him a piece of land as consideration for labour he offered. That he was given the piece of land measuring 17 feet X 17 feet by the respondent's son one Mudi. There was no any agreement which was tendered in support thereof.

Upon hearing the testimonies from witness of both parties and having visited the locus in quo the trial Ward Tribunal found that the respondent is the rightful owner of the disputed land and declared the appellant as a trespasser into a disputed land. That decision was affirmed by the District Land and Housing Tribunal in Land Appeal No. 13/2016.

Still minded, he lodged this appeal on the following grounds;

- 1. That the Honourable Chairperson grossly erred in law and fact in holding that the land under dispute was not given to him by the respondent.*
- 2. That the Honourable Chairperson went astray in believing that the appellant was a trespasser on the land under dispute hence reached a wrong decision.*
- 3. That the Honourable Chairperson misdirected himself both in law and fact in upholding the decision of the Ward Tribunal the question of jurisdiction notwithstanding.*
- 4. That this appeal is within time.*

The appellant was represented by Mr. Major Mbalasila learned counsel whereas the respondent appeared in person.

In support of the appeal, Mr. Mbalasila contended that it was wrong for the District Land and Housing Tribunal to uphold the decision of the Ward Tribunal because the Village Land Council had already declared the appellant as the lawful owner of the land in dispute. He stated further that the District Land and Housing Tribunal did not consider the proceedings of the Village Council and it also failed to consider the issue of jurisdiction as the Ward Tribunal was not properly constituted. He therefore prayed to this court to allow the appeal with costs.

In response, the respondent challenged the appellant's submissions on the ground that he is the lawful owner of the land in dispute. He submitted that the appellant ought to have tendered the agreement to prove that he was given land in dispute by the respondent. He therefore prayed for dismissal of the appeal with costs.

Having gone through the grounds of appeal raised and the entire record of this case, having also considered the rival submissions of both parties it is clear that this appeal is based heavily on the weight of evidence. I will

therefore combine the first and second grounds of appeal and look at the evidence as adduced by the parties on trial.

Upon a visit to the disputed area the trial Tribunal found that, the appellant encroached into the respondent's land as there was no proof that he was given the disputed land by the respondent as all the witnesses denied to have known the appellant as the owner of the land in dispute. The appellant's witnesses namely Urio Philemoni and Angela Jayrosi admitted to have seen the appellant living with the respondent as a Mansion and not otherwise.

Thus having heard the witnesses from all parties, the trial Ward Tribunal declared the respondent as the rightful owner of the disputed land in the following terms:-

"Madai ya mdaiwa ya kwamba aiipimiwa (alikasiwa) eneo na Mudi mtoto wa Mdai hayakubaiiki kwani Mudi sio mmiliki wa hiyo ardhi, wakati huo Mudi amemkana mdaiwa na hatambui mkataba wowote kati ya Mdai na Mdaiwa..."

That holding was also the basis upon the District Land and Housing Tribunal based its decision and said that recourse for the claim on wages for his labour he offered (if any) should be lodged at the Labour Tribunal.

It is in the trial tribunal record that the appellant's witnesses Entipas Shirima, Urio Philimoni and Angela Jayrosi admitted that the appellant was living with the respondents and he used to work on the respondent's area but they do not know the terms of their agreement (if any). This augments a point that there is no documentary evidence tendered by the appellant to prove that he was given the disputed land by the respondent.

In addition to that this being a case which involves ownership which it based more on oral evidence than documentary evidence, the trial tribunal had an opportunity to visit the locus in quo to ascertain the allegations and get the actual geographical situation of what has been stated by the witnesses.

In the case of **Ali Abdallah Rajabu v. Saada Abdallah Rajabu and Others** [1994] TLR 132 the court held that:

"Where the decision of a court is wholly based on the credibility of the witnesses, then it is the trial court which is better placed

to assess, their credibility than an appellate court which merely reads the transcripts of the record”.

The Court also referred to the case of **Omar Ahmed V. R** [1983] TLR 52 where it was held that:

“The trial Court’s finding as to credibility of witnesses is usually binding on an appeal court unless there are circumstances on the record which call for a reassessment of their credibility”.

This has been the law on the issue of credibility and this court is bound by it.

This being a second appeal, I am convinced that the trial ward tribunal’s findings on the credibility of the witnesses was justified because, it had the advantage of seeing the witnesses and assessing their demeanor. More so the findings of the trial tribunal were further established upon the visit to the locus in quo. The first and second grounds of appeal therefore fails.

On the third ground, it is argued that the Ward Tribunal was not properly constituted based on the quorum of the Assessors.

Section 14(1) of the Land Disputes Courts Act Cap 216 RE 2002 reads as follows, I quote:

14(1) The Tribunal shall in all matters of mediation consist of three members at least one of whom shall be women.

It is evidently clear from the above provision that the section talks of mediation and it obviously needs no over emphasis that the main objective behind the establishment of Ward Tribunal is to reach settlement by way of mediation as provided for under Section 13 of the Act.

The Ward Tribunal proceeding shows that there was a composition of seven members excluding the secretary. Out of that number, there were two female members namely Happiness Luhwa and Amina Abdallah.

It is my settled view that the composition of the Ward Tribunal in question was properly constituted as they met the requirement of the Law as provided for under ***Section 14 of the Land Disputes Courts Act*** (above quoted). Similarly, even the District Land and Housing Tribunal was in accord with the law. The third ground of appeal equally fails.

For the foregoing reasons, I find no justifiable reasons to interfere with the concurrent finding of facts recorded by the Tribunals. The decision and

order of the District Land and Housing Tribunal of Ilala in Land Appeal No.
13 /2016 is upheld.

The Appeal is accordingly dismissed with costs.




M.G. MZUNA,
JUDGE.

11/05/2018

Coram – Hon. J. C. Tiganga DR


For Appellant: present

For Respondent: present

C/C: Bukuku

ORDER:

Judgment delivered in open chambers in the presence of the parties as to per coram.


J. C. Tiganga
DEPUTY REGISTRAR
11/05/2018