

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC LAND APPEAL NO. 9 OF 2018

(From the decision of the District Land and Housing Tribunal of Morogoro in Land Case Appeal No. 15 of 2017 and Original Ward Tribunal of Melela in Ward Application No. 3 of 2016)

OMARI KIPIRA.....APPELLANT

VERSUS

FATUMA NASSORO.....RESPONDENT

Date of Last Order: 05/06/2018

Date of Judgment: 20/08/2018

J U D G M E N T

MGONYA, J.

This Appeal originates from the Ward Tribunal of Melela in which the Respondent herein one **Fatuma Nassoro** instituted a complaint against the Appellant **Omari Kipira** for taking/grabbing the Respondent's Land which he was given by her father; Appellants claims that the same is an clan land

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 that each party owns the land which were belongs to her/his parent

Aggrieved by the said decision, the Appellant appealed to the District Land and Housing Tribunal of Morogoro in **Land Appeal No. 5 of 2017** where the Tribunal upheld the decision of the trial Ward Tribunal and dismissed the Appeal with costs.

The Appellant herein aggrieved by the said decision hence appealed to this Court on the following grounds;

- 1. That the trial Chairman erred in law and fact in declaring the clan land to be the sole property of the Respondent.***
- 2. That the trial Chairman erred in law and fact in validating illegal inheritance, and allocation of the disputed land entered in favour of the Respondent.***
- 3. That the trial Chairman erred in law and fact in failing to note that the Respondent had no locus standi to sue at the Ward Tribunal.***
- 4. That the trial Chairman erred in law and fact in appreciating the poor evidence tendered by the Respondent and his single witness.***
- 5. That the trial Chairman erred in law and fact in failure to understand, identify and distinguish the Probate Land with the Clan land.***

6. That the trial Chairman erred in law and fact in making improper analysis to the evidence tendered.

Since both parties are representing themselves, the Court ordered the Appeal to be disposed of by way of written submissions

In support of the Appeal, the Appellant contended that it was wrong for the District Land and Housing Tribunal to uphold the decision of the Ward Tribunal because the suit land was a clan land which did not belong to the Respondent's father as sole property. He stated further that nowhere in the record there was a probate proceedings which revealed how the deceased properties were distributed to heirs including the Respondent. Again there was no letters of administration which gave the Respondent the status to sue the Appellant for recovery of the land forming part to the estates left behind by her deceased father.

Further, the Appellant submitted that his witnesses were the natives who lived and stayed longer in the area rather than the Respondent's witnesses who were stranger to the said area. Further, the Appellant contended that the Respondent's father being the member of the clan had an opportunity to enjoy the clan land as a clan member but that does not mean the land belong to him; and that Appellant's father never acquired the said land on his

own efforts but he got the same under the clan's control. He therefore prayed to this court to allow the Appeal with costs.

In response, Respondent challenged the Appellant's submissions on the ground that she is the lawful owner of the land in dispute. She submitted that she got the disputed land from her parent and that the said land was not used by the whole family neither from generation to generation as clan land. Further Respondent averred that, after her father passed away, his properties were identified and distributed to his right heirs including the Respondent. Further the Respondent averred that she had locus to sue the Appellant because of the historical background of the disputed land. Supporting her argument, the Respondent cited several authorities regarding the *locus standi* including a case of ***LUJANA SHUBI BALLONZI SENIOR VS. REGISTERED TRUSTED OF CHAMA CHA MAPINDUZI (1996) TLR 2003.***

Regarding the 4th, 5th and 6th grounds of the Appeal, on evidence, the Respondent submitted that the record reveals that she had concrete evidence against the Appellant and that the Appellant who was prosecuting the case did not prove the case on balance of probabilities and for that reason Respondent 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 heavily based on the weight of evidence. I will therefore determine at once all grounds of Appeal and look at the evidence as adduced by the parties on trial.

The evidence on record shows that the Respondent and the Appellant are cousins, and that the Respondent is the daughter of the Appellant's Uncle. It suffices to say that they are blood related from one clan. The Land which is in dispute formerly belonged to the Appellant and the Respondent grandmother, who divided the same into three portions. The 1st portion was to be owned by the Appellant's mother, 2nd to be owned by the Respondent's father and the last portion to be owned by the Respondent's brother. Therefore the Respondent's father and the Appellant's mother acquired land from their mother.

The Respondent who was the complainant on at Ward Tribunal, claimed that the Appellant **forcibly grabbed** her piece of land which belonged to her late father one **Mohamed Wande** and that her father acquired (inherited) the suit land from his mother. Respondent averred that she was legally inherited the said suit land from her father.

Further to that, the evidence revealed that the suit land was not the clan land since it is affect that the Respondent's father owned the same since **1960's** as his sole property after he inherent from his mother.

On the other hand, the Appellant herein alleged that the suit land is the clan land and not the Respondent father's land.

Upon a visit to the disputed area, the trial Tribunal found that, the Appellant encroached into the Respondent's land which she was inherited from her father and declared the Respondent as the rightful owner of the disputed land.

As I stated herein earlier this case is profoundly based on the weight of evidence tendered during trial. Under the circumstances, I have a firm view that, it is the trial tribunal which was better placed to assess the evidence before it and credibility of witnesses because it had an opportunity of hearing the witnesses and meticulously read their demeanor than this second appellate court which merely reads the trial tribunal's record.

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 situation of what has been stated by the parties and their witnesses.

It is a trite law 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, this position had been explained in the case of **JUMANNE S/O BUNGINO AND ANOTHER VS. R. (C.A. MWANZA) Criminal Appeal No. 137 of 2002 (Unreported)**, the Court of Appeal quoted from the case of **ALI ABDALLAH RAJABU VS. SAADA ABDALLAH RAJABU AND OTHERS [1994] TLR 132.**

Further, in the case of **OMAR AHMED V. R [1983] TLR 52**, it 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 and satisfied that the trial Ward tribunals findings on the credibility of the witnesses was justified. More so, the findings of the trial Tribunal were further established upon the visit to the *locus in quo*. Above all, from the records, it is my firm view that the Respondents herein is the lawful owner of the disputed land.

It is from the above reasons, I proceed to uphold the decision of the **District Land and Housing Tribunal in Land Appeal No. 15/2017** which upheld the decision of the trial **Ward Tribunal in Land Complaint No. 3/2016**.

The Appeal is accordingly **dismissed with costs**.

Right of Appeal Explained.

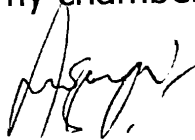


L. E. MGONYA

JUDGE

20/08/2018

COURT: Judgment is delivered in the presence of both parties and Ms. Monica RMA in my chamber today 20th August, 2018



L. E. MGONYA

JUDGE

20/08/2018