

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPEAL NO. 20 OF 2018

(From the decision of the District Land and Housing Tribunal of Kilombero in Land Case Appeal No. 128 of 2016 and original Ward Tribunal of Lumemo in Application No. 13 of 2015.)

LIGOBERT VAKOLAVENE.....APPELLANT

VERSUS

JOSEPHINE KASHE.....RESPONDENT

Date of Last Order: 02/05/2018

Date of Judgment: 10/08/2018

J U D G M E N T

MGONYA, J.

This Appeal traces its origin from the Ward Tribunal of Lumelo in which the Appellant **LIGOBERT VAKOLAVENE** sued the Respondent, **JOSEPHINE KASHE** for trespass to 40 acres of land located at Ihanga Village at Kilombero - Morogoro Region. The Appellant testified on trial that he inherited the said land from his late father who also inherited the same from his father who is the Appellant's grandfather. According to him he moved to the

disputed land in **1990** and stayed therein for five years before he moved to Dar es Salaam and left the farm under the care of his uncle one **John Vakolavene**.

The Respondent's case on the other hand was based on evidence that she was allocated the land measuring 40 acres by the Ihanga Village Government. According to her, she had been using the land for cultivation since year **2000** until **2015** when the dispute arose.

The trial Ward Tribunal found in favour of the Respondent and she was declared the lawful owner of the disputed land. Aggrieved by the said decision, the Appellant appealed to the District Land and Housing Tribunal where he lost again. This is now a second Appeal where he appeals on the following grounds:

- 1. That the Trial Ward Tribunal's proceedings, judgment and orders thereof are a nullity on account of being made by Baraza la Migogoro ya Ardhi which is a strange organ not existing in the Land Disputes courts structure hence incompetent.***
- 2. That, the trial Ward Tribunal erred in law and in fact by deciding in favour of the Respondent since revocation of the Appellant's title to the disputed***

premise was void henceforth title has never passed to the Respondent.

3. That, the trial Ward Tribunal failed to analyze, evaluate and assess evidence adduced before it henceforth it came up with wrong conclusion rendering a failure of justice.

Both parties were unrepresented and the Appeal was argued by way of written submissions.

On the first ground of Appeal the Appellant submitted that, the organ which determined the suit was Baraza la Migogoro ya Ardhi which is not amongst the Courts vested with jurisdiction to determine land disputes the same being a strange creature of the statute. Citing the book of Chipeta titled **Civil Procedure in Tanzania: A student's Manual** (2002) at page 4 the Appellant argued that, any trial conducted by a Court with no jurisdiction will be declared a nullity on appeal or revision. According to him, the entity which determined the suit has no jurisdiction but the first Appellate Tribunal did not take this point into consideration. He further cited the case of **TANZANIA CHINA FRIENDSHIP TEXTILE CO LTD VS OUR LADY OF USAMBARA SISTERS (2006) TLR 70** in support thereof.

On the second ground of Appeal, it is submitted that, there is no evidence to justify that, the Respondent was granted the disputed land by the Village Council. According to him, his family had been in use of that land until **2013**.

As for the third ground of Appeal, the Appellant submitted that, the Appellant's submissions in the District Land and Housing Tribunal were not considered at all by the Chairman and nothing from them was considered for determination of the matter. According to him, the Chairman arrived at a wrong decision because he failed to look at the evidence which was adduced by the parties. The Appellant submitted further that the Respondent herein is a trespasser to the disputed land as there is no evidence on record to prove her allocation by the Village Council.

In reply to the first ground of Appeal, the Respondent submitted that, the case was heard and determined and decided by the Lumelo Ward Tribunal which was established under **Section 3 of the Ward Tribunal Act of 1985** as it appears in the official stamp/seal of the Lumelo Ward Tribunal. According to her, the title in the judgment of the Ward Tribunal is just a clerical error. Hence, the Court should not be led by technicalities.

In her further response, the Respondent submitted that, it is the Appellant himself who instituted the claim at the Ward Tribunal

of Lumelo and he was fully aware of the jurisdiction of the said Tribunal and that it was the proper forum to hear and determine the dispute. It is the Respondent's submission that, the Appellant ought to have raised the issue of jurisdiction at the trial Tribunal.

Responding to the second ground of Appeal, the Respondent submitted that, the disputed land was legally issued to the Respondent in the year **2000** and the Respondent was in possession of the disputed land from **2000** to **2015** when the dispute arose. Hence, she was in undisturbed possession of that land for about **15 years**. Citing **Item 22 of Part 1 to the First Schedule of the Law of Limitation Act No. 10 of 1971**, the Respondent contended that this suit had no stand *ab initio* because the limitation period to institute land matters is **12 years**.

It is the Respondent's further submission that, she is entitled to the disputed land by adverse possession as she had been in undisturbed occupation of the same for about 15 years. The cases of ***SHABAN NASSOR VERSUS RAJABU SIMBA (1967) HCD NO. 233 AND THOMAS MATONDANE V. DIDAS MWAKALILE & 3 OTHERS (1987) TLR 210*** were cited in support thereof.

Regarding to the 3rd ground of Appeal, it is submitted in reply that, an equal opportunity to be heard was given to both parties at the Kilombero District Land and Housing Tribunal.

I have considered the rival submissions of the learned counsel for both parties and also gone through the entire record of this case. I will now determine the grounds of appeal raised in seriatim.

On the first ground of Appeal, the Appellant has argued that the organ which determined the matter had no jurisdiction and it is not in the hierarchy of the courts/organs which are vested with jurisdiction to determine land matters. Upon a thorough perusal of the record, the matter was well determined by the Ward Tribunal of Lumelo and that the titling of the judgment as **"BARAZA LA MIGOGORO YA ARDHI"** is just typing error which is understandable and curable. I say so because as stated by the Respondent in her submissions, the stamp/seal which has been stamped in the said judgment is written **"MWENYEKITI BARAZA LA KATA; KATA YA MUMELO."** Further to that, the summonses which are on record shows that the matter was being determined by the Ward Tribunal.

In determining the issue of clerical and typographical errors the Court of Appeal (Munuo J.A.) in the case of ***GAPOIL (TANZANIA) LIMITED VERSUS TANZANIA REVENUE AUTHORITY AND 2 OTHERS, CAT CIVIL APPEAL NO. 9 OF 2000*** Dar es Salaam Registry, (Unreported) held thus:

"We are, in the light of the above, satisfied that the mis-description of the parties in the Ruling and Drawn Order of the High Court at Pages 227 and 238 of the record of Appeal was a typing error because the particular errors are not reflected in the text of the Ruling and Drawn Order. We are also satisfied that the said mis description of the parties is a minor and curable defect under the Slip Rule."

In the instant case, as I have stated herein, above the misnaming of the Court is just a typographical error and did not occasion injustice to either of the Parties. It is trite law that, the Courts of Law should not be bound by technicalities. This principle has been imposed under **Article 107A (2) (e) of the Constitution of the United Republic of Tanzania, 1977**. Also in the case of ***NATIONAL HOUSING CORPORATION VS ETIENES HOTEL CAT CIVIL APPLICATION NO. 10 OF 2005, Dar es Salaam Registry, (Unreported)*** whereby Munuo J.A. cited with approval the case of ***GENERAL MARKETING CO. LTD. VERSUS A. A. SHARIFF (1980) TLR 61 at Page 65*** wherein Biron, J. held that:

"Rules of procedure are handmaids of justice and should not be used to defeat justice".

Having said all, **I find no merits on the first ground of Appeal.**

As for the second ground of Appeal, I am of the view that, the first Appellate Tribunal correctly construed reasoning in the Case of **NASSORO VS RAJABU SIMBA (1967) HCD NO. 233** which entitles a person ownership to land after a long undisturbed occupation of the same. I say so because, evidence shows that, the Respondent was allocated the disputed land in the year **2000** and she has been in undisturbed use and occupation of the same until the year **2015** when the Appellant sued the Respondent at the trial Ward Tribunal.

It is a well settled principle of Law that, where a person occupies another's land undisturbed for a long period of time, that person acquires that land by **adverse possession**. In the Book titled "**The Customary Land Law of Tanzania**", a Source Book by W. James and G. M. Fimbo, on the Acquisition of Title by long possession; the learned Authors state at page 533:

"Received law permits a person to acquire an interest in property by long uninterrupted possession and user..."

The above principal was also enunciated in the case of **NASSORO UHADI VS. MUSSA KARUNGE** High Court of Tanzania at Dar es salaam in **Civil Appeal No.17 of 1977** where it was held that:-

"Where a person occupies another's land over a long period and develops it, and the owner knowingly acquiesces such a person acquires ownership by adverse possession".

In the instant case, as I stated hereinabove, the Respondent had been in undisturbed occupation of the disputed land for about **15 years**. This entitles her ownership by adverse possession.

As for the last ground of Appeal, evidence speaks that, the Respondent was lawfully allocated the disputed land by the Ihanga Village Council in the year 2000 this is evidenced by the receipt which was tendered before the trial Tribunal (Kielelezo Na. 1 cha Mdaiwa). The Respondent's evidence on trial Tribunal was also corroborated by the testimonies of **Aloyce Mbanda** and **Jafari Ngela** who were leaders and Members of the Village Council by the time when the Respondent was allocated the disputed land.

Further to that, it is a trite law that, where the case is based on the evaluation of evidence it is the trial Court which is better placed to evaluate evidence than the Appellate Court which merely reads the record. This position was held in the case of **JUMANNE S/O BUGINGO AND ANOTHER VS. R. (C.A. MWANZA) CRIMINAL APPEAL NO. 137 OF 2002 (unreported)** in which the Court of Appeal, KAJI, J.A. quoted from the case of **ALI**

ABDALLAH RAJAB V. SAADA ABDALLAH RAJABU AND OTHERS [1994] TLR 132 in which it was held:-

"Where the decision of a court is wholly based on the credibility of the witnesses, then it is the trial court which is better place to assess their credibility than an appellate court which merely reads the transcripts of the records".

The Court went on the quote from another case of **OMAR AHMED V. R [1983] TLR 52** when it held:-

"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".

Also in **CRIMINAL APPEAL NO. 69 OF 2006 JIMMY ZACHARIA VERSUS REPUBLIC** (Unreported) the court of Appeal held that:-

"The practice is that in a second appeal, the Court rarely interferes with the concurrent findings of fact by the courts below. It is only when there are mis directions or non-directions on the evidence by the first appellate court that the Court can interfere."

From the above cited authorities I do not find any mis directions or non-directions of evidence which calls for this second Appellate Court's interference. I find that the Lower Courts

correctly analyzed evidence and came up with a just and fair decision. Again the third ground of appeal is devoid of merits.

In the upshot, I hereby **dismiss this Appeal with costs** for want of merits and uphold the District Land and Housing Tribunal decision accordingly.

Right of Appeal Explained.



L. E. MGONYA

JUDGE

10/08/2018

COURT: Judgment delivered before Hon. A. Teye, Deputy Registrar in the presence of Appellant in person and Ms. Kitowo RMA on 10th day of August, 2018 in chamber No. 17.



L. E. MGONYA

JUDGE

10/08/2018