

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

MISC LAND APPEAL NO. 56 OF 2019

(From the Decision of the District Land and Housing Tribunal of Kilombero/Uianza Districts in the Land Case Appeal No. 294 of 2018 and an original Ward Tribunal of Minepa Ward Application No. 38 of 2018)

MOHAMED ABDUL LYUU APPELLANT

VERSUS

ZAINABU KASIMU LYUU RESPONDENT

JUDGMENT

K.N. ROBERT, J

This appeal arises from the decision of the District Land and Housing Tribunal for Kilombero/Uianza Districts in the Land Case Appeal No. 294 of 2018 and an original Ward Tribunal of Minepa Ward decision in Application No. 38 of 2018. The Appellant lost in both lower Land Tribunals on a claim for recovery of land which was owned by his late father who died in 2017.

Briefly, the Appellant's case is that the suit land belongs to his late father.

The Appellant's father and Respondent's father were siblings. The

Appellant alleges that many years back around 1980s his father, the deceased, allocated a piece of land to the Respondent's father for a

temporary stay. Later the Respondent's father died in 2002 while he was still living in the land allocated to him. After the alleged death the Appellant decided to claim the land allegedly assigned by his father to the Respondent's father. The Appellant alleges that he convened a family meeting on 28th December, 2003 and informed the family about his intention to take back the land previously allocated to the Respondent's father. The Respondent knowing this, approached the Appellant and asked him to allow her a temporary stay in the suit land. To the surprise of the Appellant, the Respondent decided to build a house in the suit land while she was allocated the said land for a temporary stay hence this case.

The Respondent, on the other hand, maintains that when she was young her father lived with the Appellants father until the year 1983 when her father managed to get his own piece of land (the suit land) and relocated there. That their family continued to live in that land until the year 2002 when her father died. After the death of her father she was surprised to learn that the Appellant was claiming that the suit land belongs to their late father and asked the Respondent's family to vacate the suit land.

Both the Ward Tribunal and the District Land and Housing Tribunal declared the Respondent a lawful owner of the suit land and dismissed the Appellant's suit for lack of proof of ownership of the suit land.

Aggrieved by the decision of the District Land and Housing Tribunal, the Appellant now challenges the decision of the District Land and Housing Tribunal on the following grounds:

1. *That the trial Tribunal and first appellate Tribunal grossly erred in law and fact in deciding in favour of the respondent against the weight of evidence and while the evidence which was contradicting (sic).*
2. *That the trial Tribunal and first appellate Tribunal erred in fact and law by holding that the Respondent is the lawful owner of the disputed land without considering that the Respondent occupied the said land with the condition she should continue to remain there for shorter time only and she agreed the same.*
3. *That the trial Tribunal and first appellate Tribunal erred in law and in fact in holding that the respondent inherited the disputed land from her late father while her father was given the said land to remain there because his health was not good so he was there for short time for medical purposes only. The late Kassim Lyuu was given the said land with the condition to remain there till his health become better but was not given to enjoy the said land absolutely.*

4. That the Trial Tribunal and first Appellate Tribunal erred in law and fact in computing time of peaceful enjoyment of the disputed land. From the Judgment was discovered that there was a dispute over the said land even before the death of the father or the Respondent over the ownership of the said land”.

At the hearing of the appeal before this court, the Appellant was represented by Michael Mteite, Learned Counsel while the Respondent appeared in person unrepresented. Both parties agreed to dispose of the appeal by way of written submissions. The submissions were filed as scheduled.

In his written submission the Appellant did not direct himself to the grounds of appeal. He gave a short narration on the background of this matter then touched on a few matters not relevant to the grounds of this appeal. In short, the written submission does not amplify the grounds of appeal filed by the Appellant in his petition of appeal.

In response, the Respondent begged to bring two concerns into the attention of this court: first, that the Appellant has attached or annexed an annexure to the submission in chief; and secondly, that the Appellant has not submitted whatsoever in as far as his grounds of appeal are concerned.

On her first concern, the Respondent argued that submissions are supposed to be elaborations or explanations on evidence already tendered. They are intended to contain arguments on the applicable law. She cited the decision of the High court of Tanzania in **Civil Case No. 198 of 1995 between Vocation Education Training Authority vs Ghana Building Contractors and Another** in support of her argument. She prayed for this court to reject and give no consideration to the annexure attached to the Appellants consideration.

On her second concern, he argued that the appellant has submitted much out of his grounds of appeal pending before this court. She submitted that this amounts to failure to prosecute the case. She submitted further that the failure of the Appellant to submit anything regarding his grounds of appeal renders the appeal unprosecuted. She argued that the effect of failure to prosecute the case is that the case must be dismissed. She prayed that the court should dismiss this appeal for want of merit.

Without prejudice to the submissions made, the Respondent proceeded with a brief reply to the submissions made by the Appellant on matters considered to be out of the grounds of appeal.

Given the extraordinary circumstances in the submissions filed by the Appellant, I wish to state that parties should not raise or address new issues, grounds or points not contained in the petition of appeal. The Appellants written submission constitute an attempt to vary the grounds of appeal. Since Appellant's written submission does not address the grounds of appeal contained in the petition of appeal this court declines to consider it.

I now proceed to consider the grounds of appeal as contained in the petition of appeal and the Respondent's reply. The central issue for determination in this matter is whether this appeal has merit.

I will deliberate on the first, second, third and fourth grounds together. On these grounds this court has observed that there was no enough evidence to establish the Appellant's claim of ownership of the suit land. The decision of both lower Tribunals considered the evidence adduced by both sides in an attempt to establish the lawful owner of the suit land. In the result, both Tribunals rightly found that the Appellant did not provide enough evidence to establish their ownership of the disputed land. The Appellant's claim that the suit land was allocated by their late father to the Respondent's deceased father was not backed by any tangible proof. This court has observed that none of the three witnesses called by the Appellant

testified about the fact that the suit land was given to the Respondent's father by the Appellant's father. Similarly, apart from the Appellant's claim that the Respondent occupied the said land with the condition that she should continue to remain there for shorter period of time only, there is no any proof in respect of these claims. There is equally no proof to the claim that the Respondent's father was given the said land to remain there because his health was not good so he was there for short time for medical purposes only as alleged by the Appellant.

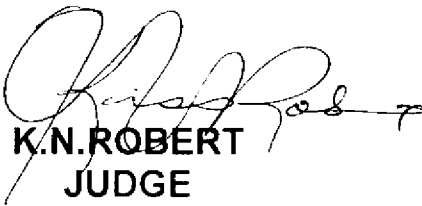
There is nothing in evidence indicating that there was a dispute over the suit land before the death of the Appellant's father or Respondent's father. Evidence adduced by both parties indicate that even after the death of the Respondent's father the Appellant's father did not try to remove his family from the suit land or claim to be the owner of that land. The dispute seems to arise after the death of the two brothers. The two lower Tribunals were therefore right to consider the entire duration of the Respondent's family stay at the suit land, from (1980s to 2002) as a time of peaceful enjoyment of the suit land and therefore rightly declared the Respondent a lawful owner of the disputed land.

Since the Appellant is disputing ownership of the suit land by the Respondent who is in possession of that land, the burden of proving that

the Respondent is not the rightful owner of that land is on the Appellant. He cannot rely or point on the weakness of the defence case to prove the claim of ownership of the disputed land.

In the end I find no reason to disturb the trial Tribunal's decision but to uphold it. The appeal is dismissed with costs for lack of merit.

Dated at Dar es Salaam this 6th day of February, 2020


K.N. ROBERT
JUDGE
6/03/2020