

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 31 OF 2018

(Arising from the decision of the District Land and Housing Tribunal for Kilosa in Land Appeal No. 40 of 2017 (Hon. Makwandi, Chairman))

ABDALLAH IDD MWAKILENDU.....APPELLANT

VERSUS

OMARY MGAYA.....RESPONDENT

JUDGMENT

I. MAIGE, J

This is the second time the appellant is attempting to fault the decision of the ward tribunal for Mabwerebwere (“the trial tribunal”) dismissing his claim and declaring the respondent herein the lawful owner of the **suit property**.

The first appeal at the District Land and Housing Tribunal for Kilosa (“the first appellate tribunal”) proved futile. The same was dismissed and the decision of the **trial tribunal** confirmed. Once again aggrieved, the appellant has registered this appeal. He is challenging the concurrent decision of the lower tribunals on the following grounds:-

1. For ignoring the evidence of PW1, PW2, PW3 and PW4 which established that the appellant was the lawful owner of the suit property.
2. For holding that the Respondent's father just rented a small piece of land out of the suit property for cultivation and not ownership.
3. For entertaining a claim against the respondent who was wrong party.
4. In not considering the fact that the appellant had been in possession of the suit property from 1972 until the date of the trial.

In accordance with the proceedings of the **trial tribunal**, the appellant had, before institution of the suit at the **trial tribunal**, lodged the complaint to the Village Land Council ("the Council"). After hearing from both parties, the **Council** made the following decision on 19th January 2017:-

" Kutokana na maelezo ya mashahidi wa mlalamikaji na mlalamikiwa Baraza limeona kuwa haki hii ya shamba ni ya Omari Mgaya alipewa na marehemu Abdallah Ngoma".

In its decision, **the trial tribunal**, just as it was the **Council** declared the respondent herein the lawful owner of the **suit property**. Express from the decision is the fact that the **trial tribunal** considered the decision of the **Council**. Therefore, at page 4 of the typed judgment it observed as follows:-

"3. Pia Baraza la Ardhi Kata ya Mabwerekwere linaunga mkono Baraza la Ardhi la Kijiji cha Kondoaa".

In his first appeal, the appellant raised eight grounds of appeal. In one of the grounds, he was faulting the **trial tribunal** for illegally basing its decision on the decision of the **Council**. In its decision, it would appear to me, the **first appellate tribunal** did not address the said ground. Instead, it focused on the issue of *locus standi* and proof of ownership of the **suit property** between the parties.

In this second appeal, the issue has not been raised. However, the assessment of evidence by the **trial tribunal** is challenged.

The Village Land Council, as I understand the law, is a mere reconciliatory organ. It does not, according to section 7 and 9 of the Land Disputes Courts Act read together with section 61 and 62 of the Village Land Act, enjoy adjudicating power as it is the ward tribunal. In this matter, it would appear, the **Council** conducted a trial and pronounced a judgment in favour of the respondent. There is no doubt that, the said judgment has no any force of law. That however is not an issue. The issue here is that, in its decision, the **trial tribunal** was influenced by the said decision. Indeed, one of the reason

that made it to pronounce a judgment against the appellant is that the witnesses he produced at the **trial tribunal** were different with those he produced at the **Council**.

On that account therefore, the **trial tribunal** was prejudicial. It was not proper for the same to consider such a decision in its judgment. The first **appellate tribunal** was therefore wrong in not reversing the decision of the **trial tribunal** for being prejudicial. As a result, the appeal is allowed and both the judgments of the **first appellate tribunal** and **trial tribunal** are reversed. The file is remitted to the trial tribunal for trial *denovo*.

It is so ordered accordingly.



I. MAIGE

JUDGE

16/04/2021



Date 16/04/2021

Coram: Hon. S.H. Simfukwe - DR.

For the Appellant: Mr. Eliaman Daniel, Advocate holding brief for Lina
Steven, Advocate

For the Respondent: Present in person

RMA: Bukuku

COURT: Judgment delivered this 16th day of April, 2021.


S.H. Simfukwe
DEPUTY REGISTRAR
16/04/2021

