

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

LAND APPEAL NO. 19 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Application No. 20 of 2017)

OSKA STIMA APPELLANT

VERSUS

STIVIN MIZIMU 1ST RESPONDENT

FLORENSI CHAMTEPA 2ND RESPONDENT

MODEST MBOGAMCHUNGU 3RD RESPONDENT

Date of last Order: 23/03/2021

Date of Judgment: 28/05/2021

JUDGMENT

C.P. MKEHA, J

Before the District Land and Housing Tribunal for Rukwa at Sumbawanga, the appellant sued the respondents claiming that, the latter, had maliciously invaded his unspecified piece of land. The applicant prayed for an eviction order against the respondents. At the end of trial, the District Land and Housing Tribunal found and held that, the suit land belonged to the respondents. The respondents were held to be lawful owners of the suitland. The appellant's application was dismissed with costs. Being aggrieved with the

said decision, the appellant appealed to this court with the following grounds of appeal:

1. That, the trial tribunal erred in law and fact for not considering the evidence adduced by the appellant which proved ownership of the suitland.
2. That, the trial tribunal erred in law and fact by not considering the evidence adduced by the appellant and his witness who testified that the suitland belongs to the appellant's deceased father.
3. That, the trial tribunal erred in law and fact by not considering the fact that the appellant's deceased father was buried at the suit land without any dispute.
4. That, the trial tribunal erred in law and fact in deciding the suit in favour of the respondents while lacked clear evidence in proving the ownership of the land in dispute.

When on the hearing date the appellant was invited to argue his appeal, he adopted all his grounds of appeal without more. On the other hand, the respondents were of the firm view that, the evidence on record was heavier on their part, to lead to the decision pronounced by the trial tribunal.

The only issued for determination is **whether there was sufficient evidence to lead to the conclusion that the respondents are lawful owners of the suit land.**

The appellant's 1st, 2nd and 4th grounds of appeal suggest that, the appellant's evidence before the trial tribunal was heavier than that of the respondents. What does the record tell? Both, the appellant and his sole witness testified that, when their father died, he was buried at the suitland. Despite claims on part of the appellant that the respondents had in 2017 trespassed over his land, neither himself (the applicant/appellant) nor his witness was able to testify before the trial tribunal on the actual size of land upon which the respondents trespassed.

The two witnesses insisted that, the suitland formerly belonged to their grandfather one Ezebio Stima. That, their grandfather, in 1997 distributed his properties to his children including the appellant's father. And that, when their grandfather distributed his properties, he did not give land to females.

The respondents testified to have bought the suitland on different dates between 18/07/2016 and 09/04/2017 from one Flaviana Stima. Whereas the first respondent testified to have bought 2.5 acres on 25/07/2016, the second respondent testified to have bought 3 acres on 18/07/2016 and that, the third respondent bought 2.5 acres on 09/04/2017. All the respondents testified to have bought their respective pieces of land after the death of the appellant's father.

The respondents' testimonies got corroboration from the said Flaviana Stima who confirmed to have sold the suitland to the three respondents. In view of

the 4th witness for the defence (Flaviana Stima), the respondents were lawful owners of the suitland.

The testimony of DW5 confirmed that what Flaviana Stima sold to the respondents, was her own land which she inherited from Ezebio Stima. The witness happened to be the person chosen by the clan to distribute the properties of the said Ezebio Stima. He also testified that, Flaviana Stima got 8 acres which she later on sold to the respondents. Flaviana Stima is the appellant's aunt.

From the foregoing evidence on record, it is evident that the respondents bought their respective pieces of land from the actual owner of the same who testified in support of that view. They therefore did not trespass over the appellant's land. There is evidence on record on how the appellant failed to prove before the trial tribunal, not only size of the suitland over which the respondents had allegedly trespassed, but also ownership of the disputed land. I therefore hold that, there was sufficient evidence on record to lead to the holding that the respondents were owners of the suitland. I accordingly dismiss the 1st, 2nd and 4th grounds of appeal for not being meritorious.

In circumstances whereby the respondents testified to have bought the suitland some years after the death of the applicant's father, the 3rd ground of appeal is rendered baseless. That is irrespective of presence of evidence on record to the effect that neither of the respondents bought a piece of land

having a grave in which the appellant's father was buried. See the testimonies of DW4 and DW5.

For the foregoing reasons, the present appeal is dismissed for being unmeritorious.

Dated at **SUMBAWANGA** 28th day of May, 2021.




C.P. MKEHA
JUDGE
28/05/2021

Court: Judgment is delivered in the presence of the parties.


C.P. MKEHA
JUDGE
28/05/202

Court: Right of further appeal to the Court of Appeal of Tanzania is explained.




C.P. MKEHA
JUDGE
28/05/202