

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

MISC. LAND APPEAL NO. 29 OF 2018
(Arising from Kinondoni District Land and Housing Tribunal in Land Appeal No. 88 of 2012;
Originating from the Tandale Ward Tribunal in Land Case No. 36 of 2012)

ADAM OMARI RASHIDI.....APPELLANT

VERSUS

MIKIDADI YUSUFU MOMBA.....RESPONDENT

Date of last Order: 19.04.2021
Date of Judgment: 24.05.2021

JUDGMENT

V.L. MAKANI, J.

This is an appeal by ADAM OMARI RASHIDI. He is appealing against the decision of Kinondoni District Land and Housing Tribunal at Kinondoni (the **District Tribunal**) in Land Appeal No. 88 of 2012 (Hon. Hemed, Chairman). The matter originated from Tandale Ward Tribunal (the **Ward Tribunal**) in Land Case No. 36 of 2012.

At the Ward Tribunal the appellant claimed from the respondent for recovery of the suit land which is at Muhaltan area, Tandale with Plot No. KND/TND/MHT/1/5 and house No. TND/MHL/17 (the **suit Land**).

The Ward and District Tribunals all decided in favour of the respondent. The appellant is dissatisfied with the decision of the District Tribunal which confirmed the decision of the Ward Tribunal and has filed this appeal with the following grounds:

- 1. That the District Land and housing tribunal erred in law and fact for stating that Adam Omary and Adam Omari Rashid are two different people while it is one person.*
- 2. That the District Land and Housing Tribunal erred in law and fact by delivering judgment in favour of the respondent without taking into consideration that the appellant is the lawful owner of the disputed land.*
- 3. That the District Land and Housing Tribunal erred in law and fact by entering judgment in favour of the respondent without considering the strong evidence adduced by the appellant concerning the disputed land.*

The appeal was argued by way of written submissions. The appellant's submission was drawn gratis by Legal and Human Rights Centre and filed by the appellant. The respondent therefore did not file his submissions in reply therefore waived his right hence the matter proceeded ex-parte against him.

The appellant briefly stated the background in which he said that the dispute is on the ownership of a piece of land which contain a pit latrine. The appellant alleged to have purchased the same from one Mwanahawa Ally in 2003 with the purpose to establish Madrasa. He

said that Bi. Fatuma had purchased the disputed land prior to the respondent, and she had no toilet and therefore she requested the appellant so that she could use the same. He added that the respondent had purchased the disputed land without involving the appellant hence the disputed piece of land was made to form part of the land purchased by the respondent.

On the first ground of appeal appellant said that it is known that the Civil Procedure Code and the Law of Evidence is not applicable in the Ward Tribunal. He said that the appellant had tried to clear the issues of name by submitting the affidavit and the same was denied by the presiding Chairman. He said that the Chairman waived the power vested in him and went on to deny justice by being impartial and fabricating facts stating that the appellant had purchased the land in 2009 while he purchased it in 2003. He said that the District Tribunal acted contrary to section 34 (1) of the Land Disputes Courts Act, CAP 216 RE 2019. That it was unfair for the District Tribunal to dismiss the appeal due to names whereby it refused to receive the evidence to prove the same which was submitted by the appellant.

On the second ground of appeal, he said that, at the time the respondent was purchasing the land the appellant was not involved and that the Tribunals failed to recognize that the appellant and respondents are neighbours. He added that the Tribunals did not recognise that the latrine pit was built by the appellant after purchasing the piece of land from Mwanahawa Ally. That the land sold to the appellant contained only coconut and pawpaw trees whereby the appellant developed the said land by building the pit latrine which was used by Fatuma who had requested to use the same.

Submitting on the third ground, he said that the appellant cleared all possible doubts pertaining to ownership of the disputed land as stated in section 119 of the Evidence Act, Cap 6 RE 2019. He said that the respondent's sale agreement was precise that he only purchased the house without a pit latrine but without justification the Tribunals denied justice to the appellant. He added that the appellant brought witnesses, but they were all discredited by the Tribunals without justifiable reasons. That the appellant had submitted the letter of one Issa Mzee (deceased) which was considered as evidence before the local authorities and the same was recorded before the Ward Tribunal

and quoted that "*aliwatamkla kuwa hata hicho choo si cha Momba ila yule Mama aliomba kuwa mpangaji wake watumie*". He relied on the case of **Kulwa Kabizi Paulo Sindano Balele and Suleiman Mlela vs. Republic [1994] TLR 210** and insisted that the Tribunals were biased as they failed to recognize that the pit latrine was built by the appellant and not otherwise. He prayed for this appeal to be allowed.

In considering this appeal I had in mind that this is a second appeal in which this court can only interfere with the concurrent findings of facts of the Tribunals below if it is shown that there is misdirection or non-direction on evidence. Or further if there is a completely misapprehension of the substance, nature and quality of evidence resulting in unfair decision (see **DPP v. Jafari Mfaume Kawawa (1981) TLR 14**).

I will start with the second and third grounds which are based on the strength of the evidence and therefore shall be dealt together. The appellant alleges that the Tribunals failed to consider the evidence that the appellant had built latrines after purchasing a piece of land with coconut trees. He is of the view that the Tribunal disregarded the evidence adduced by his three witnesses. I have gone through

the record and I have noted that these facts were not adduced at Ward Tribunal as such they are new facts which have been presented at the level of the District Tribunal. Unless the appellant now intends to abandon his evidence, which as a matter of law is not possible since it is already on record, his second witness at the Ward Tribunal one MOHAMED HASHIM testified that the piece of land bought by the appellant had latrines used by tenants although the latrine was not completed. One of the latrines had no roof while the other was complete. It is obvious that the appellant is alleging to what was not adduced in the trial as his witness alleged that the suit land had one complete latrine and another incomplete latrine while the appellant claims that he bought the suit land without a latrine and built a latrine thereon. It is obvious that the appellant is alleging to what was not presented and determined by the Ward Tribunal and according to **Hotel Travertine vs. NBC [2006] TLR 133** a matter not raised at the trial cannot be raised at the appeal.

The appellant further alleges that his witnesses' evidence was disregarded. I have gone through the records and have noted that the appellant called three witnesses and none of them witnessed the sale transaction of the suit land as they were told about the sale by

other people. The District Tribunal thus observed that their evidence was hearsay evidence. In all, the respondent's evidence at the Ward Tribunal was heavier than that of the appellant and according to the case of **Hemed Said vs. Mohamed Mbilu (1984) TLR 113** The second and third grounds of appeal therefore have no merit and are dismissed.

As for the first ground, I am of the considered view that the District Court erred to have made a decision suo mottu that Adam Omary and Adam Omari Rashid were two different people as the parties were not given an opportunity to address the court on this issue as it was not among the grounds of appeal or rather an issue raised by either party before it. On the other hand, since the parties were silent on the issue of names it was presumed that it was not an issue to them as they are familiar to each other and therefore there was no stranger in the proceedings before the Tribunals.

It is on the above basis that I concur with the findings of both the Ward and District Tribunals that the suit land is lawfully owned by the respondent. In that regard there is no fault in these decisions and this appeal is therefore dismissed for want of merit.

There shall be no order as to costs as the appeal proceeded ex-parte.

It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
24/05/2021