

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR-ES-SALAAM

LAND APPEAL NO. 213 OF 2020

(C/O Land Application No. 326 of 2017 of District Land and Housing
Tribunal for Kinondoni District)

VENANCE J. MAWENYE APPELLANT

VERSUS

MARIAM PETER RESPONDENT

JUDGEMENT

Date: 22 & 29/06/2021

Nkwabi, J.:

The appellant filed this appeal as he was not satisfied with the decision of the trial tribunal which gave judgment in favour of the respondent. He has four grounds of appeal which are:

1. The trial chairman erred in law and fact by adjudication the matter basing on erroneous, confusing and unreliable evidence/ of witness hence entering a wrong conclusion.
2. That in the alternative the trial chairman having failed to analyze evidence on record, erred in law and fact in holding that the respondent's husband is the owner of the disputed house rendering miscarriage of justice.

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3. That the trial chairperson erred in law and fact for failing to properly examine and make findings that the respondent failed to prove that two different names used mean one and the same person.
4. That the chairperson and assessors erred in law and fact by overlooking the documents presented by the respondent which had substantial material defects and misdeeds.

The evidence on the respondent who was the applicant in the trial tribunal is that she and her late husband Msafiri Camilius Wilbard Temba were residing in the house which is registered as KND/MSS/MKR 16/135 residential licence No. KND 0039957. They were allowed to build a house on the plot by her late father-in-law. But after the demise of her husband, after sometime, the appellant ordered her to give vacant possession of the suit property hence, she filed the land application no. 326/2017 in the District Land and Housing Tribunal for Kinondoni which decided in her favour. She had brought PW2 Martha Joseph and PW3 Bakari Shamba Bakari to bear her out

In his evidence, at the trial tribunal, the appellant alleged that he allowed them to stay, but the he was forced to file a suit in ward tribunal after he found that there was forgery but had to withdrawal it on being forced to. He had one witness to bear him out on the story DW2 Ismaili Issa.

Both parties tendered documentary evidence to support their respective version of the case.

At the hearing of this appeal, the appellant was represented by Mr. Francisco, learned advocate, while the respondent was represented by Mr. Charo Shogoro, also learned counsel. Further, the appellant and the respondent were both present in person as well. I will treat the ground of appeal as issues to be determined in this appeal.

I will start dealing with the issue found on paragraph 2 of the petition of appeal which was preferred as a ground of appeal to the effect that whether the trial chairman having failed to analyze evidence on record, erred in law and fact in holding that the respondent's husband is the owner of the disputed house rendering miscarriage of justice.

Submitting on this issue, Mr. Francisco argued that the record shows that the evidence given was inconsistent but the tribunal relied on the evidence and gave its decision thereon. He tried to show the contradiction between the evidence of PW2 and exhibit P.E. 7. He further argued that there was inconsistency between the evidence of PW3 Bakari Shamba (who was ten cell leader) who claimed to know the house in dispute was the property of the late Camilius Wilbert Temba while in the year 2001 witnessed hand over of the house between the appellant and Modest Pius. He rested his submission on this point by saying the District Land and Housing Tribunal relied on inconsistent evidence as such reached at a wrongful decision.

In reply, the counsel for the respondent argued that the evidence before the trial tribunal was consistent and there were exhibit P 4, P8 and P6 to prove ownership by the husband of the respondent. The change of name or having two names was explained by PW2 the mother of the deceased husband of the respondent. He insisted that the judgment of the tribunal was correct.

I have carefully gone through the evidence in the record as well as the submissions of both counsel on this matter. I am of the view that, on the preponderance of probabilities, the respondent proved her case to the required standard. There is more than enough evidence on the part of the respondent than that of the appellant to prove the case. The evidence of the appellant was even contradictory more than that of the respondent. He failed even to bring the person who he claims to have been his tenant. His claim therefore is false and it implies that actually the alleged tenant is the deceased who actually was not his tenant. The deceased used to stay in the property which had a genesis from his late father. That is why, at the life time of the husband of the respondent, the family lived in peace only the trouble emerged after the death of Modest/Msafiri.

The evidence does not also bear out the story of the appellant. If he were selected by the clan to be administrator of the estate of the late Camilius who died since the year 1996 why then to come to apply to be appointed as administrator in the year 2018 when this suit had already been lodged in the District Land and Housing Tribunal for Kinondoni?

Again, if he were the landlord of the respondent, why the transaction does not show the amount of rent which the deceased ought to be paying. The evidence on the appellant too does not show how he (the appellant) was paying government land rent. The evidence on the respondent is firm as there is the residential permit and payment of land rent.

In my view, what is seen on the record is that, the appellant fabricated some documentary evidence to suit him. This court cannot condone this. On the 1st ground of appeal, it was stated that the trial chairman erred in law and fact by adjudication the matter basing on erroneous, confusing and unreliable evidence/ of witness hence entering a wrong conclusion. I am of the firm view that the evidence on the appellant's side in the trial tribunal was confusing and unreliable. No doubt, the 1st and 2nd grounds of appeal are wanting in merits and they are dismissed as such.

I next deal with the 3rd issue which is found on the 3rd ground of appeal which was couched in the following words, that whether the trial chairperson erred in law and fact for failing to properly examine and make findings that the respondent failed to prove that two different names used mean one and the same person.

On this ground of appeal, the counsel for the appellant argued that the 2nd ground of appeal shows that the respondent, the administratrix of the estate of the late Modest Pius but the house's residential permit is in the

name of another person. The respondent did not say in evidence the purported person's names are of the same person. He further argued that the signatures on the marriage certificate and on the residential permit do not look alike.

I am dump founded by this ground. How can we proceed to ascertain the signature of the deceased? In the circumstances it is difficult. Further, in civil trial, the standard of proof is not proof beyond reasonable doubt. The two names were specifically pleaded in the land application to be the name of the same person. The appellant did not contradict specifically in the written statement of defence. There is a reasonable explanation in the evidence in respect of the names in criminal cases. It is not uncommon for a person to have two names in some customs, take for instance Masai custom. Further, it is not uncommon for persons to be charged with such alias names. The concern on the signature found on the marriage certificate and that on the residential permit in anyway was raised on the bench. It is a settled position that parties are bound by their pleadings. See **Civil Appeal No 57/2018 Melchiades John Mwenda v Gizelle Mbagha (Administratrix of the Estate of John Japhet Mbagha – Deceased) & 2 Others** (CAT) Unreported) at p. 24

... It is elementary law which is settled in our jurisdiction that the court will grant only a relief which has been prayed for - see: James Funke Gwagijo v. Attorney General [2004] T.L.R. 161 and Hotel Travertine Limited & 2 Others v National Bank of Commerce Limited [2006] T.L.R. 133

Signature ought to have been questioned at the time the deceased Modest was alive.

I dismiss the 3rd ground of appeal as wanting in merits.

In the end, I turn to discuss the 4th issue which is to the effect that the chairperson and assessors erred in law and fact by overlooking the documents presented by the respondent which had substantial material defects and misdeeds.

Apart from the other submission in relation to this issue, the counsel for the appellant argued that the evidence on the respondent did not meet the requirement of sections 111 and 112 of the Evidence Act Cap 6 R.E. 2002 and prayed the appeal be allowed, judgment of the trial tribunal be quashed and its orders be set aside.

On this argument the counsel for the respondent submitted that, at page 7 of the judgment it is shown why Msafiri was declared owner. Exhibit D1 is an evidence on a different plot/piece of land which shows a different plot number in reference with the plot/piece of land in issue. He stated, they are of the view that the judgment of the tribunal is correct and prayed the appeal be dismissed with costs.

The result on this ground of appeal can be discerned from the above discussion to the effect that this court is not persuaded that the evidence on the respondent did not meet the requirement of sections 111 and 112 of the Evidence Act Cap 6 R.E. 2002. To the contrary the documentary evidence tendered by the appellant shows that they were cooked. They are

therefore unreliable pieces of evidence. There is also a strange piece of oral evidence on the part of the appellant to the effect that he was forced to withdraw a land application before a ward tribunal. He did not show how he was forced and how at his age he could be forced to withdraw the land application. But in reality, the record shows that the land application before the ward tribunal was withdrawn because they wanted to settle the matter as a family, how come then the appellant does not know the deceased who seems to be his relative? The 4th issue is therefore too wanting in merits and it is answered in the negative.

Based on the above discussion I uphold the judgment and orders of the trial tribunal. I dismiss the appeal with costs for want of merit.

It is so ordered.

Dated at Dar-es-Salaam this 29th day of June, 2021.

J. F. Nkwabi

Judge

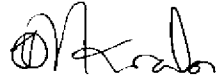
Court: Judgment delivered in chambers this 29th day of June 2021 in the presence of the respondent in person and Mr. Charo Shogoro learned advocate for the respondent and the respondent present in person.


J. F. Nkwabi

Judge

29/06/2021

Court: Right of appeal is fully explained.



J. F. Nkwabi

Judge

29/06/2021

