

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

LAND APPEAL NO.103 OF 2019

(Arising from the decision of Kilombero/Ulangu District Land and Housing Tribunal in
Land Appeal No. 374 of 2019; Originating from Lumemo Ward Tribunal in Land Case No.40 of 2019)

WILLIAM MAHENGELA.....APPELLANT

VERSUS

COSMAS MWANDOLE.....RESPONDENT

Date of Last Order: 05.07.2021
Date of Judgment: 23.08.2021

JUDGMENT

V.L. MAKANI, J

This is a second appeal. The matter originated from Lumemo Ward Tribunal (the **Ward Tribunal**) in Land Case No.40 of 2019 whereby the respondent herein was a successful party. The appellant herein WILLIAM MWAHENGELA was aggrieved by the decision of the Ward Tribunal and appealed to Kilombero District Land and Housing Tribunal (the **District Tribunal**) in Land Appeal No. 374 of 2019. The parties are claiming a piece of land measuring two acres situated at Barabara ya Simu area, Kikweta Mahatanga, Ifakara (the **suit**

land). At the District Tribunal the appellant again lost, but he was unrelenting, and so he filed this appeal with the following grounds: -

- 1. That, the honourable Chairman erred in law and fact in upholding the decision of the ward tribunal while it erred in law and fact for its failure to asses, evaluate and analyse the evidence adduced before it. Hence both tribunals decision is wrong and need to be set aside.*
- 2. That the district tribunal erred in law and facts for deciding in favour of the respondent basing on the fact that appellant failed to establish his ownership while the evidence adduced well showed and proved on how appellant came in to possession.*
- 3. That the district tribunal erred in law and facts for rewarding the land dispute to the respondent without considering that the ward tribunal erred on its procedure on how member should sign the same.*
- 4. That the appellate tribunal erred in law and fact in rewarding the disputed premises to the respondent without considering the truth that appellant was in possession of the disputed premises by clearing the bush for more than 30 years as how it has been proved by the appellant evidence.*
- 5. That the district tribunal erred in both law and fact by ordering that the respondent is the lawful owner of the of the suit land without considering that from the evidence of the appellant the respondent was just invited to the suit land for use only for short time but he turned to claim that he is the owner.*

6. *That the district tribunal erred in both law and fact by ordering that the respondent is the lawful owner of the suit land without considering that the evidence of the appellant was totally changed by the district tribunal.*

The appeal was argued by way of written submissions. The appellant and respondent were unrepresented so they personally drew and filed their own submissions.

In arguing the appeal, the appellant consolidated the 1st 2nd 4th 5th and 6th grounds of appeal and argued them together, he then argued the 3rd ground of appeal separately. Arguing the consolidated grounds of appeal, the appellant said that the general rule under section 110 (1) and (2) of the evidence Act CAP 6 RE 2019 (the **Evidence Act**) is that the one who alleges must prove and the standard of proof is on balance of probabilities as per section 3(2) of the Evidence Act. That the Ward Tribunal misdirected itself by holding that the appellant failed to prove his case by merely basing on the evidence of his wife and his brother-in-law instead of basing on the standard of proof. He said that at the Ward Tribunal, **PW2**, one **Filomena Mkamba** stated that the appellant came into ownership of the suit land earlier in 1989 and at that time the respondent and six others who were employed

in the breweries factory visited *barabara ya simu* and subleased from the appellant some acres of land for agricultural activities. He said the same fact was cemented by the respondent himself at page 19 of the Ward Tribunal judgment. He also said Aidan Mtwanga (**PW2**) testified that his father leased some acres of land from the appellant and conducted agricultural activities. That after the demise of his father, he retired from the work, sub leased two acres of land from the appellant and cultivated for a period of 3-4 years. He said **PW1** insisted that the disputed land was the one which his father sub leased from the appellant. He further pointed out that on cross examination **DW1 Materin Mvambali** stated that *barabara ya simu* and *nakasisi ndogo* are two different places. That the decision of the Ward Tribunal and the District Tribunal shows that the decision reached is based on the payment receipts tendered by the respondent as exhibits. He said the exhibits tendered are not credible and do not supplement explanation by the respondent from the village Chairman that the disputed land is located at *barabara ya simu* while the receipts shows that are in respect of land located at *nakasisi ndogo* which is not the disputed land. That both tribunals reached the decision basing on receipts of the land in *nakasisi ndogo* and not *barabara ya simu* where the suit land is located. He said the Tribunals

failed to analyse evidence and went contrary to section 15 (3) of the Ward Tribunals Act CAP 206 RE 2019 and section 34 (1) of the Land Disputes Courts Act CAP 216 RE 2019. He sought assistance from the case of **Hassan Mzee Mfaume vs. Republic [1981] TLR 167**

On the second ground of appeal the appellant said that the records of the Ward Tribunal show that on diverse dates when the Tribunal convened on 12th June, 5th August 2nd September, 2019 the members of the Ward Tribunal did not sign the proceedings and it is not known whether the members who signed the judgment were present on each day of hearing at the ward tribunal. He insisted that the signature of the members should appear in respect of their names and that failure to sign is irregular. He relied on the case of **Venance Tengeneza vs. Kawawa Mwapili, Misc. Land Case No.13 of 2008 (HC-Iringa)** (unreported) where he said the Court held that the consequence of irregularities in the ward tribunal's proceedings render the same a nullity. He prayed for the appeal to be allowed with costs.

In reply the respondent said that the first appellate Tribunal properly stated that the appellant alleges that respondent have trespassed in

his land and that appellant had a lease agreement with the appellant to cultivate for two years but after expiry of the lease agreement, the respondent refused to yield vacant possession over the disputed land. He said the District Tribunal found that the appellant failed to establish the existence of the lease agreement with the respondent, and further that the appellant also failed to establish as to how he came in the possession of the suit land. He said his evidence established how he obtained the suit land by clearing the bush and was uninterrupted for a long time. He said he presented one witness on trial and that was one **Materini Mwambali** who owned a farm at the disputed land. He said the witness clearly stated that he acquired the suit land since 1989 and was uninterrupted until 2019 when the dispute arose. The respondent continued saying that the said evidence corroborates his evidence compared to the appellant who had no evidence on how he acquired the suit land. He said he tendered exhibits such as *stakabadhi ya vijiji* bearing number *1191976* and *hati ya uhakiki uhalali wa kumiliki shamba Kijiji cha Mahutanga*. He insisted that the appellant failed to provide any documentary proof of ownership of the disputed land. He said the appellant even failed to provide oral testimony on how he acquired

the suit land. That the evidence of the appellant and his first witness one **Aidan Mtwanga** was in contradiction.

On the second ground of appeal the respondent said that the appellant did not state where under the law members are required to sign in the proceedings. He said by signing the copies of the judgment and giving their views it showed that they fully participated in the proceedings. He said according to section 11 of the Land Disputes Courts Act CAP 216 RE 2019 the Ward Tribunal is required to have not less than 4 or more than 8 members and there is nowhere that requires them to sign the copy of the proceedings each day they sat. He thus prayed for the appeal to be dismissed with costs.

In rejoinder the appellant reiterated his main submissions and added that the law does not provide for the members of the Ward Tribunal to sign the proceedings but as a matter of practice members are required to sign the proceedings to clear the doubt as to whether the said members were truly present on each day of the proceeding. He added that on some different dates the name of the secretary was not provided.

The main issue for determination is whether this appeal has merit. Appellant's grounds of appeal are categorically two, one, the weight of evidence and two, signatures of the Ward Tribunal members in the proceedings. It is noted that the appellant was also the applicant at the Ward Tribunal and appellant at the District Tribunal. Obviously, he is the one who was claiming and therefore as the law stands, he had the obligation of proving his claim that he is the lawful owner of the suit land (see **section 110(1) of the Law of evidence Act, Cap 6 RE 2019**). To strike a heavier evidence as against that of the respondent, he had to furnish the strongest oral and documentary (if any) evidence compared to that of the respondent. The duty of the court is to see whether the evidence presented was properly weighed by the Tribunals below. Both the appellant and respondent alleged to have acquired the suit land in 1989. At the Ward Tribunal the appellant went further and stated that, he leased the suit land to the respondent and to his surprise the respondent refused to return the suit land to him. The Respondent on his side insisted that he acquired the suit land by clearing the bush. However, the appellant who alleged to have leased the suit land to the respondent did not produce any document to that effect, but the respondent produced in the Ward

Tribunal *Kielelezo Namba 2 (Exhibit 2)* issued by *Serikali ya Kijiji cha Mahutanga, kitongoji cha Makweta sehemu ya Nakasisi Ndogo*. It is a document issued by the Village Council proving that the respondent had been verified by the village authority to be the lawful owner of the 4 acres of land situated at *Mahutanga Village*. The respondent further produced *Kielelezo Namba 1 (Exhibit 1)* (receipt No.1191976) and *Kielelezo Namba 3 (Exhibit 3)* (receipt number 10342). **Exhibit 1** witnesses that respondent on 03/06/2013 paid TZS 60,000/= for registration of 4 acres in the village, and **Exhibit 3** witnesses that the respondent paid TZS 9,000/= for verification of his four acres of land. As stated earlier, the appellant could not produce any document which signifies that he owns the suit land. It is apparent therefore that the documentary evidence as enlisted above proves that the respondent lawfully owns the land at *Nakasisi Ndogo*. Another important issue is the location of the suit land. Going through the proceedings of the Ward Tribunal, it is vivid that the suit land is alleged to have been located at *Barabara ya Simu* and not *Nakasisi Ndogo*. However, reading the 6th page of the Ward Tribunal's judgment, it is clearly stated that:

"...Mdai alisema kuwa shamba lina ukubwa wa eka 20 lakini baraza lilitembelea eneo la mgogoro likabaini kuwa halikupakana na eneo la mdai ambalo halina mgogoro".

Obviously, after the Ward Tribunal made a site visit it discovered that the appellant had another piece of land near the suit land which land was not in dispute. The Ward Tribunal was satisfied with the location of the suit land after the site visit. That the area referred in the receipts presented by the respondent is the same land in dispute. In view thereof, the documentary evidence tendered by the respondent at the Ward Tribunal is stronger than that of the appellant since he had no document to prove ownership of the suit land. In that regard therefore, the Ward and District Tribunals correctly analysed the evidence establishing that the evidence by the respondent was heavier than that of the appellant.

On the second ground, I agree with the respondent that, there is no law which mandatorily requires members of the Ward Tribunal to sign every day in the proceedings of Ward Tribunal. What the law requires is for the members of the Ward Tribunal to sign the judgment. In any case lack of the signatures did not prejudice the appellant in any way and nowadays courts of law are not bound by unnecessary technicalities but are required to dispense justice (see the case of

Yakobo Magoiga Gichere Vs. Penina Yusuph, Civil Appeal

No.55 Of 2017 (unreported). Basing on the authority cited above, I am of the considered view that the second ground of appeal is devoid of any merit.

For the foregoing, I find no fault in the decision of the District Tribunal and it hereby upheld. The appeal is hereby dismissed with costs for want of merit.

It is so ordered.


V.L MAKANI.
JUDGE
23/08/2021

