IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO.75 OF 2021

(Arising from the District Land and Housing Tribunal for Ilala at Ilala in Land Appeal No.9 of 2019 Originating from Pugu Station Ward Tribunal in Land Case No.73 of 2018)

AHMAD JUMA ..... APPELLANT

VERSUS

NEEMA MORICE JONATHANI ..... RESPONDENT

JUDGMENT

Date of last Order: 13.09.2021

Date of Judgment: 21.09.2021

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Pugu Station in Land Case No.73 of 2018 and arising from the District Land and Housing Tribunal for Ilala in Land Appeal No. 9 of 2020. The material background facts to the dispute are briefly as follows; Neema

Morice Jonathan, the respondent successfully filed a Land Case No. 73 of 2018 at Pugu Station Ward Tribunal to recover the suit land. The appellant complained that the appellant trespassed the suit land. The respondent complained that in 2016 the appellant gave her the disputed land on his own wish and the Village Executive Officer witnessed the transfer. The respondent constructed a five bedroom house then the appellant ordered the respondent to demolish the house and vacate the suit land. The trial Tribunal decided the matter in favour of the respondent.

Aggrieved, Ahmad Juma lodged an appeal at the District Land and Housing Tribunal for Ilala, at Ilala vide Land Appeal No.9 of 2019. The appellant complained that the trial Tribunal erred in law to rule out that the appellant transferred the suit land to the respondent. He also claimed that the trial tribunal erred in relying on the respondent's witnesses and failed to identify the size of the suit land.

The District Land and Housing Tribunal for Ilala decided in favour of the respondent and upheld the decision of the trial Tribunal. The appellant was permanently restrained from the respondent's suit land. The first appeal irritated the appellants. They thus appealed to this court through

Land Appeal No. 75 of 2021 on three grounds of grievance which are crystalized as hereunder:-

1. *That the tribunal erred in law and facts for failure to consider that the appellant did not consent to transfer his suit property to respondent.*
2. *That the Honourable District and Land Housing Tribunal erred in law and facts upholding the vicious decision of the Ward Tribunal which was based on insufficient evidence of disposing of the suit property.*
3. *That both tribunals erred in law and facts for failure to examine properly the evidence of the appellant and his witnesses which proves that the appellant did not transfer his suit property.*

When the appeal was called for hearing on 24th August, 2021, by the parties request and as the Court order the appeal was argued by way of written submissions whereas, the appellant filed his submission in chief on 31st August, 2021 and the respondent filed his reply on 7th September, 2021 and the appellant filed a rejoinder on 13th September, 2021.

The appellant was the first to kick the ball rolling. On the first ground that the tribunal erred in law and facts for failure to consider that the appellant did not consent to transfer his suit property to the respondent, the appellant contended that both tribunals faulted to declare the

respondent the owner of the suit property while did not consent the transfer of the suit land to the respondent. The appellant complained that the respondent did not tender any agreement in respect to the suit land and transfer it to the respondent. He strongly contended that there is no record to show that the appellant and respondent executed the agreement to transfer the suit property.

The respondent further contended that the respondent and his witnesses claimed that the appellant transferred the said suit land whereas they alleged that they prepared transfer forms to transfer the suit land to the respondent and she signed it. The appellant complained that the respondent and her witnesses said that there was a conflict between the factory and the owners of the nearby land thus the one with bog shares agreed to give their portion of land to others. He valiantly argued that the evidence are fabricated since the appellant did not sign the transfer forms.

He added that the respondent failed to prove her participation on the said meeting and minutes to prove the same was not tendered at the trial tribunal. To fortified his submission by referring this court to section 110 of the Evidence Act, Cap.6 [R.E 2019]. He went on to complain that the

respondent did not prove if the appellant was involved in a conflict between the people who were identified to have a plot near the factory.

On the second ground, the appellant complained that the first appellate tribunal faulted itself to sustain the decision of the Ward Tribunal which was based on insufficient evidence. The appellant complained that there was no evidence on record to prove that the appellant was involved nearby the investors. Insisting, he claimed that he was not involved in the process of appointing committee members. He valiantly argued that the respondent's evidence was insufficient in the sense that during locus in quo the respondent was not able to show the suit land. He added that he showed bigger land contrary to the size of the suit land which she claimed. To bolster his argumentation he cited the case of **Hemedi Said v Mohamed Mbilu** (1984) TLR 113.

As to the third ground, the appellant complained that both tribunals erred in law and facts for failure to examine properly the evidence of the appellant and his witnesses which proves that the appellant did not transfer his suit property. The appellant reiterated his submission made on the first ground that he did not consent to the transfer of the suit property he lamented that the ten cell leader testimony at the trial tribunal raises doubt since both

parties were not involved in any meeting between the investor and the villagers. He added that the ten cell leader did not witness the transfer of the suit land from the appellant to the respondent. Stressing, he argued that had the trial tribunal analysed the evidence on record then it could come up with a different decision.

On the strength of the above submission, the appellant urged this court to allow the appeal in its entirety with costs and dismiss the judgment of both tribunals.

Resisting the appeal, on the first ground the respondent was brief and straight to the point. He refuted that there was no evidence on record. The respondent submitted that there was ample evidence on record. He claimed that all the authorities; the Executive Village Officer of Pugu Station and the Chairman of Dispute Committee one Boaz Mongi were present and testified at the trial tribunal. He added that the trial tribunal acknowledged that there was a document that was signed by both parties.

He continued to submit that the agreement was deducted in writing witnessed by leaders, committee members, and village Chairman. He added that the first tribunal was in the best place to deal with evidence since the second appellate court cannot interfere with the evidence

adduced at the trial tribunal. Fortifying his position he cited the cases of **Melita Naikiminjal & Another v Sailevo Loibanguti** (1998) TLR 120 and **Edwin Isidori Elias v Serikali ya Mapinduzi Zanzibar** [2004] TLR 297. It was the respondent's contentious that since there is no proof that the evidence at the trial tribunal was not properly taken then there is nothing to warrant the interference by this court. It was his view that the first ground is demerit.

With respect to the second ground, the respondent contended that the appellant is trying to challenge the proceedings of the trial tribunal and the mode of acquisition of the suit land by the respondent. He had a different position for the reasons that the proceedings of the trial tribunal were clear and the trial tribunal visited *locus in quo*. He went on to submit that during visitation the trial tribunal ascertained the boundaries. He distinguished the cited case of **Hemedi Saidi** (supra) to the case at hand that the cited case is irrelevant since in the instant case all witnesses were called to testify. The respondent ended by stating that the second ground is demerit.

As to the third ground, the respondent reiterated his submission on ground 1 and 2 of the appeal. Stressing, he submitted that this is a second

appellate court that is required to deal with matters of law rather than evidence. He added that the appellant's grounds are based on evidence of one Theresia Modest whose testimony was confusing since she claimed to have not known the respondent, however, she admitted that the respondent's signature appeared in the document. He added that the evidence of Theresia contradicts the appellant's assertion that there was no document to prove the said transfer.

On the strength of the above submission, the respondent beckoned upon this court to dismiss the appeal for lack of merit.

In a short rejoinder, the appellant reiterated his submission in chief. Stressing, he complained that from the beginning of the dispute at the trial Tribunal the appellant denied having signed the transfer document. He insisted that the respondent did not prove her allegations. He continued to submit that this court under section 42 of the Land Disputes Courts Act, Cap. 216 [R.E 2019] is vested with power to confirm, reverse or vary in any manner the decision or order appalled against. He insisted that during visit locus in quo the respondent failed to identify the exact area which she claimed ownership which was measuring 23 x 15 m and during *locus in*

quo, the respondent showed the land which is measured 20 m East, 13.30 m North, and 13.30 m South.

In conclusion, the appellant urged this court to allow the appeal with costs and quash the judgments of both tribunals.

In the first place, I agree with the correct submissions made by the learned counsel for the respondent that the appellate court must be cautious when deciding to interfere with the lower court's decision as was propounded in the case of ***Edwin Mhando v R*** [1993] TLR 174. It is a settled principle that the second appellate court has to deal with the question of law and the second appellate court can only interfere where there was a misapprehension of the substance or quality of the evidence. This has been the position of the law in this country, see **Salum Mhando v Republic** [1993] TLR 170. See also the decision of the Court of Appeal of Tanzania in **Nurdin Mohamed @ Mkula v Republic**, Criminal Appeal No. 112 of 2013, Court of Appeal of Tanzania at Iringa (unreported).

However, this approach rests on the premise that findings of facts are based on a correct appreciation of the evidence. In the case of **Amratlal D.M t/a Zanzibar Hotel** [1980] TLR 31, it was held that:-

" An appellate court should not disturb concurrent findings of fact unless it is clearly shown that there has been a misapprehension of the evidence, miscarriage of justice or a violation of some principle of law or practice."

In my determination, I will consolidate the first and third grounds because they are intertwined and the third ground will be argued separately in the order they appear. The first and second grounds are related to transfer of the suit property from the appellant to the respondent and the evidence on record. I will determine whether both tribunals failed to consider the fact that the appellant did not consent to the transfer of the suit property to the appellant. The records reveal that the appellant and respondent had a written agreement of transferring the disputed land from the appellant to the respondent. The street leaders who were important witnesses in the instant case were called to testify and they all testified that Ahmad Juma occupied a large area and he gave his free consent to transfer the said suit land to the respondent.

The size of the suit land was measured 23 m x 15 m and the appellant gave his consent before the Street Committee leaders. The Street Leader testified that the appellant and respondent are familiar to him. He is was

a member of the Committee which made a study regarding the land situated at Kibiriko. It was decided and ordered that the ones who own a huge portion of land divide the same to other villagers. Ahamad agreed and gave the appellant and Justice Laswai an equal portion of land.

Apart from the evidence on record, the respondent tendered a documentary evidence to prove that the appellant transferred the said suit land to her. There is a Form No. 3 titled '*Kamati ya ufutiliaji Makazi wa Msimbazi 'B' Pugu Station Fomu Kukabidhi Enelo la Kiwanja*' whereas Neema Morice Jonathan and Ahmad Juma signed the said forms and the same bears a District Council of Ilala stamp dated 29th September, 2016. On the same day, the appellant handed overland with the same measurements to Justice Laswai and both parties signed the transfer froms. It is my view that the respondent proved her case to the standard required by the law. Therefore the appellant's claims are demerit

The respondent testified that the disputed land was 24 x 15 m located at Kibiriko. The Ward Tribunal visited *locus in quo* and recorded that the appellant was able to identify the suit land measured East 20 m, West 24 m, North 13.30 m, and South 13.30 m, and the respondent constructed a foundation within the said area. The issue of size of the suit land is an

afterthought, I am saying so because reading the transfer of property document the size of the suit land is stated 24 x 15 without stating the geographical cardinal points or directions. It is my findings that the trial tribunal relied on evidence gathered, and the *locus in quo*. The trial court discussed the rationally lengthy evidence it recorded the locus in quo findings and also based its decision substantially on its observation at the locus in quo and the evidence of witnesses. Therefore, the trial tribunal found that it was appropriate to visit a locus in quo, and it attended with both parties and other people. In the case of **Nizar M. H. Ladak v Gulamal Jau Mohamed** (1980) TLR 29 where the court had the following to say:-

> *"Where it is necessary or appropriate to visit a locus in quo, the court should attend with the parties and their advocates, if any and with such witnesses as may have to be testifying in that particular matter."*

Applying the above authority in the instant appeal, it is my considered view that there was enough evidence from both parties in the case which the trial tribunal based on it to reach its decision. The trial tribunal was in a better position to determine the matter since it was in a position to assess the suit land and its boundaries physically and it reached its

decision that the respondent was a lawful owner of the suit land based on the evidence of the respondent's witnesses as alluded above.

Concluding this ground, the decisions of both tribunals was based on sufficient documentary evidence and witnesses testimonies. The first and second grounds are demerit.

On the third ground, the appellant complained that both tribunals erred in law and facts for failure to examine properly the evidence of the appellant and his witnesses which proves that the appellant did not transfer his suit property. The appellant in his testimony denied from the beginning that he did not transfer the suit land to the respondent. However, there are documents in place to prove that he blessed the said transfer. The appellants' witnesses testified to have known the appellant but they acknowledged they did not witness the sale of the disputed land.

The records show that the appellant cross examined the respondent on whether he attended the meeting but he did not exhaust his chance to cross-examine the witness on the authenticity and genuineness of the transfer of ownership document. He did not utilize this opportunity. In other words, therefore he cannot claim that he did not sign the said sale

agreement and that he did not transfer the suit land to the respondent while the documentary evidence proves to the contrary.

Subsequently, I am satisfied that in the present case there are no extraordinary circumstances that require me to interfere with the District Land and Housing for Kinondoni and Pugu Station Ward Tribunal findings since the respondents' evidence overweighed the appellant's evidence as it was held in the case of **Hemedi Said v Mohamedi Mbilu** (1984) TLR 113.

Based on the foregoing analysis and circumstance of this case, I uphold the decision of the District Land and Housing Tribunal for Ilala and Pugu Station Ward Tribunal and proceed to dismiss the appeal on its entirely with costs.

Order accordingly.

Dated at Dar es Salaam this date 21st September, 2021.

A.Z.MGEYEKWA
JUDGE
21.09.2021

Judgment delivered on 21st September, 2021 in the presence of both parties.

A.Z.MGEYEKWA

JUDGE

21.09.2021

Right of Appeal fully explained.