

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISC. LAND APPEAL NO. 45 OF 2020

(C/O Land Appeal No. 41/2020 District Land and Housing Tribunal for
Katavi, originating from Land Dispute No. 104 of 2019 of Karema Ward
Tribunal)

SALUM SIDA APPELLANT

VERSUS

NSENSO MWANDU RESPONDENT

Date: 02/11 & 13/12/2021

JUDGMENT

Nkwabi, J.:

As this is a second appeal, this court, definitely has to be guided by **Ahmed Said v Republic, Criminal Appeal No. 291/2015** CAT (unreported):

We similarly understand that this is a second appeal to which it is well settled that this Court will ordinarily be slow to intervene and overturn the concurrent findings of the two courts below. But this established rule of practice is predicated on the premise that the two courts below did not act upon a misapprehension of

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the evidence, a miscarriage of justice or a violation of a principle of law or practice. Where the concurrent findings are based on such incorrect premises, the Court will certainly interfere on a second appeal to right the injustice ...

See also **Neli Manase Foya v. Damian Mlinga [2005] T.L.R 167**, where it was decided:

"...It has often been stated that a second appellate court should be reluctant to interfere with a finding of fact by a trial court, more so where a first appellate court has concurred with such a finding of fact. The District Court, which was the first appellate court, concurred with the findings of fact by the Primary Court. So did the High Court itself, which considered and evaluated the evidence before it and was satisfied that there was evidence upon which both the lower courts could make concurrent findings of fact."

The above, was the view of the Counsel for the Respondent, seeking this court not to interfere with the concurrent decisions of the trial tribunal and the first appellate tribunal, the District Land and Housing Tribunal for Katavi

region. Nevertheless, the appellant would not back down. Displeased with the decision of the District Land and Housing Tribunal, the appellant lodged a petition of appeal to this court which has two grounds of appeal as hereunder:

- 1. That the trial tribunal grossly erred both in facts and law to hold that the evidence of the Respondent was much heavier while both the respondent and Appellant had no documentary evidence to prove how got the land.*
- 2. That the trial tribunal grossly erred both in facts and law to hold that the last ground of appeal was failing in the face of it without taking judicial notice that the ward Tribunal of Karema had been dissolved when the dispute terminated*

The appellant prayed the concurrent decisions of both lower tribunals be reversed in favour of the appellant with costs.

When the appeal was called up for hearing the appellant appeared in person while the respondent enjoyed the services of Mr. Peter Kamyalile, learned counsel.

In his submission the appellant faults the decision of the District Land and Housing Tribunal and that of the ward tribunal. He argued that the Ward Tribunal did not do him justice in that the respondent had no right. Three of his witnesses did not testify. Even the District Land and Housing Tribunal did not do him justice. The lower courts were biased, he added and prayed for justice.

Mr. Peter Kamyalile, learned Advocate for the respondent, apart from arguing that this is a 2nd appeal, hence the 2nd appellate court cannot interfere into concurrent decisions of lower courts, he stressed that the allegations of bias are baseless. The evidence of the respondent is very clear. The respondent bought the land and his evidence is PW1.

When one says he inherited a shamba, that person should prove by probate case and such division, Mr. Kamyalile fortifying his argument by **Zainabu Kassim Faki V. Assalima Nyumba & Another Misc. Land Appeal No. 47/2017** HC Dar-es- Salaam (Land Division) (Unreported) at P.4. He rested

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his submission by observing that the appeal has no merits and prayed it be dismissed with costs.

In rejoinder, the Appellant submitted that his relative died that is why he could not open a probate case. The respondent had no enough evidence to win the case, he added. He prayed for justice.

I propose to start tackling the 2nd ground of appeal which goes, that the trial tribunal grossly erred both in facts and law to hold that the last ground of appeal was failing in the face of it without taking judicial notice that the ward Tribunal of Karema had been dissolved when the dispute terminated.

On the 2nd ground of appeal, the appellant merely stated in his submission that district land hand Housing Tribunal did not do him justice. The counsel for the respondent argued that the appeal has no merits. If I understood him well, he meant that the 2nd ground of appeal to has no merits.

The first appellate tribunal chairperson dismissed the appeal while observing that, *"The appellant argued that the trial tribunal when dealing with this matter was already dissolved. Unfortunately, the appellant did not state, when, how and why the tribunal was dissolved while the members were still holding office. I did not invest much effort on that ground because it was failing on the face of it."*

I am of the view that the learned first appellate tribunal chairperson was entitled in the decision he came up with. There is no any evidence or basis upon which to decide as per the orison of the appellant. The appellant ought to have given evidence to prove his allegation, but he did not. He even did not claim the same in the trial tribunal. This ground of appeal has no merits. It is dismissed.

I now revert to discuss the 1st ground of appeal which is couched in the following terms, that the trial tribunal grossly erred both in facts and law to hold that the evidence of the Respondent was much heavier while both the

respondent and Appellant had no documentary evidence to prove how he got the land.

On this ground of appeal, the appellant argued that the Ward Tribunal did not do him justice in that the respondent had no right. Three of his witnesses did not testify. He too argued that both lower tribunals were biased hence they did not do him justice.

As a counter argument on this ground of appeal, Mr. Kamyalile submitted that the evidence of the respondent is very clear. The respondent bought the land and his evidence is PW1. He added, when one says he inherited a shamba, that person should prove by probate case and such division fortifying his argument by **Zainabu Kassim Faki V. Assalima Nyumba & Another Misc. Land Appeal No. 47/2017** HC Dar-es- Salaam (Land Division) (Unreported) at P.4.

On this ground, I can state that as this court is a second appellate court, it is very difficult to upset two concurrent decisions of the lower tribunals,

unless there were compelling reasons. In this appeal, no compelling reasons. The main reason for the appellant's claim of ownership of the piece of land was inheritance. He did not prove that by tendering the documents proving the same. The learned, first appellate tribunal chairperson was therefore justified when he held that, "*No letters of administration was produced nor any evidence to substantiate that the land owned by his father.*"

I find inspiration in the decision in the case of **Zainabu Faki** (Supra) and find the submission by Mr. Kamyalile tenable. The appellant ought to have proved by tendering the document in respect of the probate and administration case by tendering the ACCOUNTS OF THE ESTATE. No any evidence of bias proved by the appellant. Further, there is no anything to suggest that the appellant was denied the opportunity to call his alleged three witnesses. The 1st justification of appeal has and should be dismissed.

The culmination of the above discussion, the appeal is dismissed with costs.

It is so ordered.

DATED at **SUMBAWANGA** this 13th day of December, 2021



J. F. Nkwabi
JUDGE

Court: Judgment delivered in chambers this 13th day of December 2021 in the presence of Mr. Peter Kamyalile, learned counsel for the Respondent and the Respondent in person but in the absence of the appellant.



J.F. Nkwabi
JUDGE

Court: Right of appeal is explained.

J.F. Nkwabi
JUDGE

13/12/2021

