

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

MISC. LAND APPEAL NO. 60 OF 2020

*Arising from the decision of District Land and Housing Tribunal for Kibaha in Land
Appeal No. 02 of 2015 originated from Magomeni Ward Tribunal in Land Case No.
31 of 2014)*

JUMA RAMADHANI NJIKUAPPELLANT

VERSUS

IBRAHIM SHABANI RESPONDENT

JUDGMENT ON APPEAL

Date of Last Order: 23/11/2021 &

Date of Judgment: 03/12/2021

A. MSAFIRI, J

The judgment of this Court is in respect of an appeal on the matter originated from Magomeni Ward Tribunal at Bagamoyo District, in Land Case No. 31 of 2014. In that case, the appellant sued the respondent for trespassing on the suit property. Basically, each party claimed ownership of disputed property from purchasing the same from different people and different years. While the appellant claimed to have purchased it in the year 2001, the respondent also claimed to buy it in the year 2005. However, it is legally known that the one whose evidence is heavier than another is the one who must win. On that note the Ward Tribunal agreed with respondent's evidence and declared him the lawful owner of suit property. *Alle*

Being aggrieved by the Ward Tribunal's decision, the appellant appeal to the District Land and Housing Tribunal for Kibaha through Land Appeal No. 02 of 2015, unfortunately to him the appeal was not successful. Therefore he has decided to file the current appeal as a second bite to this Court based on eight (8) grounds of appeal and prayed for the following Orders;

- 1. That this Court be pleased to allow this Appeal*
- 2. That this Court be pleased to quash and set aside the judgment of the District Land Tribunal and Ward Tribunal.*
- 3. That, this Court be pleased to announce that the appellant is the lawful owner of the suit land.*
- 4. That, this Court be pleased to declare that the act of the respondent to uproot beacon ZFL 784, Pins IPC 12 and 13 in survey No. 362/62 with registration No. 75710 is criminal offence.*
- 5. The Cost of this suit be borne by the respondent right from 2012 to the date of judgment of this Appeal.*
- 6. Any other reliefs this Court may deem fit and just to grant.*

Upon the date of hearing, the appeal was disposed of by way of oral submissions, both parties were unrepresented. Although the parties appeared in person, they were able to present their submissions in excellent manner and with confidence that enabled the Court to grasp what has transpired during the trial and in comparison with the records of the court. I am grateful for their submissions and the same has been useful and considered in this judgment. *Alle.*

Through the submission of the appellant, I have noted that he is challenging two things one being the evaluation of evidence by Ward Tribunal and Appellate Tribunal and the second being the issue of assessors opinion.

Beginning with the issue of evaluation of evidence, the appellant stated that, the Appellate Tribunal erred by confirming the decision of the Ward Tribunal without considering that, the appellant purchased the suit property first in the year 2001 while the respondent claimed to have purchased the suit property in 2005 from one Idd Ally Kilabu who has been dead since the year 2003. According to the appellant, this fact creates doubt on the truth of the respondent's evidence. That the appellant enjoyed the suit property for twelve years without any interference.

He further submitted that even if PW1 has stated that his father was not the owner of the land in dispute, the sale agreement between the appellant and Ali Selemani Mtonga shows that Iddi Ally Kilabu the father of PW1 is bordered with the appellant on north side. However, the Ward Tribunal disregarded the evidence of PW1. He further added that the fact that PW2 denied his signature is because he is too old and his memory and vision is weak. According to the appellant, the issue which were to be determined by the Ward Tribunal was whether Idd Ali Kilabu was the lawful owner of the suit land and whether he sold the suit land to the respondent? Unfortunately, these issues were disregarded by both Ward and Appellate Tribunal.

Alle

In appellant's view, the respondent did not involve the Village Authorities in land purchase. Also during the trial, the letter from the Village Government which was tendered, was not copied to the appellant which is contrary to the section 34B (2) (d) of the Evidence Act. He claimed to have begun the survey over the suit property in the year 2009 until the respondent uprooted the beacons.

For the second issue, he submitted that, there are irregularities in the Appellate Tribunal decision where assessors' opinion was not taken individually but they gave their opinion in group contrary to section 19 of the Regulations of the District Land Tribunals.

In reply, the respondent submitted that the appeal lacks merit and it should be dismissed. That, the Ward and Appellate Tribunal did evaluate the evidence properly and came out with sound decision and there are no irregularities in the proceedings. The respondent claimed to have bought the land in dispute in the year 2005 from one Idd Ally Kilabu and he left the land under the supervision of one Mwalimu Daudi Ndugai. In 2012, he erected poles and that is when the appellant came and demolished them. He filed a criminal case against the appellant at the Primary Court and later transferred to District Court. The appellant came to court with no evidence of ownership. There is no strong evidence to support his case. PW1 who was the witness of the appellant testified that his father had no land in that disputed area. And PW2 denied to have been a Chairman but a ten-cell leader of Sanzale Village and denied to have attested the Sale Agreement. The respondent prayed that appeal be dismissed. *Alle.*

In rejoinder the appellant reiterated his submission in chief and denied to have stated before the trial Tribunal that his documents were lost and that, the respondent is misleading the court.

I have regarded the powerful and strong submission of both parties. It is clear from the record that, the witnesses of the appellant before the trial Tribunal and the appellant himself did not speak the same language regarding the ownership of suit land by the appellant and there was a question of authenticity of the sale agreement brought before the trial Tribunal. PW1 Jema Iddi and PW2 Mrisho Mohamed completely denied to have been aware that the appellant owned the suit property over the suit land. Even the Chairman of the village who identified himself as a Ten Cell Leader denied to have attested the alleged sale agreement between the appellant and Ally Seleman Mtonga.

The Courts are duty bound to analyse and see whether the evidence adduced in court are strong enough or heavier enough to prove the case against each party. Section 112 of our Law of Evidence Act, Cap 6 [R.E 2019], provides specifically that:

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person" *Alles.*

And section 111 of the same Act reads:

"The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side."

Explaining the formula in the principle of ***the balance of probability*** which is the requisite standard of proof in civil cases, in **Misc. Land Case Appeal No 31 of 2017 between John Rwoga vs. Salimu Ngozi**, my Learned Sister Hon. Opiyo J had this to say;

"To understand how the rule of balance of probabilities in civil cases and how it works, I resort to explanations by Lord Hoffman in RE B. (CHILDREN) (2008) 35, that;"

"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are 0 and 1. The fact either it happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that, one party or the other carries the burden of proof. If the party bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not happened. If he does discharge it, the value of 1 is returned and the fact is treated as having happened."

Alle.

In this case, the appellant could have a strong argument if it could have been proved by the witnesses in the Court that he purchased the suit property in the year 2001 way before the respondent in the year 2005 then the priority principle would have worked in his favour. Unfortunately all the witnesses he called denied to have known or been aware of his ownership of the suit property. Even the Village Chairman denied to have attested the sale agreement. The appellant claimed that the Village Chairman could not identify the sale agreement because he is aged and has memory loss, also he does not know to read and write. If the appellant knew all that, then he should not have taken a risk of calling such a witness to testify while there were other witnesses to the contract. Since his own witnesses challenged the authenticity of the sale agreement, then the appellant's evidence became questionable. On the other hand, the respondent together with his witnesses supported evidence of ownership on his part.

Section 110(1) of the Law of Evidence Act, places an obligation to whoever desires any court to give judgment as to any legal right or liability depending on the existence of facts which he asserts, to prove the existence of those facts. As for the case at hand, the appellant failed to prove the trespass by the respondent as she failed to prove that the land that was purchased by him in 2001 is the same land that was trespassed by the respondent. At this juncture, I am convinced that the respondent has succeeded, on balance of probabilities, to prove that the land belonged to him.

Owing to the findings above, I find no justification to interfere with the findings of the trial Tribunal and Appellate Tribunal. Therefore, the trial Tribunal and the Ward Tribunal did correctly evaluate the evidence which

Allb.

was adduced by both parties and it is the appellant side who destroyed his own case.

Coming to the other issue that the assessors gave their opinion in jointly and not individually as required by Law, I think also this point carry no weight and is baseless. According to what transpires on the record of the Appellate Tribunal, there were two individual assessors' opinion. Those opinion are one from Ubwa Ramadhani Omary dated and signed on 04/04/2016 and the second one is from J.B Mhagama dated and signed on 02/02/2016 and the judgment on appeal was delivered on 12th Day of April 2016. In my opinion the issue of irregularities of the Appellate Tribunal proceedings also lacks merit.

In upshot the Appeal is hereby dismissed for lack of merit. Each party to bear its own costs. Right of appeal explained.

It is so ordered.

Dated at Dar es Salaam this 03rd Day of December 2021.



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A. MSAFIRI
JUDGE