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

LAND APPEAL NO. 162 OF 2020

(From the Decision of the District Land and Housing Tribunal of Kinondoni District Land Case Application No. 502 of 2013, dated 14th July 2020, by Hon. R.I Chenya Chairperson)

ISMAIL NJAA.....APPELLANT

VERSUS

REHEMA MAHAMAMUD RAMADHANI ***(As an Administratrix of the Estate of the late Udugu Mashaka Sultan)*****.....1ST RESPONDENT**

RAMADHANI MASHAKA.....2ND RESPONDENT

ASHURA SELEMANI.....3RD RESPONDENT

RAJABU RAMADHANI.....4TH RESPONDENT

ZAINABU YAKUBU LUANGAZA.....5TH RESPONDENT

ABDUL SHUKURU KUJUNA.....6TH RESPONDENT

JUDGMENT

Date of Last Order:03.12.2021

Date of Judgment: 15.12.2021

OPIYO, J.

This appeal follows the decision of Kinondoni District Land and Housing Tribunal allowing an application before it, vide Land Application No.502 of 2017 that was filed by the 1st respondent against the appellant together with the 2nd to 6th respondents. The dispute is over a landed property of an unknown size, here in after called the suit land, located at Bunju B within Kinondoni Municipality. It was claimed by the 1st respondent before

the trial tribunal that the suit land belonged to her late husband, one Udugu Mashaka Sultan and since he is no more, the same is under her protection as an Administratrix of his estate. She claimed further among others that, the appellant, and the 2nd- 6th respondents were trespassers who did erect their buildings in the suit land illegally. Aggrieved by the decision of the trial tribunal, the appellant lodged the instant appeal based on the following grounds:-

1. That, the learned trial chairman erred in law and fact in reversing/ overturning the testimony of Ramadhani Mashaka leading to a wrong finding.

2. That, the learned trial chairman erred in law and fact by his failure to identify the suit property resulting onto a wrong finding.

3. That, the learned trial chairman erred in law and fact by his failure to analyse the evidence adduced before the trial tribunal and totally misdirected himself in delivering judgment in favour of the 1st respondent by declaring her the rightful owner of the suit land.

The appeal was heard by way of written submissions, Mluge Karoli Fabian, learned counsel appeared for the appellant while Advocate Rajabu Mrindoko represented the 1st respondent. The 2nd and 4th respondents appeared in person. The 3rd, 5th and 6th respondents did not appear to defendant their case, hence the same proceeded *ex-parte* against them.

In his submissions in support of the appeal on the 1st ground, Mr. Mluge was of the view that, the trial chairman reversed the testimony of DW1 for reasons only known to him as seen in the 2nd paragraph of his

judgment to mean the suit land belonged to the deceased, Udugu Sultan. He contended that, DW1 did not say the deceased got the area in dispute, rather he said the deceased had the area in which he built his house in 1974 during operation Vijiji. DW1 denied the fact that the suit land belonged to his deceased brother one Udugu Sultan Mashaka that is why it was not included in his estate after his demise.

On the 2nd ground it was submitted by Mr. Mluge that, the trial chairperson relied on the testimony of PW2 who was the tenant in the suit property leading to his wrong decision by mixing up the properties around the area which has three parcels of lands. He went on to argue that based on that fact, the requirements of Rules 4 andb5 of Order XX of the Civil Procedure Code Cap 33 R.E 2019 was not met. The trial chairperson combined the land with Udugu's house, the land in dispute and the land where the frames are built.

Lastly on the 3rd ground it was submitted that the trial chairperson did not evaluate the evidence of parties properly. The 1st respondent did not prove as to how her late husband acquired the suit land. He insisted that the visiting of *locus in quo* cannot prove ownership of the deceased, the late Udugu Sultan Mashaka. In absence of documentary proof the trial chairperson was wrong to declare the suit land to be the property of the late Udugu Sultan Mashaka.

In reply, the counsel for the 1st respondent maintained that, the evidence of DW1 was not reversed, in fact, DW1's testimony corroborated the evidence of the 1st respondent that the suit land belonged to his late brother since 1974 and in other place it belonged to Njaa Ramadhani.

On the 2nd ground, it was submitted that, there is nowhere in the defense evidence including that of the appellant at the trial tribunal that show the land that contains frames belongs to the 1st respondent. He insisted that, going through the evidence of the appellant who testified as DW3 and that of DW1 one will find that the land where the shops are built is part of the suit land hence the same was properly identified by the trial tribunal.

As for the 3rd ground, it was argued that the trial chairman correctly analysed the evidence before him and found that of the 1st respondent was heavier than of the appellant and the rest hence declared the land to be the property of the 1st respondent's husband.

As for the 2nd and the 4th respondent, they shortly insisted that, they have no interest in the disputed property.

Having gone through the submissions of the parties in this appeal and the records at hand. The question for determination is whether the appeal has merit or not. In answering the above sated issue, I will consolidate all three grounds of appeal and discuss them together as they are all related to the analysis of evidence on part of the trial tribunal. Starting with the 1st ground of appeal where the appellant faulted the trial tribunal for reversing the evidence of DW1. I went through the records, the testimony of DW1 at the trial tribunal and what was written in the impugned judgment, my findings are that, the claims by the appellant that he testimony of DW1 was reversed are unfounded. There is nowhere the trial chairperson did reproduce the testimony of DW1 contrary to his

statements. In fact, as stated by the 1st respondent's counsel, the testimony of DW1 at the trial tribunal supported that of the then applicant, now 1st respondent. He narrated well how the 1st respondent's husband got the suit land and when, and what were the boundaries between the suit land and that of Mr. Njaa. He stated that the two lands were separated with a pathway and further that, the Njaa's family are not concerned with the suit land. That is to say, the 1st ground is baseless.

On the 2nd ground of appeal as to the identification of the suit land. This too is a misconceived issue. The records are clear, the trial tribunal visited the suit land and made a sketch of the same. It has already been settled that the purpose of site visitation is for the court or tribunal to have a clear picture of what is in dispute and see whether the evidence given by the parties to the dispute is in line with what exists on the ground as far as the dispute is concerned. In **Kimono Dimitri Mantheakis versus Ally Azim Dewj and 7 others, Civil Appeal No. 4 of 2018, Court of Appeal of Tanzania at Dar Es Salaam**, it was observed that;

> "*The essence of the court attending the locus in quo with the parties was emphasis in the case of* ***William Mukasa v Uganda (1964) E.A 696 at page 700, Sir Udo Udoma G*** *(as he then was) held as follows;*
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> *A view of locus a locus in quo ought to be, I think to check on the evidence already given and where necessary and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken in the proceedings. It is essential that after a view of a judge or magistrate should exercise great care not to constitute himself a*

witness in the case. Neither a view nor personal observation should be a substitute for evidence."

The court went on in the same case by referring to the case of **Avit Thadeus Massawe versus Isdory Assenga** where the same quoted the Nigerian case of **Akosile versus Adeye (2011) 17 NNWLR (pt1276) p. 263** in showing the essence of visiting the locus in quo in the following words: -

"The essence of a visit in locus in quo in land matters includes location of the disputed land, the extent, boundaries and boundary neighbor, and physical features on the land. The purpose is to enable the Court see objects and places reffered to in evidence physically and to clear doubts arising from conflict evidence if any about physical objects"

On the basis of the above authorities, it is my view that there is a misconception on part of the appellant in faulting a trial tribunal that it failed to identify the suit land properly. The trial tribunal did its job well and the land in question was well identified as seen on records. This ground also is denied. And that brings me to the last ground of appeal that the trial tribunal did not well analyse the evidence on record. Based on my findings on the two grounds above, I find the trial tribunal have well evaluated and analysed the evidence on record and its findings as far as the disputed land is concerned was correct. The third ground also is dismissed.

In the end this court dismisses the appeal with costs and accordingly, upholds the decision and orders of the trial tribunal.

M. P. OPIYO,

JUDGE

15/12/2021