

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND CASE APPEAL NO. 26 OF 2022

SAIDI IBRAHIMU.....1st APPELLANT

JAMES PETER KALINGA.....2nd APPELLANT

VERSUS

HUSSEIN RAMADHANI KIOMBO..... RESPONDENT

JUDGMENT

Date of last Order: 03/10/2022

Date of Judgment: 07/10/2022

KHALFAN. J.

The appellants invited the court to, among other things, quash and set aside the judgment, decree and orders of the District Land and Housing Tribunal in Land Appeal No. 93 of 2021. They so invited the court based on the grounds of appeal that they raised.

The grounds were that, the District Land and Housing Tribunal failed to consider that the respondent did not prove that the disputed property was the property of his late father Ramadhani Kiondo; that the District Tribunal did not consider that the respondent was not the administrator of the estate of his late father as no letters of administration were in that respect tendered before the Ward Tribunal; that the District



Tribunal did not consider that the appellants acquired the disputed property in 2000 while the respondent acquired the property in 2012; that, there was no reason assigned by the Ward Tribunal for its decision; that the decision of the District Tribunal was contrary to **Section 11 of the Land Disputes Courts' Act, Cap. 216 R.E 2019;** and that the respondent adduced weak evidence compared to strong evidence of the appellants.

The appeal arose from the decision of the District Tribunal exercising its appellate jurisdiction in a matter that originated from the Ward Tribunal of Tabata in *Shauri la Ardhi Na. 112/2021* (Application No. 11 of 2021). The District Tribunal found in favour of the respondent as was the Ward Tribunal and hence concurrent findings of the two lower tribunals as to the respondent's entitlement to the ownership of the disputed property.

I should point out at the outset that, the concurrent findings of facts of the two lower tribunals restrict this court from interfering with or disturbing such findings unless it is shown that the findings were based on misdirection or misapprehension of evidence or violation of some principles of law or procedure, or have occasioned serious miscarriage of justice. See, for instance, **Amratal Damodar Maltaser and Another t/a Zanzibar Silk Stores v A. H. Jariwala t/a Zanzibar Hotel**



[1980] TLR 31, **Neli Manase Foya v Damian Mlinga** [2005] TLR 167, and **Martin Kikombe v Emmanuel Kunyumba**, Civil Appeal No. 201 of 2017 (unreported).

Of the grounds of appeal raised against the decision of the Ward Tribunal before the District Tribunal, and which were entertained by the District Tribunal, there were only two which reflected the grounds dealt with by the District Tribunal. These were that there were no reasons assigned by the Ward Tribunal for its decision; and that the decision of the District Tribunal was contrary to **Section 11 of the Land Disputes Courts Act, Cap. 216 R.E 2019**. The latter relates to composition of the Ward Tribunal.

With the foregoing in mind, this appeal will not consider the new grounds as they were not raised before the District Tribunal sitting as the first appellate court. I am of such finding, because such grounds were not considered and decided upon by the said District Tribunal when it exercised its appellate jurisdiction over the decision of the Ward Tribunal of Tabata.

The instant appeal was heard and argued by filing written submissions. They were duly filed by both sides. In respect of the appellants, their submission in chief was in a nutshell based on the grounds that were



never raised in the first appeal. They were in relation to, firstly, that, the complaint that the respondent's evidence before the Ward Tribunal was weak compared to the strong evidence adduced by the appellant before the Ward Tribunal; and secondly that, the respondent was not the administrator of the estate allegedly comprising the disputed property.

In his reply, the respondent in sum said that he had the letters of administration. He also annexed a copy of a grant of letters of administration in his written submission in reply, contrary to the principle that one cannot adduce new evidence in his written submission. He also submitted that the issue in this appeal was one of ownership of the disputed property and the evidence adduced at the trial in relation to the issue of ownership. In their rejoinder, the appellants reiterated their submission in chief.

As already said, this court will not accept the invitation to deal with the grounds raised by the appellants in this court sitting as a second appellate court, for such matters were not a subject of appeal in the first appeal before the District Tribunal. Indeed, the submissions by the appellants were on the new matters as aforesaid which were not raised by the appellants and not decided by the District Tribunal when it



exercised its appellate jurisdiction in the first appeal. This court cannot therefore consider them.

In line with the above finding, I was guided by the decision of the Court of Appeal in **Jafari Mohamed vs Republic**, Civil Appeal No. 112 of 2006 in which the Court of Appeal while relying on its previous decision held at page 9 of the typed judgment, and I hereby quote thus:

*We take it to be settled law, which we are not inclined to depart from, that "this Court will only look into matters which came up in the lower court and were decided; not on matters which were not raised nor decided by neither the trial court nor the High Court on appeal..." per the Court in **Elias Msaki v. Yesaya Ntateu Matee**, Civil Application No. 2 of 1982 (ARS). See, also **Richard s/o Mgaya @ Sikubali Mgaya v R.**, Criminal Appeal No. 335 of 2008 (both unreported). The logic behind this should be obvious. This Court is conferred with jurisdiction to hear appeals from or revise proceedings or decisions by the High Court in the exercise of its original, appellate or revisional and/or review jurisdictions. We cannot, therefore, competently render a decision on any issue which was never decided by the High Court.*



Since this is a second appeal in which there are concurrent findings of the two lower tribunals, I also find that there is for the above findings, no errors shown entitling this court to interfere with the concurrent findings of facts as to the ownership of the disputed property by the respondent.

In the results, the appeal lacks merit. It is dismissed with costs.

It is so ordered.

Dated at Dar es Salaam this 7th October 2022.



F. R. KHALFAN

JUDGE

07.10.2022

Court

Judgment delivered this 7th day of October, 2022 in the presence of Mr. Saidi Issa Ibrahimu, first appellant, Mr. James Peter Kalinga, second appellant and Mr. Donald Aloyce Kahamba (holding power of Attorney by the respondent).



F. R. KHALFAN

JUDGE

07.10.2022