

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

MISCELLANEOUS LAND CASE APPEAL NO. 44 OF 2021

UPENDO ARON MGOGO APPELLANT

VERSUS

ISRAEL ARON MGOGO RESPONDENT

**(Being an appeal from the Judgment and Decree of District Land and Housing
Tribunal for Kilombero District at Ifakara)**

(C.P. Kamugisha, CM)

dated the 02nd day of December, 2020

in

Land Appeal No. 58 of 2020

JUDGMENT OF THE COURT

S.M. KALUNDE, J.:

This is a second appeal in which the appellant is challenging the decision of the Mang'ula 'B' Ward Tribunal in Case No. 16 of 2019 (hereinafter "the ward tribunal"). Before the ward tribunal the respondent instituted a suit against the appellant for trespass into his piece of land measuring 1.76 acres with Customary Title No. 084KLM/90397 located at Kanyenja, Mikoroshini Mang'ula 'B' Ward, Kilombero District in Morogoro Region registered in the name of Tusubilege Mwasika Mwasile (hereinafter "the disputed land"). The said title was issued on the 26.08.2018.

The background leading to the dispute before the trial tribunal was that: In 2001 the respondent was taken under the care of Aaron



Mgogo (*Baba Mdogo*) and Tusubilege Mwasika Mwasile (*Mama Mdogo*). Apparently, the late Aron Mgogo is the appellants father whilst Tusubilege Mwasika Mwasile is the appellant's stepmother. The respondent stayed at Mzee Mgogo family where he was raised and schooled for the entire period until their demise. Mzee Mgogo passed away around 2012 whilst Tusubilege Mwasika Mwasile passed away in 2019. In 2018 before her demise, Tusubilege Mwasika Mwasile, managed to survey the suit property and was granted with a customary title with registration No. 084KLM/90397. On the passing of Tusubilege Mwasika Mwasile a dispute over ownership of the suit property arose. The respondent contended that the property was given to him by the deceased before her demise. The appellant on the other alleged that the suit property was part of the property of their father. Having heard the parties, the ward tribunal was satisfied that the respondent was the lawful owner of the suit property.

The appellant was not pleased by the decision of the ward tribunal. She unsuccessfully lodged Land Appeal No. 58 of 2020 at District Land and Housing Tribunal for Kilombero/Malinyi District at Ifakara (hereinafter "the DLHT"). She has now preferred the present appeal. The Petition of Appeal contains five grounds of appeal which may be summarized into mainly one complaints; that the DLHT erred in declaring the respondent to be the lawful owner of the suit property without evidence exhibiting how the property was transferred from the late Tusubilege Mwasika Mwasile to the respondent.

The appeal was argued by way of written submissions. However, it is on record that only the appellant was able to file her submissions. The respondent did not file their submissions. I take it that they have waived their right to be heard. I will therefore proceed to determine the appeal.

In her elaboration of the grounds of appeal the appellant alleges that in the first, second and fourth grounds of appeal relates to the DLHT failure to re-evaluate and analyze the evidence available on record and thereby arriving at an inaccurate conclusion that the respondent was the lawful owner of the suit property. She contended that the ward tribunal records were clear that the suit property was registered in the name of Tusubilege Mwasika Mwasile, her stepmother and guardian to the respondent. The appellant argued that it was improper for the respondent to be declared the lawful owner of the suit property on account of inheritance without proof of letters of administration. According to the appellant, allegation that the late Tusubilege Mwasika Mwasile gave him the disputed property before her demise were unfounded as the property was registered in her name and not that of the respondent.

Arguing on the third and fifth grounds of appeal the appellant contended that the respective grounds were question the respondent locus stand to institute the matter before the ward tribunal. The appellant argued that in absence of letters of administration appointing the respondent as an administrator of the estate of the

late Tusubilege Mwasika Mwasile the respondent had no locus to file the suit before the ward tribunal. In support of that contention the appellant cited the provisions of section 33 and 71 of **the Probate and Administrations of Estate Act, Cap. 352 R.E. 2019**. As for the question of locus standi the appellant cited the case of **Lujuna Shubi Ballonzi Senior vs. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, this Court (**Samatta, J** as he then was) acknowledged *inter alia* that:

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court..."

Relying on the above arguments, the appellant insisted that this Court finds merit in the appeal and proceed to allow the same and consequently, setting aside the judgment and decree of the DLHT and the ward tribunal.

Now that the appellant has questioned whether the first appellate court properly re-evaluate and analyze the evidence available, I propose to start by considering whether that duty was abdicated by the DLHT. In its decision, having considered the evidence on record, the first appellate court concluded that the respondent had established his ownership over the suit property through a registrable interest under the customary certificate of title

which had devolved to him following the demise of the lawful owner Tsubilege Mwasika Mwasile. The question now is whether these findings were supported by the evidence on record.

The respondent testimony before the ward tribunal was to the effect that the late Aaron Mgogo (*Baba Mdogo*) and Tsubilege Mwasika Mwasile (*Mama Mdogo*) had been living and take care of him since around 2001. The late Aaron Mgogo passed away in 2012, thereafter in 2014 the appellant and her relatives filed a suit against the late Tsubilege Mwasika Mwasile seek for distribution of the estate of the late Aaron Mgogo. It was resolved that all the properties remained to be the property of the late Tsubilege Mwasika Mwasile. In 2018, the land was surveyed followed by issuance of a customary certificate of title was issued to the said Tsubilege Mwasika Mwasile. Part of the respondents' testimony reads as follows:

"Mnamo 2001 nilifika Mangula na huyu mama aliniachia hilo shamba na marehemu baba mdogo ndiyo walikuwa wananilea. Waliinisomesha kuanzia darasa chekechea hadi kidato cha nne mwaka 2012, Marehemu baba mdogo alifariki dunia. Alibakia mama mdogo alinilea hadi mwaka 3/2019 akafariki dunia – Iilipofika 2014 mdaiwa Pamoja na ndugu yake mwengine waliozaliwa kwa baba mmoja waliweza kumpeleka marehemu mama mdogo Mahakamani wakidai mali ya marehemu baba yao. Baada ya mama mdogo kuwashirikisha kwamba nataka kuuza sehemu moja ya kiwanja



changu nataka nijenge nyumba nyingine ilikuwa nyumba hiyo imechoka. Ilikuwa inavuja sana. Ndipo walipoweza kumkatalia. Na kumwambia kuwa, huna mamlaka ya kutupangia mali alizoacha marehemu baba yetu. Ndipo Watoto hawa walienda kufungua mirathi lakini ilishindwa mali ilibaki kwa mke wa marehemu. Tangu hapo mdaiwa na ndugu zake walikuwa hawasalimiani na mke wa marehemu hivyo mpaka mungu anachukua uhai wake baada ya hapo nikawa nimebaki mimi na mama mdogotu. Baada ya ndugu zetu kututenga, **Katika familia hiyo tarehe 22/08/2018 baada ya mashamba hayo kupimwa tulienda na mama kwenda kupima hilo shamba ndipo waliposajili kwa jina lake Tusubilege Mwasike Mwasile na anayefatia ni mimi Israel Aron Mgogo baada ya marehemu mama kufariki dunia niliendelea kulitunza. Kwa sababu hilo shamba nimeanza kulitumia 2014. Na shamba mwaka huu 2019 nilipotaka kwenda kulima shamba hilo nimekuta shamba hilo limekwisha limwa baada kuulizwa mdaiwa ndiyo amelima."**

[Emphasis is mine]

The above testimony is supported by **Daniel Peter Mdaila (AW2)** who recalled having seen the appellant cultivating on the suit property since around 2014. Another supporting testimony came from **Rosse Mwasika Mwasile (AW3)** a sister to the late Tusubilege Mwasika Mwasile. Her testimony was that she has been

cultivating on the farm between 2010 and 2013 before her sister took over the farm and handled it over to the respondent.

In addition to the above oral testimony, the respondent tendered in evidence a copy of the certificate of customary right of occupancy issued in accordance with provisions of **the Village Land Act, Cap. 114 R.E. 2019** (hereinafter "the Act). In accordance with the Act the procedure for the application, grant and management of customary right of occupancy is provided for under sections 22, 23 and 24. Under section 25 of the Act upon conclusion of the application procedure an applicant is granted with a "**certificate of customary right of occupancy**". Section 25 reads:

"25.- (1) Where a contract for a grant of a customary right of occupancy has been concluded, a village council shall, within not more than ninety days of that conclusion, grant a customary right of occupancy to the applicant who accepted the offer referred to in section 23 by issuing a certificate, to be known as a 'certificate of customary right of occupancy' to that applicant.

(2) A certificate of customary right of occupancy shall be—

(a) in a prescribed form;

(b) signed by the Chairman and secretary of the village council;

(c) signed or marked with a personal mark by the grantee of the customary right of

occupancy to which it relates at the foot of each page of the certificate;

(d) signed, sealed and registered by the District Land Officer of the district in which the village is situate.

It would appear that the late Tsubilege Mwasika Mwasile complied with the application procedure provided for under the Act. As a result, on 26.08.2018 she was granted with Customary Title No. 084KLM/90397. In terms of section 27 of the Act the Customary Title was given to the late Tsubilege Mwasika Mwasile for an indefinite period. The said certificate was tendered and admitted in evidence. According to "FOMU YA UHAKIKI WA MASLAHI KWA MPANGILIO" the late Tsubilege Mwasika Mwasile is registered as the lawful owner of the suit property and the respondent ISRAEL ARON MGOGO is registered as a person with registered interest over the suit property ("**Mtu/Watu wenye Maslahi**"). Neither the appellant or any member of the family objected to the issuance or grant of the customary right of occupancy to the late Tsubilege Mwasika Mwasile. I do not think it would be appropriate for them to appear and interfere was property now.

On the other hand, through her testimony, the appellant insisted that the suit property formed part of the property of her father. **Justin William Mdimi (RW2)** informed the ward tribunal that he was a neighbor to the suit property. This is correct and he indicated as such in the customary certificate of title. In addition to

that he said that the appellant was the daughter of the late Aron Mgogo. That was about it, there was nothing pointing to the fact that the witness knew the appellant as the owner of the suit property. **Kaisi Hosea Cheyo (RW3)** testified that the suit property was rented to Afredi Nyirenda after the demise of the late Aaron Mgogo and Tusbilege Mwasika Mwasile to avert family disputes. Throughout her evidence the appellant did not present any credible evidence that her father remained the lawful owner of the property of that she was the lawful owner of the suit property. In her testimony she admitted that the owner of the suit property was her stepmother. However, her complaint in this appeal and the appeal before the DLHT was that the respondent was not the owner but a mere beneficiary. But as I have endeavored to demonstrate above, the respondent is not merely a beneficiary of the suit property has registered interest in the suit property.

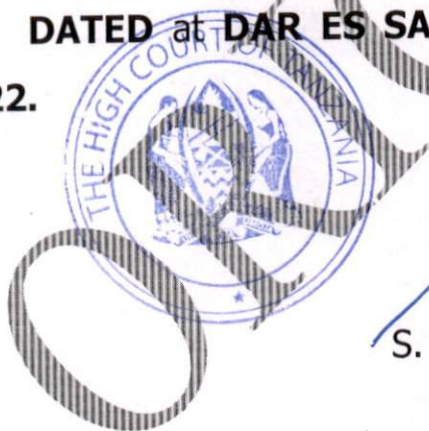
All said and done, like the two courts below, I am satisfied that the respondent had a right in instituting the suit before the ward tribunal because under the certificate of customary right of occupancy the respondent has a registered interest over the suit property. In my view he was not supposed to stand and watch when the appellant trespassed and interfered with the property to which he has registered interests. In similar vein, I am convinced that the two lower courts were correct in declaring the respondent to be the lawful owner of the suit property.

For the above reasons, I cannot interfere with the concurrent findings of the two lower courts because I have not seen any misapprehension the evidence or omission to consider available evidence. There is also no indication that the two lower courts have drawn wrong conclusions from the facts, or that there is a misdirection or non-direction on the evidence. As stated earlier, I see no reason to disturb or interfere with concurrent findings of the two lower courts.

In the end and for the above reasons, I am satisfied that the appeal is destitute in merits. It is accordingly dismissed. Given the circumstances, no order for costs is made.

It is so ordered.

DATED at DAR ES SALAAM this 24th day of NOVEMBER, 2022.




S. M. Kalunde

JUDGE