

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

LAND APPEAL NO. 132 OF 2021

SAID ABDALLAH NDAMBWE APPELLANT

VERSUS

SAID ABDALLAH MKELEKA RESPONDENT

JUDGMENT

Date of Last Order: 06/04/2022

Date of Judgment: 20/04/2022

A. MSAFIRI, J

This appeal originates from Ruaruke Ward Tribunal in Kibiti, Pwani. In the said Ward Tribunal, in 2018, the respondent Saidi Abdallah Mkeleka successfully sued the appellant Said Abdallah Ndambwe for trespass of Land (herein as land in dispute). The Ward Tribunal declared the respondent the rightful owner of the land in dispute. The appellant was aggrieved by the decision and lodged the first appeal before the District Land and Housing Tribunal for Mkuranga (herein as District Tribunal). The District Tribunal upheld the decision of the Ward Tribunal and declared the respondent the lawful owner of the land in dispute. The respondent was not happy with the decision of the District Tribunal and has filed this second appeal basing on the five grounds of appeal which are as follows;

Adls.

- 1. That, the Honourable trial Chairperson was erred in law and facts by departing from his own previous findings delivered 18th April 2019 as to the size of the disputed land without stating the reasons for such departure.*
- 2. That, the way Honourable trial Chairperson made its (sic) findings and decision was unusual and baseless.*
- 3. That, the Honourable trial Chairperson was grossly erred in law and facts by neglecting the grounds of appeal as presented and argued by Appellant.*
- 4. That the manner of which the appeal proceedings were conducted by the trial District Land and Housing Tribunal of Mkuranga, were irregular or/and improper thereby causing serious injustice on the part of the Appellant.*
- 5. That, the decision of the trial District Land and Housing Tribunal was reached without effective evaluation of the evidence tendered before the Ward Tribunal and subsequently to the Appellate Tribunal.*

He prayed for the appeal to be allowed, judgment and decision of the District Tribunal be quashed and set aside and costs be provided for.

When the appeal came for hearing it was ordered to be argued by way of written submission. Both parties complied with the schedule of the Court. The appellant appeared in person, unrepresented and the respondent was represented by advocate Beda Kapinga.

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I will not reproduce all what have been submitted by the parties while arguing for and against the appeal. However, I appreciate their efforts to assist the Court in determination of this appeal and I have considered their submissions and authorities which they have referred to this Court. Having gone through the submissions by the parties and court records available, the main issue is whether this appeal has merit.

In determination of that main issue, I will consolidate the grounds of appeal No. 1, 2, 3 and 4 for the reason that they are centered on how the District Tribunal misdirected itself while conducting the appeal proceedings and thereby causing serious injustice on the part of the appellant.

In his submission in support of the appeal, the appellant's major issue was that, the District Tribunal erred in law and facts by departing from its previous findings made on 18th April, 2019 as to the size of the disputed land without stating the reasons for such departure.

I have gone through the records and it is shown that, after the decision of the Ward Tribunal which declared the respondent a lawful owner of the land in dispute, the appellant was dissatisfied and filed an appeal against that decision before the District Tribunal. During the hearing of an appeal, one of the grounds of appeal was that, the Honourable Chairman erred in law by speculating the area of the farm in dispute as 6-8 acres while Bakari Kitingi whose father sold the land in dispute gave evidence that the area sold to the respondent is only 1 acre. *Acres-*

While determining the appeal, the Honourable Chairperson was of the view that, the respondent was supposed to mention the size of this land even by estimation. He went on to find that it was important to mention the size to enable the opponent to know and prepare his defence well without creating any uncertainty in the decision.

However, after that finding, the Honourable Chairperson went on to determine the issue of case number which was raised by the counsel for the appellant. It was raised that the dispute at the Ward Tribunal had no case number. The chairperson was of the view that, every case must have number for easy of reference and record. The Chairperson went on to find that the fact that the matter at Ward Tribunal was not given case number for reference, then it was enough reason to quash and set aside the proceedings and decision of Ward Tribunal.

Therefore, the proceedings and decision of the Ward Tribunal were quashed and set aside and parties were set at liberty to file a fresh suit. This was the judgment of Appellate District Tribunal of 18th April, 2019.

Aggrieved by that judgment, Said Abdallah Mkeleka, the respondent, appealed to this Court but the appeal was heard before the Court of Resident Magistrate of Dar es Salaam at Kinondoni by the Senior Resident Magistrate with Extended Jurisdiction (Hon. S.R. Ding'ohi).

The respondent forwarded four grounds of appeal among them being that the District Tribunal erred in quashing the proceedings and decision

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of the Ward Tribunal on the mere reason that the dispute before the Ward Tribunal did not have a case number.

The Hon. Resident Magistrate with extended jurisdiction determined the appeal on one ground only which raised the issue of absence of a case number in a dispute before the Ward Tribunal. The Hon. Resident Magistrate with extended jurisdiction was of the view that, the appeal before the District Tribunal was not heard on merit. He based his findings on the issue on whether the District Tribunal was right in quashing the decision by the Ward Tribunal on the mere reason that the dispute has no case number. He found that, the omission was not fatal and did not render the proceedings and decision by the Ward Tribunal null and void. The Hon. Resident Magistrate with extended jurisdiction allowed the appeal and quash and set aside the decision of the District Tribunal. He remitted the case file to the District Tribunal and ordered that, the District Tribunal which was the first appellate court to consider an appeal before it on merit.

On that direction, the case file and records were remitted to the District Tribunal whereby it was placed before the same Chairperson. The appeal was not re-heard but basing on the previous proceedings, the Hon. Chairperson went on to compose a new judgment which determined all three grounds of appeal as previously presented by the appellant. In that decision, the Hon. Chairperson this time agreed with the reasoning and decision of the Ward Tribunal regarding the size of the land in dispute that it was about 6-8 acres and not one (1) acre as

Acres.

the witness Bakari Kitingi has previously stated. The District Tribunal upheld the decision of Ward Tribunal and dismissed the appeal.

As previously observed, in the current appeal before me, the appellant is dissatisfied with the second decision of the District Tribunal and in grounds 1 up to 4 of the appeal, the appellant is raising grievances that;

- i). The District Tribunal departed from its previous decision of 18th April 2019 as to the size of the land in dispute without stating the reasons for such departure;
- ii). The Senior Resident Magistrate with Extended Jurisdiction directed the appellate District Tribunal to reconsider its previous decision particularly that of basing its decision on the reference number of the case at the Ward Tribunal;
- iii). That, in the re-hearing of the appeal, the Chairperson did not reconsider her previous findings but opted to revise her own decision. This is because the District Tribunal did not hear the appeal afresh but used previous proceedings, and departed from its previous decision.

In analysis of the grievances of the appellant which are the basis of the first four grounds of appeal, I am of the view that the Hon. Chairperson did not depart from her previous decision, nor did she revise her previous decision because the said decision did not exist as it was quashed and set aside by the appellate Court with extended jurisdiction. This is reflected at page six (6) of the said judgment which state thus;

"I proceed in quashing and setting aside the decision of the District Land and Housing Tribunal for Mkuranga in Adde.

Land Appeal No. 38 of 2018. The lower tribunals' case are remitted back to the first appellate court with a direction that it considers an appeal before it, on merit".

If the previous decision of the District Tribunal was quashed and set aside by the higher court, then there was no decision to depart from. What the District Tribunal did was to determine the appeal afresh and compose new decision. So, the Hon. Chairperson in her decision delivered in 04th August, 2021 did not revise or depart from her decision of 18th April, 2019 simply because that decision was quashed hence did not exist.

On the issue of the appellate Tribunal using its previous proceedings, this is because the second appellate Court with extended jurisdiction did not quash and set aside the proceedings. It only set aside the decision (judgment) of the District Tribunal. Therefore, the District Tribunal acting on the directives of the second appellate Court, used the proceedings available in the Court records as they were still existing.

Furthermore, I am of the view that, **the second appellate Court, did not direct the District Tribunal to reconsider its previous decision as the appellant claims in his submission. The second appellate Court gave direction to the District Tribunal to consider an appeal before it on merit.**

From this analysis I am of the view that, the District Tribunal did not error but it was simply following the directives of the higher Court. *Aelle*

Furthermore, as its previous decision was quashed and set aside, the District Tribunal was right to deliberate afresh the appeal and reached to the impugned decision. The District Tribunal was not tied or bound by its previous decision as the same as I have explained, was not in existence as it was quashed and set aside by the higher Court.

From this analysis, I find grounds No. 1, 2, 3, and 4 of this appeal to have no merit and I dismiss them.

The remaining ground No. 5 of appeal is basing on the purportedly failure of the District Tribunal on evaluation of the evidence tendered before the Ward Tribunal.

Submitting on this, the appellant stated that there was clear contradiction of evidence tendered by the respondent before the Ward Tribunal. That, first, neither the respondent nor his witnesses ever told the size of the land in dispute. Second, that, the respondent claimed that on the land in dispute there are mango trees, cashew and coconut trees only while the appellant's evidence before the Ward Tribunal was that there were graves in the land in dispute. That, the Ward Tribunal failed to consider this evidence.

The appellant stated further that this contradiction has resulted to miscarriage of justice and has resulted on difficulties in executing the decree of the District Tribunal because the respondent did not know the boundaries and size of the land in dispute. *Alls.*

In reply, the respondent's counsel submitted that, the District Tribunal made valid findings based on facts, testimonies and evidence adduced at the Ward Tribunal as well as analysis of the evidence available.

It is trite law that, when a matter is based on the weight of evidence, it is the trial court or Tribunal which is better placed to evaluate evidence than the appellate Court/Tribunal which merely reads what is on record. (See the case of **Ali Abdallah Rajabu vs. Saada Abdallah Rajabu and others** [1994] TLR 132).

In the appeal at hand, the Ward Tribunal is the one which heard the testimony of the witnesses and visited locus in quo. According to the record, the Ward Tribunal members were shown the land in dispute where they saw cashew and coconut trees. There is no record of there being grave yard in the land in dispute.

On the boundaries of the land in dispute, the witnesses of the respondent did show the area in dispute to the Ward Tribunal members. They also pointed the boundaries. Bakari Kitingi who is a son of one Abdallah Kitingi, who allegedly sold the land in dispute to the respondent, is the one who said that the size of the land in dispute was one acre. However, when the members of the Ward Tribunal visited the land in dispute, they estimated the area to be about 6-8 acres. The Ward Tribunal was satisfied with the evidence adduced by the witnesses of the respondent that they were telling the truth. This is observed in the decision of the said Tribunal as seen in the record as follows;

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"WAJUMBE: Walitoa maamuzi kwa pamoja baada ya kuchambua maelezo ya kila upande wote waliona ukweli upo kwa ndugu Saidi Mkeleka"

(Emphasis mine).

This shows that the members of the Ward Tribunal evaluated the evidence adduced by parties and find that the weight of evidence of the respondent was heavier than that of the appellant.

Hence on ground No. 5 of the appeal, I find that the claims that the District Tribunal did not effectively evaluate the evidence tendered before the Ward Tribunal are baseless. This is because, first the Ward Tribunal did evaluate the evidence before it as I have hereinabove analysed. Second, the District Tribunal while determining the grounds of appeal, also analysed the evidence which was adduced before the Ward Tribunal. This is reflected from page 3 to page 5 of the judgment of the District Tribunal. I also find that the ground of appeal No. 5 to have no merit and I dismiss it.

In the upshot, I find this appeal to have no merit and I dismiss the same in its entirety, with costs.

It is so ordered.



Dated at Dar es Salaam this 20th April, 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI,
JUDGE**