

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL CASE NO. 130 OF 2021

*(Originated from the decision of Mlandizi Ward Tribunal in Land Case
No. 145 of 2020 and District Land and Housing Tribunal Kibaha
in Land Appeal No. 48 of 2020)*

MFANYEJE M. MAKONGOROAPPELLANT

VERSUS

AZIZI HAMZA ALLYRESPONDENT

JUDGMENT ON APPEAL

Date of Last Order: 24/03 /2022 &

Date of Judgment: 19/04/ 20221

A. MSAFIRI, J:

This appeal originates from the Ward Tribunal of Mlandizi in Land Case No. 145 of 2020. In the Ward Tribunal the respondent sued the appellant for trespass of a piece of land located at Mlandizi Kati within Kibaha District, Dar es Salaam Region. It was proved that the respondent was a lawfully owner of the suit property and the appellant was ordered to vacate the suit property from the date of the decision. The respondent was dissatisfied with that decision. Thus, he unsuccessfully appealed to the District Land and Housing Tribunal for Kibaha through Land Appeal No. 48 of 2020 whereby it was held that the record shows that the Ward Tribunal was properly constituted and

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there was proper evaluation of evidence according to how they were presented. Therefore, the District Tribunal upheld the decision of the Ward Tribunal and dismissed the appeal. The appellant was aggrieved by the said decision. Hence, he lodged this appeal on the following five grounds:

- 1. The Learned Appellate Chairman erred in law and fact to hold that the evidence of the appellant in the Mlandizi Ward Tribunal was weak.*
- 2. The Learned Appellate Chairman erred in law and fact to hold that the disputed Sale Agreement was signed by the late Mohamed Ramadhani Makongoro and his witness one Joackim Shehondo, hence it is a genuine Sale Agreement.*
- 3. The Learned Appellate Chairman erred in law and fact not to hold that the Mlandizi Ward Tribunal totally failed to take into consideration the contents of the last will of the deceased one Mohamedi Ramadhani Makongoro which rendered the alleged Sale Agreement into serious doubts as to its correctness.*
- 4. The Learned Chairman erred in law and fact in failing to properly analyzing(sic) the evidence correctly and critically as regards to the last will viz the Sale Agreement as the documents contains different dates and contents.*
- 5. The Learned Appellate Chairman erred in law and in fact to hold that the Mlandizi Ward Tribunal was properly constituted to determine the dispute conclusively.*

Therefore, the appellant prays the appeal be allowed with costs, set aside the judgment and decree and the respondent be ordered to vacate the disputed area immediately.

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While the appellant was unrepresented, Mr. Augustino Kusalika, learned counsel appeared for the respondent. When the matter came up for hearing on 24/03/2022 it was argued orally.

In his submission, the appellant submitted generally and did not argue on some grounds which raised technical issues i.e. 3rd and 5th grounds of appeal. The appellant stated that, the suit land was surveyed by the Government on 18/09/2018 and he paid for the survey. That, sometime in 2020, the Street Chairman and respondent uprooted the beacons in the suit land claiming that part of the land which was surveyed was sold to the respondent by Mohamed Makongoro, who is the appellant's father who is now deceased. The appellant argued that, however, the sale agreement of the purported sale has no official stamp of the Street Local Government. He further argued that, the Ward Tribunal was wrong to measure the area in dispute and award the respondent as the lawful owner.

He stated that, during the hearing at the Ward Tribunal, the respondent said that, he, the appellant had no locus standi as he was not appointed as an administrator of the estate of the late Mohamed Makongoro. He explained that, he was in the process of applying in court to be appointed as administrator of the late Mohamed Makongoro and by the time the matter commenced at the Ward Tribunal in 2020, he was already appointed as administrator but not yet to be issued with a letter of administration.

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Lastly, the appellant argued that during the hearing of the dispute at the Ward Tribunal, he had only two witnesses. However the proceedings at the Ward Tribunal shows other witnesses whom he don't know and did not summon. He added that, among the ten children of the late Mohamed Makongoro, there is no one with the knowledge that their late father sold the land in dispute to the respondent. He stated that the purported sale was not valid and he prayed for this Court to allow the appeal and grant the prayed reliefs.

In reply to the appellant's submissions, Mr. Kusalika, argued the 1st, 2nd and 3rd grounds of appeal jointly and stated that, the respondent bought the land in dispute from the late Mohamed Ramadhani Makongoro on 05/02/2003. The payment was by instalment and it was completed on 04/04/2003. The sale agreement was tendered as exhibit at the Ward Tribunal and it was witnessed and the purchase price was TZS 350,000/=.

Mr. Kusalika submitted further that, the issue that the agreement had no official stamp is irrelevant because the one who sold the suit land was appellant's late father and he had no obligation to inform the appellant about the sale of his land. He averred that, there were no dispute when the late Makongoro was alive. That, the dispute arose in 2020 while the respondent was in occupation of the suit land since 2003. Therefore, the respondent is lawful owner of the land in dispute as it was found by the lower Tribunals.

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On 4th ground on issue of Will of the late Makongoro, Mr. Kusalika submitted that it was right for the Ward Tribunal not to consider the said Will since the land in dispute was sold before the demise of the late Mohamed Makongoro.

For the 5th ground of appeal, he submitted that the trial Tribunal was properly constituted and the same has been reflected on in the judgement of the District Tribunal at pages 3, 4 and 5 where the Appellate Tribunal found that the quorum was proper. He prayed that the appeal be dismissed with costs.

On rejoinder, the appellant reiterated his submission in chief.

I have gone through the grounds of appeal, the record of this appeal and the arguments for and against the appeal, and the major issue is whether this appeal has merit. As per the records and pleadings, the appellant claims the suit land being inheritance from the deceased who was his father while respondent claim to have purchased the suit land from the same deceased. Among the evidence tendered on record was the sale agreement dated 05/02/2003 between the respondent and Mohamed Ramadhani Makongoro.

The appellant claims that, the sale agreement between the respondent and the late Mohamed Makongoro was not valid as it has no official stamp of the Street Local Government. In this, I agree with Mr. Kusalika for the respondent that the sale agreement was between the respondent and the late Makongoro. The appellant has no any mandate to invalidate

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the said agreement as he was neither the party to the same nor was he at the time of the trial, an administrator of the estate of the late Makongoro. So as the matter stands, the appellant who was sued on his own capacity as the trespasser to the suit land, had no locus standi on the matter as he was not yet appointed an administrator of the estate of his late father.

As observed earlier, the appellant argued that the sale agreement lacks official stamp of the Street Chairman therefore it is invalid. Looking at the said agreement, it is true that it was not witnessed by the Street Chairman and has no official stamp but according to the principle of law of contract, the contract is regarded as a contract once it has been agreed and signed by the parties and their witnesses. Since the appellant was not a party to the agreement and has no any mandate whatsoever on the suit land as it has not been established that suit land passed from the late Makongoro to the appellant, then I find that he is not in a position to question the validity of the agreement.

Furthermore, during the trial, the respondent brought a witness who witnessed the agreement who corroborated the contents of the sale agreement. However, on the side of the appellant, his witnesses failed to corroborate the evidence of the appellant as they didn't have any knowledge about the dispute.

The appellant also has raised the issue of the Will of the late Makongoro. He stated that, the lower Tribunals erred in disregarding the said Will. Mr. Kusalika submitted that the lower Tribunals were right to

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disregard the Will since the respondent bought the land in dispute before the death of Mzee Makongoro.

I have read the photocopy of the said Will which is in court records. It shows the Will was made on 11/07/2008. It shows Mohamed Makongoro distributing properties to his children. However I have failed to see where the suit land is mentioned in the Will. From this, it is crystal clear that, since the sale was purportedly made in 2003 and the Will was made in 2008, then the Will of the late Makongoro did not include the suit land.

About the analysis of the evidence during the trial, I have gone through the proceedings of the trial Tribunal, I am satisfied that the trial Tribunal analysed the evidence adduced by both parties and found that the evidence of the applicant at that time was heavier than the one of the respondent after having heard the witnesses from both side of the dispute. The evidence adduced during the trial was also analyzed by the first appellate Tribunal and was satisfied that the respondent managed to establish his case.

From this, I see no reason to differ with the findings of the trial Tribunal and the District Tribunal on the first appeal. I base my findings on the principle in the case of **Hemedi Said vs. Mohamed Mbillu [1994] TLR 113** which stated that the one with heavier evidence than the other is the one who must win the case. The respondent's evidence was heavier than that of the appellant so the lower Tribunals were right in their findings and decisions. In my humble opinion, both the trial

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Tribunal and appellate Tribunal did evaluate the evidence properly according to how they were presented.

In his grounds of appeal, the appellant has raised an issue that the quorum of the Ward Tribunal was not properly constituted. Although the appellant did not argue on this ground of appeal, Mr. Kusalika submitted that, this issue was determined by the appellate Tribunal which found that the quorum of the Ward Tribunal was proper. I agree that the appellate Tribunal determined this issue and found it to have no any base. As per the records of the court, the quorum of the Ward Tribunal which on 30/01/2020 sat to hear and resolve the dispute between the appellant and the respondent was as per sections 11 and 14 of the Land Disputes Courts Act Cap 216.

From this analysis of the appeal, I find no fault at all that requires me to invoke Section 43 of the Land Disputes Courts Act. (Supra). I therefore find the appeal to have no merit and I dismiss it in entirety with costs.

It is so ordered.

Dated at Dar es Salaam this 19th Day of April 2022.



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A.MSAFIRI

JUDGE