

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 34 OF 2021

MOSES SEMU APPELLANT

VERSUS

CLALA ENERICK NGANZA RESPONDENT

(Appeal from the decision of the District Land and Housing Tribunal for Katavi at
Mpanda)

(G. K. Rugalema, Chairman)

Dated 24th day of March 2021

In

(Land Appeal No. 35 of 2020 originating from Land Dispute No. 109 of 2020 of Karema
Ward Tribunal)

JUDGMENT

Date: 30/3 & 23/05/2022

NKWABI, J.:

This is a second appeal. In the Ward Tribunal, the appellant sued the respondent over a controversy as to who owns a two acres piece of land. The piece of land is situated at Daraja la pili la Karema. He claimed to have bought the piece of land at T.shs 800,000/= from the respondent. After receiving the evidence of both parties, the Ward Tribunal decided that the appellant had proved his claim for one acre so it was decided.

The appellant was unhappy with the decision of the Ward Tribunal. He thus appealed to the District Land and Housing Tribunal for Katavi. There, he lost his appeal and as there was a cross-appeal, it was decided that both acres are the property of the respondent. The 1st appellate tribunal was of the view that since a material witness of the appellant had given evidence against the appellant, then the appellant had not proved his case. He was again seriously aggrieved, to protect what he is sure to be his property, he lodged this second appeal to this court.

The appellant preferred five grounds of appeal as listed here below:

1. That the Learned Chairman erred in law and fact by holding that the disputed property belongs to the respondent while there is a valid sale agreement to prove the agreement (Annexure 1 of this appeal).
2. That the Learned Chairman erred in law and fact by holding that the disputed property belongs to Respondent relying on the Appellant's witness who turned hostile that he did not sign the document forgetting that he was a Village Executive Officer and if at all it was a forged document, he could have sued the Appellant for forgery an act

which he had not done proving that the document indeed was a true document.

3. That the Learned Chairman erred in law and fact by holding that the land in dispute belongs to the Respondent while the Appellant from the date the Appellant purchased the suit premise in 2016 made a permanent settlement in there by building a home in it and is living there to date.
4. That the Learned Chairman erred in law and facts by admitting the respondent's testimony of the area being hired to the Appellant while there was no any witness to prove it.
5. That the Learned Chairman erred in law and fact by holding that the document had no respondent's name while the name is there written and the contract has all aspects of valid contract.

For those grounds, he prayed the appeal be allowed. The decision of the District Land and Housing Tribunal for Katavi at Mpanda be set aside, and the two acres endorsed in the contract be declared Appellant's property. He also prayed for any relief this Honourable Court deems fit and just to grant. He further prayed for costs to be borne by the Respondent.

At the hearing which was conducted orally, both parties appeared in person, unrepresented. The appellant adopted his grounds of appeal as his submissions. He reiterated his prayers in petition of appeal.

The respondent defended the appeal saying that she did not sell the land but she lent the piece of land to the appellant for growing tomatoes. She insisted the appellant was an invitee who has not paid even a penny. She prayed the appeal be dismissed. In rejoinder, the appellant prayed for justice.

I have had an ample time considering this appeal. In my determination of this appeal, I propose to begin with the 4th ground which is that the Learned Chairman erred in law and facts by admitting the respondent's testimony of the area being hired to the Appellant while there was no any witness to prove it.

It is trite law that he who alleges has to prove, see **Karangirangi v. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT). It was not the respondent who was the respondent in the land dispute in the Ward Tribunal

to prove her defence rather it was the appellant who was the complainant to prove his allegations. It is also mundane law that there is no number of witnesses that is required to prove a fact see **R v. Gokaldas Kanji and another** (1949) EACA 116, though a criminal case. In the circumstances, this ground of appeal is unmerited and it is dismissed.

Next, I discuss the 5th ground of appeal which goes, that the Learned Chairman erred in law and fact by holding that the document had no respondent's name while the name is there written and the contract has all aspects of valid contract.

I have carefully considered this ground of appeal and with respect to the appellant, the same has no any merit. That there was the name of the respondent written therein does not mean that the respondent was responsible of the document. The appellant ought to have proved its being genuine (authentic). Whether the document (contract) was genuine or not, I will discuss when I will be considering the 1st ground of appeal. This ground of appeal is wanting in substance, it crumbles to the ground.

I now revert to consider the 3rd ground of appeal in which the appellant laments that the Learned Chairman erred in law and fact by holding that the land in dispute belongs to the Respondent while the Appellant from the date the Appellant purchased the suit premise in 2016 made a permanent settlement in there by building a home in it and is living there to date.

Without much ado, ownership of any property or land is not proved by the fact that one built a permanent building or settlement and that one lives there. To prove that one has to prove title to the land and or how one acquired it. That rests in the applicant/plaintiff. This ground too is dismissed for wanting in merit.

In his 2nd ground of appeal, the appellant complains that the Learned Chairman erred in law and fact by holding that the disputed property belongs to Respondent relying on the Appellant's witness who turned hostile that he did not sign the document forgetting that he was a Village Executive Officer and if at all it was a forged document, he could have sued the Appellant for forgery an act which he had not done proving that the document indeed was a true document.

This ground too is unmerited. In my view, it merely indicates that the appellant does not know how one becomes and a court of law or a tribunal declares a witness to be a hostile witness. Indeed, it is the one who brings that witness to pray to the court that witness be treated as a hostile witness followed by tendering his/her statement if any and then the witness will be cross-examined by the party who calls that witness. At the end, the court will make a ruling, that rules that a witness is a hostile one or no. The appellant does not claim he attempted to do that and was denied. It should be remembered that giving adverse evidence to a party who calls a witness does not make a witness hostile, see **Madafi Radiba v R.** 5 E.A.C.A. 52 and or as provided under section 164 of the Evidence Act, Cap 6 R.E. 2019. Further the claim that the Village Executive Officer ought to have sued the Appellant for forgery an act which he had not done proving that the document indeed was a true document has no merit as it is the duty of the appellant to prove his case not the other way around. This ground of appeal has no merit. It is dismissed.

Lastly, I turn to the 1st ground of appeal to consider and determine it. In the 1st ground of appeal, the appellant contends that the Learned Chairman erred in law and fact by holding that the disputed property belongs to the respondent while there is a valid sale agreement to prove the agreement (Annexure 1 of this appeal). Now, the question is, was that alleged contract valid? It should be remembered that the respondent disputes its authenticity and, in this appeal, claims that she did not receive a penny from the appellant for the alleged purchase of the land. She insists that he was a mere invitee whose status does not change even if one stays in the land for more than a hundred years.

So, it was the duty of the appellant to prove the validity of the alleged contract. Did he discharge the onus placed on him? The learned Chairman of the District Land and Housing Tribunal was not convinced that the appellant discharged his onus of proof for one of the reasons that the Village Executive Officer rejected to have witnessed or signed on the alleged contract. In my view, that fact alone is sufficient to make the case of the appellant crumble to the ground. This is because, if it is left as it is, then the appellant's case was tainted by a grave contradiction. To do away with that


grave contradiction, the appellant ought to have prayed the trial tribunal for treating the Village Executive Officer as hostile witness and should obtain the order to that effect. Further, the learned Chairman of the District Land and Housing Tribunal went further to elaborate why he did not accept that the contract existed. I do not have any reason to think otherwise. In the circumstance I join hands with the learned Chairman to hold that the appellant failed to prove the contract of purchase of the piece of land. It is for the above reasons, I find that the decision of the District Land and Housing Tribunal is justified. I uphold it while dismissing the 1st ground of appeal.

Finally, I dismiss the appeal. Consequently, each party to bear their own costs as the respondent did not pray for costs.

It is so ordered.

DATED at **SUMBAWANGA** this 23rd day of May, 2022.




J. F. NKWABI
JUDGE