IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO.15 OF 2022

(Arising from the District Land and Housing Tribunal for Temeke at Temeke in Land Appeal No.88 of 2021, originating from Ward Tribunal of Mtoni in Land Dispute No.43 of 2021)

MWANZANI NASSORO ..... APPELLANT

VERSUS

ARAFA ABDALLAH ..... RESPONDENT

JUDGMENT

Date of last Order: 23.05.2022

Date of Judgment: 26.05.2022

A.Z.MGEYEKWA, J

This is a second appeal, it stems from the decision of the Ward Tribunal of Mtoni in Land Dispute No. 43 of 2021 and arising from the District Land and Housing Tribunal for Temeke at Temeke in Land Appeal No. 88 of 2021. From the scanty information borne out by the record, the background of this matter can be traced way back to the year 2020, when

the parties herein appeared before Mtoni Ward Tribunal contesting over the business frame. Mwazani Nasoro contended that she constructed a business frame in the area where she was ordered to vacate by the alleged owner Arafa Abdallah, the respondent. The respondent claimed that she is the lawful owner of the suit premises and the appellant was paying her rent fee. The respondent all the time claims that she is the lawful owner and the appellant claimed that she constructed the business frame. That finding prompted the appellant to institute a case at Mtoni Ward Tribunal. The trial tribunal determined the matter and found that the suit land is a public area thus the same cannot be owned by either of them. However, the appellant was allowed to proceed with her business in case she wishes to do so.

The matter went on appeal to the District Land and Housing Tribunal for Temeke at Temeke in Land Appeal No. 43 of 2021. Arafa Abdallah claimed that the trial tribunal had no jurisdiction to determine the matter. She also blamed the trial tribunal for failure to find that she was the lawful owner of the suit land. The District Land and Housing Tribunal for Temeke quashed the decision of the trial tribunal for the main reason that the trial tribunal did not consider the evidence of both parties while the appellant was the respondent's tenant. The first appeal irritated the appellant. In this

appeal, the appellant has accessed the Court seeking to impugn the District Land and Housing Tribunal decision through a memorandum of appeal premised on three grounds as follows:-

1. *That the appellate tribunal erred in law and fact in finding and holding that there was nothing material placed before the trial tribunal to establish the ownership of the appellant as alleged by him.*

2. *That the appellant tribunal erred in law and fact by holding that the respondent is the lawful owner of the suit land.*

3. *The appellate tribunal erred in law by its failure to evaluate and appreciate the evidence that was tendered before the Ward Tribunal by the petitioner and his witness and the strong arguments that were tabled on the appellate tribunal.*

When the appeal was called for hearing on 23rd May, 2022, the appellant and the respondent appeared in person.

In her submission, the appellant started with a brief background of the facts which led to the instant application which I am not going to reproduce in this appeal. The appellant opted to combine the three grounds of appeal and argue them together. She submitted that she constructed a business

frame at Mtongani, sokoni area then later she was informed that the suit land was under the supervision of the respondent. The appellant claimed that they discussed with the respondent and agreed that the appellant will pay rental rent to the respondent. The appellant stated that she was ordered by a Municipality Officer to vacate the suit premises. She claimed that as long as she constructed a business frame then she is the lawful occupier because the respondent did not tender any documentary evidence to prove her ownership.

It was her further submission that the Ward Tribunal visited the disputed area and noted that the business frame was constructed within the road reserve. She faulted the District Land and Housing Tribunal for deciding that the respondent is the lawful owner instead of upholding the decision of the Ward Tribunal. She argued that the appellate tribunal ordered her to vacate the suit premises and pay the costs of the case while she incurred costs in constructing the business frame and she paid rents.

In her conclusion, the appellant made it clear that she is not the lawful owner of the suit land.

In her reply, the respondent began to narrate the nighty gritty of the case which I will not reproduce in the appeal at hand. The respondent claimed that the appellant was her tenant. She claimed that she constructed a wooden frame and rented several women who were paying her rent. She submitted that the respondent rented the business frame and was paying Tshs. 200,000/= for four months. She added that later the respondent modified the business frame, and she was ready to compensate the appellant for the costs incurred in constructing the said business frame. She claimed that the Ward Tribunal did not visit the *locus inquo* and decided the case in favour of the appellant. She went on to submit that the decision of the trial tribunal amused her then she decided to lodge an appeal before the District Land and Housing Tribunal whereas the tribunal decided in her favour and ordered the appellant to return the business frame and pay the costs of the case.

In her brief rejoinder, the appellant reiterated her submission in chief. Insisting, she is the one who constructed the business frame and was paying rent thus she was trying to solve the issue in dispute.

I have considered the rival arguments by the learned counsels for the appellant and respondents. In determining the appeal, the central issue is whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Temeke.

I am fully aware that this is a second appeal. I am therefore supposed to deal with questions of law only. It is a settled principle that the second appellate court can only interfere where there was a misapprehension of the substance or quality of the evidence. This has been the position of the law in this country, see **Salum Mhando v Republic** [1993] TLR 170 and the decision of the Court of Appeal of Tanzania in **Nurdin Mohamed @ Mkula v Republic**, Criminal Appeal No. 112 of 2013, Court of Appeal of Tanzania at Iringa (unreported).

However, this approach rests on the premise that findings of facts are based on a correct appreciation of the evidence. In the case of **Amratlal D.M t/a Zanzibar Hotel** [1980] TLR 31, it was held that:-

> *" An appellate court should not disturb concurrent findings of fact unless it is clearly shown that there has been a misapprehension of*

the evidence, miscarriage of justice or a violation of some principle of law or practice."

In my determination, I will consolidate all grounds of appeal because they are intertwined. The appellant is faulting the appellate tribunal for grounds related to lawfully ownership and failure to evaluate the evidence on record.

I have perused the tribunals' records and noted that the issue at hand is related to a road reserve area. There is no dispute that none of the parties produced cogent documentary evidence to prove their ownership. Therefore, the issue of ownership cannot be determined in favour of any parties in dispute. Both of them are unlawful occupiers. The appellant was a bonafide tender believing the area belongs to the respondent and the respondent unlawfully occupied the suit land.

Therefore, I do not agree with the appellate tribunal's decision that the respondent is the lawful owner of the suit premises for the reason that she rented the suit premises to the respondent. In case the Government will issue an order to vacate the area then both parties will be evicted from the road reserve area. At the time at hand while waiting for any other process ahead. Then it is prudent to order the respondent to refund the appellant

the costs incurred in renovating the business frame to the respondent and the appellant is ordered to vacate the suit premises.

In the upshot of the foregoing, I quash and set aside the decision of both tribunals and allow the appeal to the extent that the respondent is ordered to refund the appellant the costs incurred in the renovation of the suit premises and the appellant is ordered to vacate the suit premises. Each party to bear its own costs.

Order accordingly.

Dated at Dar es Salaam this date 26th May, 2022.

A.Z.MGEYEKWA
JUDGE
26.05.2022

Judgment delivered on 26th May, 2022 in the presence of the appellant and respondent.

A.Z.MGEYEKWA
JUDGE
26.05.2022

Right of Appeal fully explained.