

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

LAND APPEAL NO. 35 OF 2021

(Arising from Kibaha District Land and Housing Tribunal in Land Appeal No. 126 of 2019.
Originating from Maili Moja Ward Tribunal)

ANETH DICKSON MAIKASU.....APPELLANT

VERSUS

GEORGE VIZITO LEUNA.....RESPONDENT

Date of last Order: 10.12.2021
Date of Judgment: 31.01.2022

JUDGMENT

V.L MAKANI, J:

This is a second appeal. The matter originated from Maili Moja Ward Tribunal (the **Ward Tribunal**) in Land Case No. 103 of 2019 where the matter was decided in favour of the respondent herein. The appellant herein ANETH DICKSON MWAIKASU being dissatisfied with the decision of the Ward Tribunal filed an appeal at Kibaha District Land and Housing Tribunal (the **District Tribunal**) in Land Appeal No. 126 of 2019 (Hon. S.L. Mbuga, Chairman) where she also lost. Being dissatisfied with the decision of the District Tribunal the appellant has appealed to this court.

The grounds of appeal are two, namely:

- 1. That the appellate Tribunal erred in law and fact for deciding in favour of the respondent without considering the validity of the respondent's Sale Agreement is questionable and was not determined.*
- 2. That the appellate Tribunal erred in law and fact by deciding in favour of the respondent by declaring that there was a double sale, whilst the respondent had never owned any piece of land.*

The respondent prayed for the appeal to be allowed, the decisions of both the Ward and District Tribunals be quashed and set aside, and the appellant be declared the lawful owner of the disputed land. The appellant also prayed for costs of the appeal and any other relief this court may deem fit for the interest of justice.

The appeal was argued by way of written submissions. The submissions by the appellant were drawn gratis by Ms. Irene Nambuo, Advocate from the Legal Aid Clinic, Legal and Human Rights Center and were filed by the appellant herself. The respondent had the services of Mr. Emmanuel Richard Machibya, Advocate.

Ms. Nambuo argued the grounds of appeal generally. She said according to the record the land in dispute which was measured at 48 x 48 feet in Muheza Street, Kibaha (the **suit land**) was land amid Yusufu Ponda's land. She said the respondent was not able to bring the neighbours to prove his ownership of the land and his sale agreement did not have witnesses from the neighborhood. She said the respondent does not know his neighbours and that he decided to file a complaint after the incarceration of the seller one Jakobo J. Kitiku.

Ms. Nambuo went on saying that there was no sale between the respondent and the seller Jakobo J. Kitiku and that there were contradictions in the testimony of witness Charles Patrick Salakani who said Sylvester Simon Kiyelo was present during the sale but the latter in his testimony said he never witnessed the sale. Ms. Nambuo said the sale agreement by the respondent was witnessed by Charles Patrick Salakana without authority as he was leader of Cell No. 2 while the suit land was in Cell No.1. She said the leader of Cell No. 1 Suleiman Dude was the one who witnessed the sale agreement of the appellant. She observed that the Tribunals erred in concluding that

the suit land was sold twice while the respondent failed to establish the existence of the sale.

Ms. Nambuo prayed for the evidence at the Ward Tribunal to be re-evaluated since the presiding Chairman acted contrary to law as was stated in the case of **Stanslaus Rugaba Kasusura & Another vs. Phares Kabuye [1982] TLR 338** that the duty of the trial court is to evaluate the evidence of each witness as well as his credibility and make a finding on the contested facts in issue.

Ms. Nambuo submitted on an additional ground that the Ward Tribunal was not well composed as there was only one female member Bi. Virgilia Nkoma which is contrary to section 11 of the Courts (Land Disputes Settlements) Act, 2019. She also supported her argument with the case of **William Bubeshi vs. Fanuel Andrea Kivuyo, Misc. Land Appeal No. 128 of 2020 [2021] TZHCLAND 319**. She concluded by praying that the appeal be allowed on its merit and the decisions of the Tribunals be rescinded and the appellant be declared the lawful owner of the suit land.

In submissions in Reply, Mr. Machibya extensively narrated the background of the matter. He further said neighbours with capacity to testify might have been absent but that does not validate or invalidate the sale agreement because neighbours are for the purpose of identifying boundaries and not to testify on ownership of the suit land. He said the sale agreements show that the appellants bought her suit land in 2016 and the respondent in 2015 and they all bought from Jakobi J. Kitiku (now deceased). He said the person who has good title is the respondent as ownership shifted from Jakobo J. Kitiku to the respondent and it was therefore wrong for Jakobo J. Kitiku to sell it again to the appellant. He said the issue is not the validity of the sale agreement but who was the first to buy from Jakobo J. Kitiku.

On the issue of composition of the Ward Tribunal Mr. Machibya said the applicability of section 11 is only when there are eight members adjudicating but not five as was in the present matter. He said the cases cited by learned Counsel are irrelevant and distinguishable. He prayed for the appeal to be dismissed with costs for lack of merit.

In rejoinder Ms. Nambuo insisted that the suit land was never sold to the respondent and hence there was no double allocation. She

reiterated her submissions and emphasized that the respondent was acquitted by the Primary Court in the criminal case because the said Primary Court had no jurisdiction to entertain land matters. She repeated her prayers for the appeal to be allowed and the appellant to be declared the lawful owner of the suit land.

Having carefully considered the grounds of appeal, the submissions made by the parties and examined the record before me, I wish to be guided by a settled principle that, this being a second appeal, the court should rarely interfere with the concurrent findings of the lower courts on the facts unless there has been a misapprehension of evidence occasioning a miscarriage of justice or violation of a principle of law or procedure. See **Wankuru Mwita v. Republic, Criminal Appeal No. 219 of 2012 (CAT)** (unreported) where the Court of Appeal stated that:

"...The law is well-settled that on second appeal the Court will not readily disturb concurrent findings of facts by the trial court and first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of a complete misapprehension of the substance, nature or non-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of justice."

I will consider the grounds of appeal generally. The main complaint by the appellant is that the Ward Tribunal did not properly evaluate evidence. I have gone through the records and I agree with the District Tribunal that the evidence at the Ward Tribunal was properly evaluated. The Ward Tribunal even moved to the *locus in quo* to assess and satisfy itself of the boundaries. The issues and questions raised by Ms. Nambuo that the sale agreements were not properly signed (that they were signed by the Cell Chairman No. 2 instead of Cell Chairman No. 1) and that there was no sale that was established to warrant the passing of the title, are new things which were not raised and determined at the first appellate court as such cannot be raised at this stage. In **Sadick Marwa Kisase vs. Republic, Criminal Appeal No. 83 of 2012 (CAT)** (unreported) where the Court of Appeal stated:

"The Court has repeatedly held that matters not raised in the first appeal cannot be raised in a second appellate court."

There was also a complaint by Ms. Nambuo that the composition of the Ward Tribunal was not proper. In my considered view this complaint has no merit. Section 11 The Land Disputes Courts Act CAP 216 RE 2019 states:

"Each Tribunal shall consist of not less than four nor more than eight members of whom three shall be women who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."

And section 4(4) of the Ward Tribunal Act CAP 206 RE 2002 provides that:

"The quorum at a sitting of the Tribunal shall be the one half of the total number of members."

The provisions above gives the overall number of members to compose the Ward Tribunal and the quorum. They do not provide specifically as to ratio of men and women at a particular sitting in the Ward Tribunal. Going through the records, the sitting members in respect of this matter were Ms. Mosi O. Musiba, Mr. Bashiri Mshana, Mr. Damian Mbalamla, Ms. Virgilia Nkoma and Mr. Richard M. Mangi. There were two ladies and three men totalling to five which is more than one half of all members as provided by the law. The Ward Tribunal was therefore properly constituted. In any case, the issue of improper quorum of the Ward Tribunal was not raised at the District Tribunal and therefore it cannot be considered at this second appeal while it was not heard and determined at the District Tribunal (see the case of **Sadick Marwa Kisase** (supra) and **Hotel Travertine**

& 2 Others vs. National Bank of Commerce Limited [2006]

TLR 133. Subsequently, the complaint has no merit.

In the result, this court finds no reason to fault the decisions of the Ward and District Tribunals. Consequently, the appeal is dismissed. Considering that the appellant is under the services of Legal Aid, there shall be no order as to costs.

It is so ordered.


V.L. MAKANI
JUDGE
31/01/2022

