

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 27 OF 2021

KEREMENSIA MAGANGA APPELLANT

VERSUS

SYLVESTO CHOLE RESPONDENT

(Appeal from the Judgment and Decree of the District Land and Housing Tribunal for
Rukwa at Sumbawanga)

(J. Lwezaura, Chairperson)

Dated 4th day of May 2021

In

(Land Appeal No.75 of 2019)

JUDGMENT

Date: 20/05 & 15/08/2022

NKWABI, J.:

The trial tribunal decided in favour of the appellant. Its unanimous verdict was that the disputed piece of land is the property of the appellant in this appeal. The appellant had claimed for a piece of land sized eight acres which she alleged her husband bought from the respondent. It was the appellant who convinced her husband to purchase it. After the demise of the appellant's husband in the year 2008, the respondent started challenging the sale saying how could a piece of land having eight acres be sold at T.shs 20,000/= So, he claimed to sell to them one acre only. The respondent

chased the persons who had been let the piece of land for cultivation. PW2 Wensesilaus confirmed to have been cultivating the piece of land for the appellant. The dispute over the piece of land emerged after the death of the husband of the appellant. The 2nd witness on the appellant's side was not cross-examined in any material particular by the respondent.

The defence of the respondent in the trial tribunal was that he sold a piece of land to the husband of the appellant which was one acre only in size. He called his witnesses, but it seems, they were unaware of the real dispute since DW2 contradicted the year the piece of land was sold to the appellant's husband while DW3 was employed by the husband of the appellant and was not aware of the transaction. He also claimed that the appellant has been trespassing in his piece of land.

In submission in chief, the Appellant told this Court that she was not satisfied with the decision of the District Land and Housing Tribunal because she was not heard.

In rival submission, Ms. Neema, Advocate asserted that the District Land and Housing Tribunal had jurisdiction, the ward tribunal had power to entertain the matter because there is no any document to justify the claim (E.g. valuation Report) **Section 15 of Land Disputes Courts Act CAP 216 RE. 2019**. She urged the 1st ground of appeal be dismissed for being baseless. I agree with Ms. Neema's contention and proceed to dismiss the 1st ground of appeal.

It was further Ms. Charles' argument on the 2nd ground of appeal that the appeal ought to be heard by way of written submissions but she failed to file written which is tantamount to non-appearance on a hearing date. No prayer for extension of time to file reply submissions. She cited the decision of this Court in **Famari Investment (T) Ltd V. Abdallah Selemani Komba**, Misc. Civil Application No. 41 of 2018 which quoted with approval the decision in **Olam Tanzania Limited v. Halawa Kwilabya**, DC. Civil Appeal no. 17 of 1999 where it was held:

"Now what is the effect of a court order that carries instructions which are to be carried out within a predetermined period? Obviously, such an order is binding.

Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of justice will grind to a halt or it will be so chaotic that everyone will decide to do only that which is conversant to them. In addition, an order for filing submission is part of hearing. So, if a party fails to act within prescribed time, he will be guilty of in-diligence in like measure as if he defaulted to appear ... This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn chaos."

The contention by Ms. Charles finds purchase with me. The claim by the appellant that she was not heard in the District Land and Housing Tribunal has no basis. It fails.

Ms. Charles' contention in respect of the 3rd ground of appeal was that the appellant did not prove her case hence the decision of the District Land and Housing Tribunal was proper in accordance with the law. There was proof and added that even the appellant advanced the case of the respondent by

the evidence of Mr. Mbikilwa. She concluded, therefore, that the 3rd ground is unmerited and prayed it be dismissed. She likewise disputed the 4th ground of appeal. She was of a firm opinion that the evidence proves that the appellant's husband bought one acre for T.shs. 10,000/= . She thus prayed the decision of the District Land and Housing Tribunal be upheld. Ms. Charles' finally prayed this appeal be dismissed with costs.

In rejoinder submission, however, the Appellant reiterated that the witness who is said did not witness the matter. She insisted that the shamba was bought for T.shs. 20,000/= and it had 8 acres. She then prayed for justice.

In this appeal, the real dispute is whether the District Land and Housing Tribunal erred to reverse the decision of the trial tribunal that decided in favour of the appellant to the effect that she was entitled to 8 acres piece of land. The District Land and Housing Tribunal held that the appellant was entitled only to one acre as admitted by the respondent.

In my view, there was a misapprehension of the evidence on record by the 1st appellate tribunal. Instead of deciding on the credibility of the witnesses,

the first appellate tribunal criticized the evidence of the appellant that she did not send witnesses who witnessed the sale. It is trite law that in proving a fact, there is no specific number of witnesses is required. Be that as it may, the appellant paraded a witness one Wensesilaus Kasanda who said he used to use the piece of land peacefully. The conflict arose when the appellant's husband passed away. When asked questions for clarification by the members of the ward Tribunal, PW2 said the land in dispute had the size of eight acres. That piece of evidence was not considered by the first appellate tribunal which led to a wrongful decision. The circumstances of this case appear to me that when the respondent found that the appellant's husband had passed away, he found an opportunity to disturb the widow of the deceased. That is unacceptable

The trial tribunal was satisfied with the evidence of the appellant. I do not see any reason to fault its decision. The appellant proved her case on the balance of probabilities as per **Karangirangi v, Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 (CAT) at pg. 7 & 8 in which it was stated:

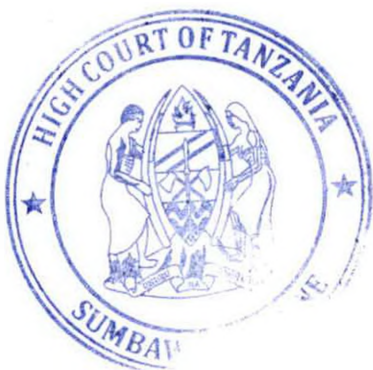
"... we think it is pertinent to state the principle governing proof of cases in civil suits. The general rule is that, he who

alleges must prove. ... It is similarly that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on balance of probabilities."

In the final analysis, the trial tribunal was justified in holding that the owner of the eight acres of land (the suit land) is the appellant. The District Land and Housing Tribunal's decision ought to be reversed because it is wrongful. I proceed to reverse the decision of the District Land and Housing Tribunal for Rukwa and restore the unanimous decision of the trial tribunal. Thus, I allow this appeal with costs.

It is so ordered.

DATED at SUMBAWANGA this 15th day of August, 2022




J. F. NKWABI
JUDGE