

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

MISCELLANEOUS LAND APPEAL NO. 1 OF 2022

KASHINJE KAMUGA APPELLANT

VERSUS

PAULO JOSEPH JITAMBI RESPONDENT

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

(G. K. Rugalema, Chairperson)

Dated 28th day of September 2021

In

(Land Appeal No. 29 of 2020)

JUDGMENT

Date: 21/07 & 25/08/2022

NKWABI, J.:

The appellant lost her appeal in the District Land and Housing Tribunal. She was a complainant in the Ward Tribunal for Kabungu ward. There she had claimed for a piece of land. The trial tribunal found that since the purchased pieces of land were in the name of the respondent, the respondent is the owner of the pieces of land. It ordered the respondent to refund the money to the appellant at T.shs 2,000,000/=. In the District Land and Housing Tribunal, one of the grounds of appeal preferred by the appellant was that the ward Tribunal grossly erred both in facts and law to order the

Respondent refund the Appellant T.shs 2,000,000/= in lieu of a piece of land which had been purchased by the aforesaid money.

The appeal was heard by way of written submissions in the District Land and Housing Tribunal. In deciding the ground of appeal, the District Land and Housing Tribunal considered the evidence of the respondent who said without being cross-examined by the appellant that he used the money for paying an herbalist who they were indebted to. The chairman relied on the case of **Athanas Ngomai v. Republic** the decision of the Court of Appeal of Tanzania which held:

"Failure to cross examine a witness on a certain matter entails acceptance of the matter."

So, the appellant was deemed to have admitted that the money was used to pay an herbalist. Thus, the 3rd ground of appeal was determined by the District Land and Housing Tribunal in favour of the respondent herein.

In this appeal, which had three grounds of appeal, the counsel for the appellant abandoned the 1st and 3rd grounds and remained with the 2nd one which states:

The 1st Appellate Tribunal grossly erred both in facts and law to quash order of the ward Tribunal of the respondent to refund Tsh. 2,000,000/= the appellant.

It is for the above ground of appeal it is prayed for the appellant that:

- (a) Decisions of both the ward Tribunal and District Land and Housing Tribunal be reversed.
- (b) The Appellant be declared the rightful owner of the disputed land.
- (c) Costs.
- (d) Any other relief (s) deemed fit.

This appeal was heard by way of written submissions. Mr. Elias Julius Kifunda learned counsel advocated for the appellant. The respondent did not appear. There is an affidavit of service by the Court Process Server to the effect that the respondent refused to receive service of summons. The appeal was thus heard ex-parte.

In submission, Mr. Kifunda argued that there are no circumstances under which the 1st appellate Tribunal, could have interfered with the order of the trial tribunal for the respondent to refund the appellant T.shs 2,000,000/=

citing **Materu Lesionand J. Foya v. R. Sospeter** [1998] T.L.R 102, **Adam Pascal Mangi v. Maria Juius**, Misc. Land Appeal o. 24 of 2020 and **Eneriko Mlangi v Emmanuel Kamangu**, Misc. Land Appeal o. 17 of 2016. Mr. Kifunda vigorously submitted that the first Appellate Tribunal at page 4 and 5 of its judgment, stated that the Appellant failed to cross examine the Respondent on the issue of her moneys being used to pay witchdoctor. This could not have warranted it to interfere with the order of the ward Tribunal.

He also added that the 1st appellate Tribunal grossly erred to quash the order of the ward Tribunal for the Respondent to refund the Appellant T.shs 2,000,000/=. If is to dismiss the appeal could have dismissed without disturbing the order of the ward Tribunal which was not appealed by the Respondent.

To wind up his submissions, Mr. Kifunda prayed the order of the District Land and Housing Tribunal Mpanda to quash an order of the Ward Tribunal of Kabungu be reversed, and the order of the ward Tribunal for the Respondent to refund the Appellant T.shs 2, 000,000/= be restored.

Mr. Kifunda is seemingly in admission that the appellant did not cross examine the respondent about that issue of the money being used to pay the witchdoctor. In my view, the District Land and Housing Tribunal was entitled to reevaluate the evidence in the record of the Trial Tribunal and come to its own conclusion. That is so because the District Land and Housing Tribunal is the first appellate tribunal. This is as per **Emmanuel Lyabonga v. Republic**, Criminal Appeal No. 257 of 2019, CAT (unreported) in which it was held:

*" ... we wish to state that in dealing with the substance of the appeal as the first appellate Court, we are enjoined by Rule 36 (1) (a) of the Tanzania Court of Appeal Rules, 2009 to re-appraise the evidence on record and draw our own inferences and findings of fact subject, certainly, to the usual deference to the learned trial Judge's advantage that he enjoyed of watching and assessing the witnesses as they gave evidence – see, for instance **Juma Kilimo v. Republic**, Criminal Appeal No. 70 of 2012 (unreported); and **D.R. Kandya v. R.** [1957] E.A. 336. See also **Jamal A.***

Tamim v. Felix Francis Mkosamali & The Attorney

General, Civil Appeal No. 110 of 2012 (unreported)."

Such re-evaluation that is warranted by the above authority entails to see what is the effect of failure to cross-examine the respondent in respect of the evidence about the use of the money for paying to an herbalist. Truly, the decision of the District Land and Housing Tribunal is justified to base its decision by the authority of **Athanas Ngomai v. Republic** (supra).

Further, the appellant cannot be heard to complain about the order of the District Land and Housing Tribunal because that is what exactly she was seeking for in her 3rd ground of appeal where she stated: *That the Ward Tribunal grossly erred both in facts and law to order the Respondent refund the Appellant Tsh. 2,000,000/= in lieu of a shamba which had been purchased by the aforesaid moneys.*

For the above reasons, I find the appeal is devoid of any merit. I dismiss it. I proceed to uphold the decree of the District Land and Housing Tribunal. I make no order as to costs as the respondent did not enter appearance.

It is so ordered.

DATED at SUMBAWANGA this 25th day of August, 2022



J. F. Nkwabi

**J. F. NKWABI
JUDGE**