

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 80 OF 2022

WILFRED MICHAEL BATAKANWA..... APPELLANT

VERSUS

HALPHAN ALLY MUNGI..... RESPONDENT

JUDGMENT

24/4/2023 & 23/5/2023

A. MSAFIRI, J.

The appellant Wilfred Michael Batakanwa being aggrieved with the decision of the District Land and Housing Tribunal for Kisarawe at Kisarawe sitting as the first appellate Court in Land Appeal No. 193 of 2021, has appealed to this Court on a second bite on six (6) grounds of appeal which are reproduced herein below as follows;

- 1. That, the trial Tribunal erred in law and in fact in failing to establish that the appellant is the rightful owner of the suit land which is situated at Ngwazi in Msimbu Ward. And to hold that the Respondent was lawful owner of the suit by mere possessing a title deed prior to the Appellant, without taking into consideration that the Respondent's purported title deed was neither witnessed by Local Government authority nor shows any boundaries unlike the appellant's title deed.*

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2. *That, the trial Tribunal misdirected itself in law and in fact to hold that the appellant's title deed was suspicious for not addressing another land and not of Ngwazi, while the reality is that, the suit land is situated at Ngwazi not Msanga, that's why the Ward Tribunal vested with jurisdiction to entertain (sic), or else it shouldn't have such jurisdiction.*
3. *That, the trial Tribunal erred in law and fact to hold that the respondent was the lawful owner of the suit land, without taking into consideration that the seller of the suit land to the respondent was not joined to the case when the same was instituted in the trial Ward Tribunal as a requirement for recovery of land case demands.(sic).*
4. *That the trial Tribunal erred in law and fact to hold that the respondent is the lawful owner of the disputed land and losing the sight on the fact that the respondent failed to bring witnesses when he was required to do so by the trial Ward Tribunal as a result he failed to prove his lawful ownership of the suit land to the required standard on the balance of probability.*
5. *That the trial Tribunal judgment is contradictory and uncertain as its failure (sic) to indicate and clarify who between Rehema Selamani and Fatuma sold the suit land to the respondent.*
6. *That, the trial Tribunal erred in law and fact in deciding the matter based on its own facts and disregarded the ward Tribunal decision which visited the locus in quo having a full understanding of the suit land.*

The appellant seek for this Court to quash and set aside the appellate Tribunal Judgment and uphold the trial Tribunal Judgment.

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The appeal was heard by way of written submissions. The appellant's written submissions in chief and rejoinder were drawn and filed by Mr Nixon Tugara, learned advocate for the appellant while the reply submission by the respondent was drawn and filed by the respondent himself who appeared in person.

Before embarking on arguing the grounds of appeal, Mr Tugara pointed to this Court about the so-called irregularity committed by the appellate Tribunal while determining the grounds of appeal before it.

Mr Tugara submitted that, the former appellant Halphan Mungi while was submitting his lodged six (6) grounds of appeal before the appellate Tribunal, he stated that he was abandoning the sixth ground of appeal.

Mr Tugara argued that, despite that, the Hon. Chairperson of the appellate Tribunal entertained that sixth ground of appeal while giving her decision at page 15 of the judgment. Mr Tugara added that, the Hon. Chairperson misdirected herself to entertain the abandoned ground of appeal and prays for this Court to cure the irregularity by allowing the appeal.

Mr Tugara claimed further that, the respondent had abandoned grounds one, four and five. That he argued ground two alone and there was no explanation on ground three whether it was abandoned or not. That the Hon. Chairman stated in her judgment that the third and sixth grounds will be resolved jointly, then at page 6, the Hon. Chairman joined grounds two and six.

Mr Tugara was of the opinion that there is high possibility of the judgment being influenced by the grounds which was already abandoned. *Alle-*

In response, the respondent denied the appellant's claims and stated that what was abandoned was grounds No. 1, 4 and 5 only. And that grounds No. 2, 3 and six were argued in consolidation.

I have gone through the records particularly the written submissions by the appellant Halfan Mungi during the hearing of the Land Appeal No. 193 of 2021 at the Appellate Tribunal. The written submissions shows clearly that the appellant abandoned grounds number one, four and five.

At a conclusion of his submissions, he stated that he does not think it is worth to go with sixth grounds of appeal taking into consideration of all the irregularities he has pointed out. The fact the appellant opted not to argue the sixth ground of appeal does not mean he had abandoned it.

To sum up, it is my view that there was no irregularity in the analysis of the grounds of appeal by the appellate Tribunal so I find Mr Tugara's claims to be baseless.

Having attended that, I now move to the analysis of the grounds of appeal along with the submissions by parties to the appeal at hand. But before that, a brief background giving rise to the present appeal is apposite.

The appellant was the respondent in the land dispute No. 95 of 2021 before Msimbu Ward Tribunal. The current respondent Halphani Ally Mungi had filed the said matter claiming that the current appellant Wilfred Batakanwa has trespassed into his lawful owned piece of land, measured 3 ¼ acres in size, located at Msanga Ngwazi Hamlet, Simbu Ward, Kisarawe District. Having heard the parties, the Ward Tribunal decided in favour of the current

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appellant Wilfred Batakanwa, stating that according to the evidence adduced in Tribunal, the appellant's evidence was heavier than the respondent.

The current respondent who was then the complainant was aggrieved and lodged an appeal before Kisarawe District Tribunal (herein as appellate Tribunal). The appellate Tribunal decided the matter in favour of the appellant (who is now respondent). It quashed and set aside the decision of the Ward Tribunal and declared Halfan Mungi the lawful owner of the land in dispute.

The current appellant being dissatisfied with the said decision, has now appealed to this Court.

Having read the submissions from the parties, and the records of the lower Tribunals, the issue for my determination is whether the appeal has merit.

From the submissions by the parties and the lower tribunal records, I have observed that the center of the dispute is based on the ownership of the land in dispute. The dispute is based on the contest of ownership of the land in dispute between the two parties.

Since the analysis of evidence has been done by the trial Tribunal and the appellate Tribunal, this being the second appellate Court, will base solely on the issues on points of law, and in the circumstances, I am of the view that, since both the appellant and respondent claim to have bought the land in dispute from previous owners, the major issues on point of law is whether those previous owners had good title to pass to their purchasers and who between the appellant and the respondent is entitled to the disputed land.

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Arguing in support of the appeal, Mr Tugara for the appellant submitted that, it is true that the appellant's title (sale agreement) indicates that it was issued on 2006, while the respondent's title was issued on 2005. That it is clear that the respondent's title was issued earlier than the appellant's but the most important question is which between the two contested sale agreements meet the legal qualifications?

Mr Tugara argued that, the appellant's title (sale agreement) shows that it is legally qualified as it is endorsed by the Local Government authority, unlike the sale agreement by the respondent which falls short of the legal requirement. That, the sale agreement by the respondent does not show the endorsement from the Local Government nor the boundaries of the disputed land.

Mr Tugara stated further that the omission of the respondent's Title Deed to be endorsed by the relevant authority, the local government, is a major defect and hence the appellate Tribunal was wrong to overlook it.

The respondent, replied and submitted that, where there are two titles both claiming ownership on the particular land, the older title prevails. He stated further that the respondent's title was issued on 10/05/2005 and one of the witness was a member of the Local Government Street. That the said member represents the Local Government in that particular territorial jurisdiction.

He added that, the Chairman of Ngazwi Village from 2002 to 2009 was one Mzee Said Ligania Rai, and that he adduced evidence before the trial Tribunal and recognized the title deed of 10/5/2005.

Adls.

In his submission, the respondent seems to introduce the facts of another case which is case No. 15 of 2022 at the District land and Housing Tribunal for Kisarawe at Kisarawe which is between the respondent and another person. The respondent went further even to the extent of attaching the said case. However, I will not regard this part of submission, as the respondent is attempting to introduce new evidence at this level.

During the trial, the trial Tribunal declared the appellant the lawful owner of the suit land. The reasons of the trial Tribunal's decision were that, the sale agreement by the then respondent was legally qualified as it has followed all the legal procedures required in sale agreements and that it was approved and endorsed by Kitongoji Chairman who signed and endorsed by official stamp.

The trial Tribunal which visited the *locus in quo* stated that, the sale agreement by the then respondent shows the boundaries which are similar to the boundaries which the Tribunal has seen when visited the suit land.

The trial Tribunal was of the view that the sale agreement by the then complainant did not reveal the boundaries of the suit land despite the fact that the sale was conducted in 2005.

I have gone through the whole record by the lower Tribunals, I have seen the sale agreements between Henry Rashid Mbala and Wilfred Michael Batakanwa dated 26/5/2006 which was witnessed by Said Rigania Rai, the Kitongoji Chairman.

However, the records have no sale agreement of Halfan Ally Mungi which he purportedly bought the suit land from Rehema Selemani Kifumo.

Adde

During the trial, the respondent Halphan Mungi told the trial Tribunal that his area is measured 3 ¼ acres and is located at Msimbu Ward and that the appellant has trespassed into said land. That he bought the said land from Rehema Selemani Kifumo on 10/5/2005.

The respondent who was then the complainant called the witness one Mwarami Sultani Mkali who told the Tribunal that the suit land belongs to Henry Rashid Mbala who owned about 4 acres of land. The witness said that Rashid Mbala told him (the witness) that he has sold the land to Batakanwa. That it was Halfani Mungi who invaded the said land. That Halfani Mungi planted the coconut trees in Batakanwa's land.

Issa Ally Tunda was then respondent's witness. He testified that the suit land is the property of Wilfred Batakanwa which he bought from Henry Mbala, and that it was measured at one (1) acre size.

Abdulahaman A. Malacho was another witness for the complainant who stated that he knows the owner of the suit land to be Halphan Mungi who bought the said land from the late Rehema Seleman in 2005.

As said earlier, the appellate Tribunal quashed and set aside the trial Tribunal's decision and declared the now respondent, the owner of the suit land. I have gone through the decision of the Hon. Chairman of the appellate Tribunal. The reason for her decision is seen from page five (5) of the judgment.

The first reason is that the evidence which was taken shows that one Rehema Seleman Kifumo was the one who sold the suit land to Halphan Mungi, the then appellant. That Rehema Kifumo was the native (original)

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owner of the said suit land and that there are people who used to see her farming on the said land. That those people came to testify/give their evidence to prove that the suit land was originally owned by Fatuma.

However, there is nothing on record to reflect on what was ruled or concluded by the Hon. Appellate Chairman. Reading the records on the evidence adduced during the trial, beside the complainant Halphan Mungi, only one witness Abdulahaman A. Malacho recognise the suit land as the property of Halphan Mungi, and that he bought the same from the late Rehema Selemani in 2005. The witness did not say whether he knew the late Rehema Selemani as the original owner of the suit land and how she came to own the suit land.

Hence, the first reason of the Hon. Appellate Chairman does not tally with the available evidence adduced during the trial and which is on the record of case file.

On the first reason, the Hon. Chairman states that;

"Ushahidi uliochukuliwa unaonyesha Rehema Selemani Kifumo ambae ndio alimuuzia mrufani alikuwa mmiliki wa asili hapo.

Watu waliokuwa wanamuona analima hapo kwa muda mrefu walikuja kutoa ushahidi na kuthibitisha hayo....."

However, on the records, there is no such evidence from the people who saw Rehema Selemani or Halfan Mungi farming on the suit land. It is not clear to this Court how the appellate Tribunal reached to the above findings.

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But on the evidence of Wilfred Batakanwa, he and his witnesses including one witness of Halfani Mungi all testified that the suit land belong to Wilfred Batakanwa which he bought from Henry Mbala and there was sale agreement to prove that.

The second reason of the decision of the appellate Tribunal was that, there is no evidence to show how one Ally Ismail Awadhi got the land initially who sold the suit land to Henry Mbala who later sold to Henry Batakanwa.

The Hon. Chairman was of the view that it was important to prove the chain of ownership so as to know whether Ally Ismail Awadhi had a good title to pass.

However, having read the evidence during the trial, I am satisfied that Wilfred Batakanwa managed to prove that he bought the suit land from one Henry Mbala. He produced sale agreement to that effect. He went further to produce the sale agreement which shows that Henry Mbala bought the suit land from one Ally Ismail Awadhi.

It could have been difficulty to try and trace how Ally Ismail Awadhi got the suit land, even if he could have bought it from another person, then the Tribunal could have demanded that person to prove how they got the suit land. There could have been endless tracing of the previous owners by generations! It was enough that, the current buyer proved to have bought the suit land from the previous owner, and the previous owner proved to have bought from the initial (first owner).

I find that the passing of title from previous owners of the suit land to Wilfred Batakanwa was proved by balance of probability which is a standard in civil

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cases so Henry Mbala who was the previous owner of the disputed land had a good title to pass to Wilfred Batakanwa.

The third reason by the appellate Tribunal for its decision was that, the appellant was the first to buy the suit land in 2005, and that the process was lawful so he is entitled to the ownership of suit land.

The appellate Tribunal added that the sale agreement of Wilfred Batakanwa does not show the location of the land, but the sale agreement of the appellant Halphan Mungi state the location of the land to be Msanga Ngwazi Hamlet, Simbu Ward.

It is true that the sale agreement of the appellant Wilfred Batakanwa does not show the location of the suit land. But it does show the boundaries of the suit land and the neighbours of the said land.

The trial Tribunal visited the *locus in quo* and was satisfied that the boundaries were genuine and they reflect the boundaries shown in the sale agreement. The trial Tribunal found that the sale agreement of the current respondent did not show the boundaries of the claimed land.

Since the trial Tribunal visited the locus in quo, it was in a good position to identify the disputed land and later physically examined the parties to satisfy itself of the truth of their claims.

The trial Tribunal found that Wilfred Batakanwa was the lawful owner of one (1) acre piece of land, the finding I see no reason to differ with.

I agree with the principle of priority, i.e. the first owner to the title is deemed to have better or superior interest over the other. However, this principle

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applies only when it is proved that the claimed first owner obtained the claimed land lawfully.

In the current matter, there was no evidence to show how the so-called original owner obtained the suit land which she later sold to the current respondent. Hence, it is not clear whether this Rehema Selemani was the lawful owner of the suit land.

Having analysed the reasons for the decision by the appellate Tribunal, for the reason I have carefully explained, I find that the Hon. Chairman of the appellate Tribunal grossly misdirected herself on the facts and evidence adduced during the trial by the Ward Tribunal and as a result, reached to unjust and wrong decision.

Basing on those reason, I quash and set aside the decision, judgment and decree of the appellate Tribunal in Land Appeal No. 193 of 2021 before the District and Housing Tribunal of Kisarawe at Kisarawe. I hereby restore the decision of Msimbu Ward Tribunal in Land Case No. 95 of 2021 which was delivered on 07/12/2021, and which declared the suit land sized one (1) acre to be the lawful property of Wilfred Michael Batakanwa.

Appeal is allowed with no order for costs.

Right of further appeal explained.


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A. MSAFIRI
JUDGE
23/5/2023

