

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

LAND APPEAL NO. 404 OF 2023

(Originating from Misc. Land Application No. 144 of 2021, Kisarawe
District Land and Housing Tribunal)

MOHAMEDI OMARI CHONGWE.....APPELLANT

VERSUS

MOHAMEDI SALUMU LOLOA.....RESPONDENT

JUDGMENT

8/02/2024 to 14/03/2024

E.B. LUVANDA, J

The Appellant is aggrieved by the decision of the Tribunal decreeing in favour of the Respondent as the lawful owner of a piece of land (65x75) situated at Msigamo Village, Menerumango Ward at Kisarawe District. In the memorandum of appeal, the Appellant raised two grounds of appeal, namely: One, that the trial Tribunal erred in law and fact by deciding basing the hearsay evidence; Two, the trial Tribunal erred in law and fact by failing to evaluate properly evidence adduced before the Tribunal.

Mr. Richard Malagila Mafolo learned Counsel for Appellant submitted that during the hearing in the Tribunal the first and second witnesses of the Respondent

namely DW1 and DW2 adduced the history of the disputed land from colonial period. He submitted that since both two witnesses were not present during colonial period, arguing the history were narrated to them by someone which amount to hearsay evidence. He submitted that evidence must be direct, citing section 60(10) of the Evidence Act, Cap 6. He submitted that hearsay evidence is not admissible.

Ground number two, the learned Counsel submitted that PW1 said the disputed land was given to the Appellant even before Operation Vijiji in 1974 and continued to live and cultivate it, which fact was corroborated by PW2. He submitted that there was no need of another witness, arguing the Tribunal erred in law by requiring another witness to prove that fact.

In reply, the Respondent submitted that the Tribunal did not decide the matter based on hearsay evidence. He submitted that DW1 and DW2 testified basing on what they know from their personal knowledge of history of ownership of the disputed land by virtue of being members of the two families of Chingwe (sic, Chongwe) and Lolowa. He submitted that both proved to have been born and grew up there at Msegamo Village where the disputed arose. He submitted that even DW2 testified against her biological (sic) brother the Appellant.

Ground number two, the Respondent submitted that the Tribunal properly evaluated the evidence adduced during hearing. He submitted that the Tribunal

analyzed the evidence including the history of ownership of the disputed land even before operation vijiji. He submitted that the Tribunal was wise to rule that person was supposed to come from among the family members. He submitted that it is baseless for the Appellant to complain about the Tribunal for deciding that he ought to summon more witness, arguing the provision of section 143 (sic) of the Evidence Act cited by the Appellant, is irrelevant in this particular case.

On rejoinder, the learned Counsel for Appellant submitted that since the evidence adduced in the Tribunal was not direct evidence is hearsay evidence, the effect of hearsay evidence lack consideration before the court. He cited the case of **Rosemary Stella Chambe Jairo vs David Kitundu Jairo**, Civil Application No. 517/01 of 2016 CAT.

For ground number two, the learned Counsel submitted that the Tribunal failed totally to evaluate evidence adduced during hearing for reason that PW1 is a relative or family member of the Appellant. He submitted that a call by the Tribunal for a need of a witness who is a relative to testify on the disputed land does not have merit, arguing the Tribunal failed to evaluate evidence properly. He submitted that even a single witness can prove, citing section 143 Cap 6 (supra) and **Generoza Ndimbo vs Blasidus Yohana Kapesi** [1988] TLR, for

a proposition that it the duty of parties to prove their claim and that court can only summons witness if asked by the parties to do so.

On my part, to begin with ground number one. It is true that DW1 (Mohamed Salumu Solowa) aged fifty four years at the time when he appeared before the Tribunal, testified on narration of past history reckoning from colonial era, on that the original proprietor one Mzee Mng'ango (Mgang'o) vended a suit land (65x75) to DW1's grandfather one Mzee Lolowa, the latter made permanent settlement there and then invited his sibling including the Appellant's father. According to the narration by DW1 the rest sibling scattered elsewhere and established their settlement there. DW1 stated that after demise of his grandfather, the title passed to DW1's father who later passed away in 2001. DW1 confessed not seeing or knowing his grandfather. DW1 contended before the demise of his father a suit farm was handed over to him.

Admittedly what transpired before the birth of DW1 was a past history, which DW1 admitted to have heard it. However, DW2 (Amina Salum Mmandame) who introduced being aged seventy-eight years at the time she appeared before the Tribunal, explained that the Appellant is her sibling (brother) and the Respondent is a son of her uncle. DW2 explained that Mzee Lolowa visited to is brother Mzee Msese, where the former purchased land and the latter advised the former to make settlement thereat. Thereafter Mzee Mgang'o vended two

acres of land to Mzee Lolowa, the latter decided to relocate from where he formerly married and made permanent settlement to a newly purchased land. According to DW2, Mzee Lolowa invited his four siblings including one Chongwe (the Appellant) of making a camp with condition that later they will vacate. Other siblings searched for other lands elsewhere and made settlement there, where Mzee Lolowa and the Appellant remained at the suit land. According to DW1, the Appellant is a grandson. DW1 stated that Mzee Lolowa made it clear before his demise, that a suit land is his personal property. DW1 stated that at the time of demise of Mzee Chongwe his children were not there, even the Appellant (grandson to Mzee Chongwe) was not there, only children of Lolowa were living there.

In that way, it cannot be said that the evidence of both DW1 and DW2 were both hearsays. As alluded by the Respondent, DW2 testified based on her personal knowledge. Indeed, her evidence was credible and reliable. What I have grasped from the testimony of DW2, Chongwe's and descents were mere invitee who enjoyed usufructuary right. In other words, after the demise of Chongwe, no title could pass to his descendent (the Appellant).

Importantly, PW1 Hamis Hassani Mugila who was holding the power of attorney for the Appellant, stated that the Appellant was given that land by his parent. But as I have ruled above, the late Mzee Chongwe had no title which could pass

to his descendants. Again, as ruled by the Tribunal, PW2 Msiba Seleman Kitabu who bragged to have been a Village Chairman from 2000 to 2005 and thereafter from 2014 to 2019, his evidence was contradictory, at first he said he established the ownership of the Appellant by merely seeing him at the suit land at the time when the Village Council was conducting planning/survey. During cross examination by the Respondent, PW2 said he started seeing the Appellant at the suit land since operation vijiji in 1974. When was further cross examined by the Tribunal member (assessor), PW2 said the allocation of land to the Appellant was done during operation vijiji in 1975. Therefore, the evidence of PW2 was unreliable for being contradictory. To my view, the Tribunal was justified to fault his evidence. In this respect, the Tribunal's obiter dictum that the Appellant ought to tender evidence to vindicate a fact that a suit land was handed over to him by his parent, hold water and reign. This is because the Appellant evidence was wanting, his witness (PW2) did not support a fact that the Appellant was given that land by his parent. In lieu thereof, PW2 lead a contradictory testimony, which I have ruled being unreliable.

This adumbration takes into board both grounds of appeal.

Therefore, this appeal was presented without sufficient ground of complaint.

The decision of the Tribunal is upheld.

The appeal is dismissed. However, I make no order for costs, for reason that the Honorable Chairman who had a privilege of seeing viva voce the Appellant, was satisfied that he is aging, senile, weak with ailment.



E. B. LUVANDA
JUDGE
14/03/2024

Judgment delivered in the presence of the Respondent and Mr. Richard Malagila Mafolo learned Counsel for Appellant.



E. B. LUVANDA
JUDGE
14/03/2024