

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND APPEAL NO. 22 OF 2022

(Arising from Land Application No 22 of 2022 by the District Land and Housing Tribunal for Singida at Singida)

RAJABU HAJI MUMBA APPELLANT

VERSUS

ELIMARIA KAMBI KISUDA.....RESPONDENT

JUDGMENT

04/10/2022 & 8/11/2022

KAGOMBA, J

RAJABU HAJI MUMBA ("appellant") has filed this appeal to challenge the decision of the District Land and Housing Tribunal of Singida at Singida, ("the Tribunal") which was made in favour of ELIMARIA KAMBI KISUDA ("respondent"). The filed grounds of appeal are:-

- 1) That, the Tribunal erred in law and facts when it ignored the evidence adduced by the appellant which clearly proves that the appellant is the rightful owner of the suit land.
- 2) That, the Tribunal erred in law and facts by holding that the appellant failed to produce documents from the village council showing allocation of the suit land to him while there is enough evidence which portrays that the suit land belongs to the appellant.

3) That, Tribunal erred in law and facts when it ignored to visit *locus in quo* in order to satisfy itself as to the size of the suit land, getting opinion of village and sub-village leaders and making general assessment of evidence adduced in relation to the suit land visited.

Before going further in determination of this appeal, the brief facts of the case need to be stated. At the Tribunal the respondent successfully sued the appellant over ownership of the land comprising of 8 acres located at Misoghoo in Mkiwa village within the Ikungi District in Singida region ("the suit land").

The Tribunal having heard evidence from both sides found that the respondent was the lawful owner of the suit land basing on the fact that it was proved by evidence that the respondent had been in ownership of the suit land after clearing the same since 1989, unlike the appellant who did not produce evidence of his allocation of the suit land by the village authority as he contended. The trial Chairman anchored his judgement on the provision of section 8(5) of Village Land Act, Cap 114, which requires that before the village council has allocated the land to any person it should obtain approval of the village assembly.

During hearing, Fred Kalonga, learned Advocate represented the appellant while Mugheny Hassan Kimu represented the respondent by power of attorney.

On the first ground of appeal, Mr. Kalonga submitted that the Tribunal ignored strong evidence adduced by the applicant that he had been in the

suit land since 2003 having been allocated the same by the Mkiwa village leaders. He submitted further that exhibit D1, being a copy of judgment of the Ward Tribunal in the case between the appellant and one Aron Kituu, proved ownership of the appellant one Chiku Juma, a hamlet chairperson, testified that the appellant was allocated the suit land by the village authority.

Mr. Kalonga contended further that exhibit D2 which is the lease agreement over the land in dispute proved that the appellant was the owner of the suit land that is why he could lease the same. He argued as well that exhibit D3, which was the judgment of the Ward Tribunal, declared the appellant the lawful owner of the suit land having been sued by the son of the respondent, one Samwel Samson Bakari. Basing on this submission, it was Mr. Kalonga's contention that the case was instituted by the respondent after her son had lost his case against the appellant in the Ward Tribunal whereby Aron Kituu was called as a witness.

On the second ground of appeal, Mr. Kalonga reiterated what he submitted for the first ground contending that the Tribunal erred to hold that the appellant didn't produce document of ownership from the village council to prove ownership of the suit land while there was enough evidence on the same.

On the third ground of appeal, Mr. Kalonga contended that it was necessary for the Tribunal to visit *locus in quo* in order as the respondent contended that she cleared the land and has been using the same for

farming, while the appellant told the Tribunal that the land in dispute constituted an abandoned house (*hame*).

Basing on the above submissions, Mr. Kalonga prayed the Court to allow the appeal with costs.

Mr. Kimu, in his reply, contended that the said Chiku Juma was not a village chairperson in 2003 as she was elected in 2004. He added that during the trial, he demanded the appellant to bring the said Chiku Juma to prove her allocation of the suit land to the appellant, but he couldn't do so.

Mr. Kimu contended further that the suit land was a parcel in a 40-acre land comprising of sandy soil, grassland and abandoned residential houses (*mahame*). He also opposed the visit to the visit *locus in quo* arguing that there was no confusion in the evidence adduced, hence no need for the site visit.

Regarding Aron Kituu (PW2), Mr. Kimu submitted that the land owned by him, which was subject to the case in the Ward Tribunal where the appellant won, was about a land parcel different from the suit land. He also submitted that there was no dispute that the appellant leased his land, but harried to submit that the leased land was different from the suit land.

Mr. Kimu also contended that the appellant failed to prove that the suit land was allocated to him by the village authority as he couldn't bring any evidence on the procedures that he followed to be allocated the same by the village authority; including the letter of application and minutes of both the

village council and village assembly. He argued that in absence of such minutes, it was evident that the appellant trespassed into the respondent's land.

Regarding the case which Samwel Samson Bakari lost, Mr. Kimu submitted that Mr. Bakari lost the case for lack of *locus standi* to represent her mother, the respondent. He added that it was him who was given the that mandate through a power of attorney.

In his rejoinder Mr. Kalonga reiterated his submission in chief, adding that the fact that the decision of the Ward Tribunal (exhibit D1) was never challenged through appeal, it meant that the appellant remained the owner of the suit land.

Having heard submissions by both sides, and in my perusal of Tribunal's records, the issue to determine is whether the appeal is meritorious. It is trite law that whoever alleges a fact exists must prove it and such proof, in matters like this one, has to be on balance of probabilities. This court being the 1st appellate court, has to re-evaluate the available evidence and determine which party has adduced heavier evidence on the ownership of the suit land.

From the evidence adduced by and for the appellant, the rock bed of his case is that he owned the suit land after being allocated the same by the Mkiwa village authority through its chairperson, one Chiku Juma. He also relied on exhibit D1 and D3 which are the judgments of the Ward Tribunal where he triumphed and was declared the owner of the suit land, whereas

Exhibit D2 showed that the appellant, being the owner of the suit land, was able to lease the same to one Gerine Silay Gerald. Also, Iddi Mkufi Kiteu who testified as SU2, stated that he was once leased land by the appellant.

On the side of the respondent, the evidence shows that she owned the suit land after clearing the same in 1989 as per evidence of PW1 Mughenyi Hassan Kimu, whose testimony was corroborated PW2 Aron Theophil Kituu. The evidence also revealed the neighbours, who include the respondent's other land.

Weighing the evidence briefed above, I am inclined to make a finding that the evidence of the appellant has less weight compared to that of the respondent. This is because, the issue of allocation of the land by the village authority is the cornerstone of the appellant's case, yet it needed tangible evidence that wasn't availed. The fact that the appellant was able to lease out the suit land, without having proved how he acquired it in the first place is vanity.

The Tribunal correctly relied on the provision of section 8(5) the Village Land Act (supra) as there are procedures to be followed for one to be allocated village land. I, therefore, concur with the Tribunal that the appellant was supposed to prove his claim of land allocation to him by showing the procedures adopted, and not merely stating that he was allocated by village authority through the village chairperson. Since the cases in the Ward Tribunal were against parties other than the respondent herein, the judgments obtained in those cases wouldn't be binding on the respondent, and surely, are insufficient to prove the case at hand. Apart from

the case of Mr. Bakari, who was said to have lost the case for lack of *locus standi*, it hasn't been established that the previous case between the appellant and Mr. Kiteu concerned the same suit land.

In the above connection, the submission by Mr. Kimu that the dispute was about different parcels of land altogether was not controverted by Mr. Kalonga in his rejoinder. The fact is therefore inferred to be admitted by the appellant. For this reason, even the rejoinder by Mr. Kalonga that the previous decisions of the Ward Tribunal have not been traversed, hence admitted, would have no effect if the land in dispute was not the same as the suit land.

In light of the above deliberations, putting the evidence of both parties in the balance, I find that the evidence for the respondent is weightier than that of the appellant. Since it has not been disputed that the respondent was on the suit land since 1989 and that she cleared and was using the land ever since, in absence of strong evidence to the contrary, her claim of ownership should triumph. I therefore, support the decision of the Tribunal in this regard.

Regarding the visit to *locus in quo*, I should state here that such a visit is not mandatory in law, but a need-based procedure. A court or Tribunal may make a site visit where there is a need so to do. In **Nizar M. H. Ladak v Gulamali Fazal Janmohamed**, Civil Appeal No. 9 of 1980, Mustafa, J.A observed that:

"It is only in exceptional circumstances that a Court should visit a locus in quo, as by doing so, a Court unconsciously takes the role of a witness rather than an adjudicator."


In this appeal, there appears to be no controversy as to which parcel of land the dispute is all about. Since the submission by Mr. Mugheny Hassan Kimu was not controverted by Mr. Kalonga, when Mr. Kimu stated that the land in dispute in the case between the appellant and Mr. Aron Theophil Kituu at Ward Tribunal was different from the suit land, that urge for a visit to the *locus in quo* is effectively watered down.

In the light of above discussion, I find no merit in the appeal, I hereby dismiss it. As the parties are neighbours, I make no order as to costs.

Ordered accordingly.

Dated at Dodoma this 08th day of November, 2022




ABDI S. KAGOMBA
JUDGE