

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

LAND APPEAL NO. 01 OF 2020

(Originating from Misc. Land Application No. 07 of 2019 in the High Court of Songea at Songea which originating from Land Appeal No. 56 of 2016 from District Land and Housing Tribunal for Mbinga at Mbinga which originating from Land Dispute No. 58 of 2016 of Utiri Ward Tribunal)

ADAM NDOMBA..... APPELLANT

Versus

VICENT NDUNGURU..... 1ST RESPONDENT

EMILIAN NDOMBA 2ND RESPONDENT

JUDGMENT

Date of Last Order: 29/09/2020.

Date of Judgment: 24/11/2020.

BEFORE: S.C. MOSHI, J.:

This appeal emanates from the decision of the District Land and Housing Tribunal of Mbinga at Mbinga which also originates from Utiri Ward Tribunal in Land Case No. 58 of 2016 whereby the appellant unsuccessfully sued the respondents jointly for selling a clan land measuring about four acres which was initially owned by his grandmother. Aggrieved by the decision of the Ward Tribunal he appealed to the District

Land and Housing Tribunal which blessed the decision of the Ward Tribunal hence this appeal having four grounds, however the first point cannot be termed as a ground of appeal, therefore I decided to renumber the remaining grounds as 1, 2 and 3 as hereunder:-

- 1. That, the Hon. Chairman erred in law and fact for considering matters relating to inheritance and administration of deceased person's estates which it has no jurisdiction to deal with.*
- 2. That, the Honorable chairman erred in law and in fact by not considering the evidence tendered by the appellant.*
- 3. That, the Honorable Chairman erred in law and fact in determining the dispute contrary to the need of law as the respondent never disputed by written statement of defence nor orally for lack of appearance before the District Tribunal.*

The appeal was heard *exparte* as the respondents refused to receive summons and it was disposed off by way of written submissions. The appellant appeared in person.

The appellant submitted that the first appellate tribunal had no jurisdiction to deal with the matter of inheritance as the court with such jurisdiction are Primary courts , District Courts (subordinates courts) and

High court. He said that the Land in dispute was allocated to him by one Tito Aron Ndomba who was appointed as Administrator of Estate by the late Aron Adam Ndomba on 02/04/2015 at Mbinga Urban Primary Court via Probate and Administration Cause No. 20 of 2015. That the tribunal erred for not considering this fact and declaring the respondents the owner of the disputed land while they did not challenge it, at the District Land Housing Tribunal and Utiri Ward Tribunal.

On the second ground he argued that, the trial Tribunal did not consider his evidence tendered in support of his claim that the area in dispute was given after being distributed by the administrator of the Estate of the late Aron Adam Ndomba.

Regarding the third ground of appeal he argued that the respondents never disputed over the area even by way of presenting a written statement of defence or even appearing in court, thus this shows that they don't have interest over the land and they support that the land in dispute was given by Administrator of Estate of the late Aron Adam Ndomba.

The issue to be determined is whether the appeal has merits. I will discuss the 2nd and 3rd points together as they relate to analysis of evidence. This is a second appeal in which the court has no power to

interfere with the concurrent findings of the Ward Tribunal and the first appellate tribunal, the power to do so can be exercised only in cases where it is established that the concurrent findings are based upon a misapprehension of the evidence or as the case may be if in making of their findings, the tribunals demonstrably violated or acted on wrong principles of law or practice. See the case of **Mohamedi Juma @ Kodi Versus Republic**, Criminal Appeal No. 273 of 2018 Court of Appeal at Mtwara (Unreported) and **Salum Mhando Versus Republic** (1993) TLR 170.

It is apparent that the two tribunals below made concurrent findings on the disputed land; the appellant was unsuccessfully. I concur with their findings as the appellant failed to prove his claim to the required standards of the law. In civil cases always the burden of proof lies on the party who alleges anything in his favor, Section 110 and 112 of the Tanzania Evidence Act Cap. 6 R.E 2019 are relevant and they read thus: -

"whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

(2) when a person is bound to prove the existence of any fact, it is that the burden of proof lies on that person.

112. the burden of proof as to any particular act lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person."

The appellant's evidence is to the effect that the disputed land was given to him by a person whom he didn't name in his testimony, the version which was also supported by PW2, and PW3. They stated that the land has dispute however they didn't explain what dispute is all about and the parties to such dispute.

The respondents on their side gave clear testimonies in respect acquisition of the disputed land by giving historical background of ownership. That the second respondent's father was blessed with four issues namely Aloni Ndomba, Emilian Ndomba, Tabita Ndomba and Yordan Ndomba. Their father distributed his land to each of his children; each of them was given a plot of land. Aloni, Emilian, and Tabita were blessed with children except Yordan. Therefore, Yordan took in a child of her sister

Tabita one Gido Ndunguru, he lived with him until he met his death in 1981. Gido used that land for 30 years. Later on Gido moved to another village called Kizuka, he left the land under the care of his son one Vincent Ndunguru. I am of the view that the respondents' evidence is heavier than that of the appellant.

On the issue of jurisdiction which covers the 1st point of appeal, I find that the tribunal had jurisdiction as the disputes concerned ownership of land. In the case of **Olam Tanzania Ltd and 3 others Versus Selemani S. Selemani and Four Others**, Court of Appeal at Mtwara, Consolidated Civil Revisions No. 2, 3,4, 5,6 of 2010 (unreported), the Court of Appeal held that District Land and Housing Tribunals have jurisdiction to hear and determine all lands' disputes arising under the Land Acts regardless of whether the said land is registered or not. See also section 33 of the Land Disputes Courts, Cap 216 R.E 2019. Furthermore, the District Land and Housing Tribunal has jurisdiction to hear appeals from Ward Tribunal per section 34 of the same Act. Besides, the dispute was referred to the Ward Tribunal by the appellant. Interesting enough, he's now complaining that the Tribunal didn't have jurisdiction. Therefore I find this ground meritless.

That said, I find that the appeal lacks merits, in the event it is dismissed in its entirety without costs taking into account the relationship between the parties.

Right of Appeal Explained.



[Signature]
S.C. MOSHI
JUDGE
14/10/2020