IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT SUMBAWANGA

LAND APPEAL NO. 30 OF 2019

(From the decision of the District Land and Housing Tribunal of Rukwa District at Sumbawanga in Land Application No. 7. Of 2014

ANGELO G. KAPUFI .....APPELLANT

VERSUS

1. EDWARD MATONDWA
2. HELMAN MATONDWA } **..... RESPONDENTS**
3. LEONARD MATONDWA

JUDGEMENT

21st April -11st May, 2020

MRANGO, J

This appeal was brought by the appellant, Angelo Kapufi who is contesting against the judgement and decree of the District Land and Housing Tribunal for Rukwa (henceforth the trial tribunal) at Sumbawanga in Land Application No. 7 of 2014 delivered on 22. 08. 2019 by Hon. Chairperson F. Chinuku.

At the trial tribunal, the application was determined in favour of the respondent. The appellant being aggrieved by the trial tribunal decision has

preferred this appeal comprised of ten (10) grounds of appeal as contained in the memorandum of appeal as filed by the appellant. The grounds are hereunder quoted:

1. *That the learned Chairperson of the District Land and Housing Tribunal erred in law and fact by not considering that failure by the respondents not claim anywhere over the plot for the period over 48 years.*

2. *That the learned Chairperson of the Appellate Tribunal erred in law and fact by failing completely to evaluate the evidence of me appellant which indicate from the time the respondents to be trespass over my plot.*

3. *That the learned Chairperson of the tribunal erred in law and fact by not evaluating the evidence of Edward Matonwa who paid Tsh. 20,000/= compensation to me over my plot, if that could be his plot could not pay the same.*

4. *That the Chairperson made a serious misdirection of law by deciding the case in absent of assessors.*

5. *That the learned Chairperson made a serious misdirection of law by not considering probate issues over the plot.*

6. *That the learned Chairperson made a serious misdirection of law by not considering permanent crops such as trees which I used to mine timber over the disputed land and the respondents were the buyers of those timber.*

7. *That the ward tribunal erred in law and fact by not considering the time of recovery of land.*

8. *That the Chairperson of District Land and Housing Tribunal for Rukwa defaulted the procedure as the case was heard and processed by different assessors and hence contravene the procedure.*

9. *That I was not fully treated as according to principles of natural justice.*

10. *That the District Land and Housing tribunal did not move and see the scenery of the disputed land.*

When the matter was called on for hearing before this court, the appellant appeared in person, unrepresented whereas the respondents had a legal service of Mr. Baltazar Chambi – learned advocate. The matter

proceeded orally by the appellant to adopt his grounds of appeal he has lodged. In addition, he said the respondent's advocate challenged his submission he made on 30. 01. 2014 and again on 04. 04. 2014 he challenged his own submission.

In responding, Mr. Baltazar Chambi – learned advocate for the respondents in addressing ten (10) grounds of appeal as lodged by the appellant he argued in answering form as follows;

As regard the first ground, he argued that the appellant was an invitee through his father who was invited by the father of the respondents. He said later on the appellant got married while in the land and the 1st respondent married the appellant's sister while all in the land. The appellant is why he is mentioning 48 years' time. The invitee cannot claim good tittle and claim adverse possession by the person invited him. This is per the case of **Mkemalila & Thadeo vs. Luilenda 1972 HCD 4**. He again said the same decision was adopted in the case of **Ramadhan Makwega vs. Theresia M. Mshuza, Misc. Land case No. 03 of 2018 HC DSM**. (Unreported) pg. 3. Also in **Mussa Hassan v. Barnabas Yohana Sedafa, Civil Appeal No. 101/2018** (CAT) Tanga unreported

pg. 5, an invitee cannot assume ownership and exclude his host. He finally concluded by saying the first ground of appeal has no merit.

As regard the second ground, he argued that it is the appellant who lodged an appeal as a result he had to indicate the time of occupation. The respondents were born and grew on the land and they are still in the land.

As regard the third ground, he said the tribunal properly evaluated the evidence. He argued that nowhere is reflected the compensation of Tsh. 20,000/= in the tribunal.

As regard the fourth ground, he argued that the assessors fully participated in the proceedings and in the decision making.

As regard the fifth ground, he said there was no issue of probate. It is the appellant who filed the land case. He further said the probate issue has no base. The respondents complied with the notice issued.

As regard the sixth ground, he said issue of permanent crops has no base, the appellant is an invitee and not a hosts. He cannot assume ownership.

As regard the seventh ground, he said the issue of time is not an issue to the invitee.

As regard the eighth ground, he argued that there was no change of assessors as alleged by the appellant.

As regard the ninth ground, he said the matter was heard interpartes and the tribunal observed natural justice.

As regard the tenth ground, he submitted that it is correct that the tribunal did not visit *locus in quo.* There was no issue of boundaries as a result the issue of visiting of land in dispute did not arise. The issue was ownership only and he finally prayed for the appeal to be dismissed with costs.

In rejoinder, the appellant said it is the respondent who initiated the proceedings at the village tribunal. He said there was changing of assessors though he cannot recall their names.

With the arguments of both sides being submitted and considered by this court, the crucial question for this court to determine is whether the appeal has merit in the circumstance of this case.

It is a principle of law that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove those facts exist. See **section 110 of the Law of**

Evidence Act, Cap 6 RE 2019. It is on record that the appellant was granted a piece of land by his father, namely mzee kachoma matondwa now a deceased for cultivation after he completed his primary school studies in a year 1965. He enjoyed that prestige on using such land until the year 2013 when the 1st respondent said to have sued the appellant before the Village Land Council claiming to be the rightful owner of the land in dispute. The Village Land Council mediated the dispute in favour of the respondent. Angered by such decision he filed application No. 07 /2014 at the District Land and Housing Tribunal for Rukwa which determined the application in favour of the respondents. However, having subjected his entire testimony before the trial tribunal under my scrutiny did not in any way explain to the satisfaction of trial tribunal and as well to this court how his father came unto ownership of the disputed land before he was granted such land. His only witness, Norbert Kanyoka informed the trial tribunal that in a year 2004 up to 2009 he was a village chairman who resolved the dispute between the appellant and the 1st respondent. The 1st respondent admitted to have burnt the trees in the farm of the appellant and he was ordered to pay compensation to a tune of Tsh. 200,000/=. That testimony does not prove ownership of land by the appellant or his late father. Therefore, it can be concluded that the appellant has failed to establish the

claim of ownership despite being in cultivation to such land for many years since he was granted the same by his late father.

On their part, respondents along with their two witnesses well defended their case. The respondents testified at the trial tribunal that the disputed land belong to their father mzee Kachoma Matondwa who passed away in 1976. They further argued that Mzee Kachoma Matondwa hosted applicant's father and he gave him such land for cultivation. At that the applicant was still a little boy attending school at Mwazye village.

DW2, Ernest Mwanisenga who identified as a neighbor of Mzee Kachoma testified before the tribunal that he knows the suitland very well. He said the father of 1st respondent is the one who hosted appellant's father, Geremanico Mavazi and he gave him land for cultivation, a land which was latter on given to the appellant.

Again, DW3, Conrad Mavunje when testified before the tribunal said he is a neighbor to the disputed land. He further said he started to cultivate his own land in a year 1968, thus he knows the parties to this dispute as they live in one village of Malagano. He submitted that the disputed land belongs to Mzee Matondwa, who was his neighbor as well.

Considering the foregoing discussion, it is undisputed that the appellant's father was invited to the disputed land by the respondent's father for purpose of cultivation only. Therefore, it made him to become an invitee to such land before he granted the same to the appellant. The act of being given such disputed land by his father who was an invitee to such land, and using it for long period of time did not pass good tittle to the appellant as he claimed. As rightly argued by the respondent's advocate, it has been held in various decisions of Court of Appeal and this court that no invitee can exclude his host whatever the length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited. See the case of **Mussa Hassan v. Barnabas Yohana shedafa** (supra) cited to me by the respondent's advocate. Other cases, **Samson Mwambene v. Edson James Mwanyingili [2001] TLR 1, John Livingstone Mwakipesile v. Daudi William & Others, Misc. Land Appeal No. 5 of 2012(unreported).**

It follows therefore, the finding of fact by the trial tribunal that the father of the appellant was an invitee, thus had no legal tittle in respect of the disputed land, and hence could not be able to pass good tittle of the same to the appellant is acceptable in our case at hand. With the

submission of both parties, I am of the considered view that there is no evidence to suggest that the appellant's father and the appellant himself were not invitee to the disputed land. What is clear before this court is that the appellant was given a land that was allocated to his father by the respondent's father after being hosted for purpose of cultivation only.

The above reason stated may suffice to dispose of jointly ground 2, 3, 6 and 7 of appeal as contained in the memorandum of appeal by the appellant.

Coming to ground 4 and 8 which are alike in respect of issue of assessors. The appellant argued that Hon. Chairperson concluded the dispute in the absence of the assessors and that the dispute was heard by using different assessors. Having scrutinized the proceeding of the trial tribunal, it transpired to this court that Hon. Chairperson informed the parties at the stage of defence hearing that the assessors have become indisposed, hence the suit proceeded under section **23 (3) of the Courts (Land Dispute Settlement) Act, No. 2 of 2002**. Also, In her judgement Hon. Chairperson made it clear that the suit has been disposed under provision of **section 23 (3) of the Act No. 2 of 2002** as assessors who were present at the commencement of the suit were indisposed, she

explained that one assessor was dead and other was seriously sick. The said section used by Hon. Chairperson to conclude dispute is hereby quoted to appreciate her reasons:,

> ***23(3)*** *Notwithstanding the provisions of Sub (2), if in the course of any proceedings before the tribunal either or both members of the tribunal who were present at the commencement of proceedings is or absent, the* ***chairman and the remaining member (if any) may continue and conclude the proceedings notwithstanding such absence.****[emphasis is supplied]*

At this juncture, the argument that the trial tribunal used different assessors hence defaulted to the procedure has no weight as the matter was concluded without their opinion be given as pointed above.

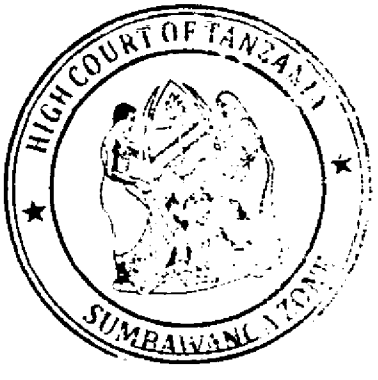
As regard the fifth ground of appeal, this court find that the ground is meritless as the case at hand is a land case. If that was the case the appellant could have raised it during the hearing of the dispute before the trial tribunal and not at this stage of an appeal.

With regard the ninth and tenth grounds of appeal, as argued by the respondent's advocate the dispute was determined interparties, the

proceedings of the tribunal shows that the parties were accorded a chance to present their case and the right to call witnesses, which is a constitutional right under **article 13** of our Constitution. Thus, I may say the trial tribunal observed the principles of natural justice during the hearing of the dispute. Again, as argued by the respondent's advocate, it is correct the trial tribunal did not visit the *locus in quo*. The dispute itself did not involve boundaries issues which could have necessitated for the trial tribunal to visit the area. Nevertheless, at present there is no law which mandatorily require for any tribunal to visit *locus in quo*. The requirement depends upon the wishes of the parties and the facts of the case if requires.

In the premise, the appeal is dismissed with costs. For the reasons as stated above, I find the appellant had no good tittle to the disputed land as he was allocated the same from the person who was an invitee of the respondent's father.

Order accordingly.



D. E. MRANGO

JUDGE

11.05.2020

Date - 11.05.2020

Coram - Hon. D.E. Mrango – J.

Appellant - Present in person

1st Respondent - Present

2nd Respondent } Absent

3rd Respondent }

B/C - Mr. A.K. Sichilima – SRMA

COURT: Judgment delivered today the 11th day of May, 2020 in presence of the Appellant and 1st Respondent and in the absence of the 2nd and 3rd Respondents/without leave.

Right of appeal explained.

HIGH COURT OF TANZANIA
SUMBAWANGA ZONE

D.E. MRANGO

JUDGE

11.05.2020