

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT COURT OF MUSOMA)

AT MUSOMA

MISC. LAND APPEAL NO. 128 OF 2020

(From the Decision of the District Land and Housing Tribunal of Tarime District
in Land Appeal No. 112 of 2018, Original Ward Tribunal
of Kisumwa Ward in Application No. 13 of 2018)

DR. JAMES KILAZA APPELLANT

VERSUS

CHACHA MAGO RESPONDENT

JUDGMENT

6/7/2021 & 27/7/2021

MKASIMONGWA, J

In the Ward Tribunal of Kisumwa Ward in Tarime District, Dr. James Kilaza (Appellant) claimed against Chacha Mago (Respondent) for a piece of Land of about 385 x 324 paces area. In the suit the Appellant alleged that the Respondent had invaded or his land without his consent. The Tribunal found the suit in favour of the Appellant (then Applicant). In its decision, the trial Tribunal was satisfied, from the evidence adduced, that initially the land in dispute was the property of the Appellant's parents and that the parents lived thereon the land prior to and even after the formation of Ujamaa villages. The land was then bequeathed to the

Appellant by his mother one Veronica Alphonse. The Tribunal, again, was satisfied that sometime later, the Kisumu Village Council Authorities allocated the land to the Mago family and that, the Authorities did so unlawfully the fact which is the genesis of the dispute at hand.

After a full trial of the matter, the trial Tribunal found the Appellant, Dr. James Kilaza to be the lawful owner of the Land and not the Respondent. The later was ordered to surrender it to the Appellant. Being aggrieved by that decision of the Ward Tribunal, the Respondent lodged an Appeal to the District Land and Housing Tribunal for Tarime. In the Petition of Appeal filed for that purpose, the Appellant listed three grounds which are:

- 1. That the trial Ward Tribunal erred in law and in fact for not considering the principle of adverse possession in its decision. The letter dated on 31st March, 2016 by the Respondent is hereby attached and marked CM1 to form part of the Appeal.*
- 2. That the trial Ward tribunal erred in law and fact for not considering documentary evidence tendered by the Appellant. The document dated 17th October, 2018 is hereby attached and marked MC2 to form part of the Appeal.*

3. That the trial Ward Tribunal erred in law and fact for entering judgment against a wrong party to suit.

In determining the appeal before it, the District Land and Housing Tribunal quashed and proceedings and set aside the judgment of the Ward Tribunal. It further directed that if the Appellant is still interested in the disputed land he has to sue Laurentia Mbusiro who has the interest in that land. The Appellate Tribunal Chairman so decided based on what he said:

"After hearing the submission from both sides and upon my perusal of original records inside the case file, I have noted that on 19/6/2018 respondent sued appellant in Ward Tribunal for trespass in the disputed land. On 26/5/2018 Laurentia Mbusiro wrote a letter to the Chairman of Ward Tribunal informing the chairman that, she is the owner of the land in dispute and she has appointed the Appellant to represent as her representative.

Section 18 (2) of the Land Disputes Courts Act No. 2 of 2002 allows any relative or member of household to represent any party in the Ward Tribunal. As the Appellant was just representative of Laurentia Mbusiro, it was wrong for the Ward Tribunal to make him a party to case as he has no any interest in the disputed land rather he was required to be representative only".

That decision of the District Land and Housing Tribunal did no good to the Appellant, hence this Appeal a Petition of which lists three grounds of Appeal from which he bids for the court's order allowing the Appeal with costs. The grounds are as follows; -

- 1. That the District Land and Housing Tribunals judgment does not contain tribunal opinions*
- 2. That the appellant Tribunal never considered evidence tendered before the trial Tribunal*
- 3. That the respondent in the case never complied with the law of this land on representative suit.*

The Appeal was resisted by the Respondent and to that effect, the later filed a Reply to the Petition of Appeal. On the date the Appeal was set for hearing before me, Mr. Thomas Makongo (Adv) appeared on behalf of the Appellant who was again present in Court whereas the Respondent appeared in person.

When Mr. Makongo, learned advocate for the Appellant was invited to argue his case, he in the first place sought to abandone the third ground of appeal and it was accordingly so marked. Arguing the first ground of appeal Mr. Makongo contended that, under the ground the Appellant challenged the judgment of the District Land and Housing Tribunal for

having not contained the opinion of the Gentlemen Assessors who assisted the Chairman of the Tribunal in determination of the matter before him. Instead, the Chairman only showed that he is not in agreement with the Assessors' opinion. The case law is to the effect that the judgment of the District Land and Housing Tribunal must contain the Assessors' opinion. As the contested judgment does not contain the opinion of the Gentlemen Assessors the same is illegal hence a nullity.

As regard to the second ground of appeal, Mr. Makongo submitted that the evidence on record is silent for it does not show how the Respondent accounted for his ownership over the land in dispute. The evidence actually on the balance of probabilities, tilted in favour of the Appellant. Had the District Land and Housing Tribunal properly considered the evidence on record, it could not have determined the matter in favour of the Respondent as it did, by the judgment in which the Chairman did not state his observations from which he based his decision. The learned advocate prayed the Court that it allows the Appeal with costs.

On his part the Respondent submitted that in the Appeal, the Appellant has raised three grounds. He stated that the case first brought before the Ward Tribunal, was brought against Mbusiro Mago @ Laurentia

Mbusiro and that they adduced evidence from which the District Land and Housing Tribunal again based its decision. The Respondent submitted further that in the case before the District Land and Housing Tribunal the Assessors were involved and that they were given a special day on which they were to give their views/opinions in the case. Going by the evidence on record, the Respondent stated that the Chairman of the District Land and Housing Tribunal was justified to find the way he did in this matter. He concluded by praying the Court that it dismisses the appeal with costs.

I have considered the submissions and the evidence on record and the record as a whole. Going by the record, it is clear that before the Ward Tribunal the Appellant sued the Respondent for trespassing into his land. There was ample evidence adduced in favour of the Appellant which evidences that the land in dispute belonged to the Appellant and acting on that evidence the trial Tribunal found the suit in favour of the Appellant. The same view had the Gentlemen Assessors in the District Land and Housing Tribunal on appeal. Indeed the decision of the Appellate Tribunal part of which is quoted above was not based on the evidence the parties had adduced in the matter. In his defence, the Respondent stated that the land he was developing from which development this dispute arose belongs

to Mago family. Since the Appellant had claimed that the Respondent had trespassed on his land and since the Respondent had claimed that the land does not belong to the Appellant, it was for the parties to prove their allegations. It was strange therefore, when on 26/5/2018 Laurentia Mbusiro wrote a letter to the Chairman of the Ward Tribunal informing it that she is the owner of the land in dispute and that she appointed the respondent as her representative. In my view ownership of the suit land was the issue to be determined by the Tribunal in which case Laurentia Mbusiro could have sought to be joined in the matter for her to defend her interest. She did not, but, surface in the Tribunal as a party or even as a witness.

Section 18 (2) of the Land Disputes Courts Act [Cap 216 R.E 2019] to which the Appellate found assistance in reaching to its conclusion reads as follows:

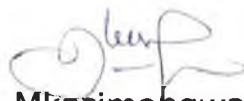
"18 (2) Subject to the provisions of subsections (1) and (3) of this Section, a Ward Tribunal may permit any relative or any member of the household of any party to any proceedings upon request of such party to appear and act for such party".

With due respect, the Appellate Tribunal was wrong when it acted on the letter of Laurentia Mbusiro purporting to do so under the above provision of the law, and found that it was wrong when the Ward Tribunal made the Respondent a party to the case. Section 18 of the Land Disputes Courts is on appearance by the parties. Subsection (2) of the Section allows a relative or member of the household of any party to any proceedings upon request of such a party to appear and act on behalf of such a party. It is important to note here that it is a party to the case who is intitled to request to the Ward Tribunal that a relative or member of his household appears and act on his behalf. In the case at hand, from the beginning Laurentia Mbusiro was not a party to the case. She could not therefore, ask the Tribunal that the Respondent appears and acts on her behalf. In my view the Ward Tribunal rightly neglected the letter of Laurentia Mbusiro and the District Land and Housing Tribunal was wrong when it acted on it.

All in all, the District Land and Housing Tribunal did not properly direct its minds to the evidence on record. It also illegally acted on the letter written by Laurentia Mbusiro demonstrating that the Respondent was just her representative while in fact it was the Respondent who was personally sued in the matter.

In event I find merit in this Appeal. The decision of the District Land and Housing Tribunal is quashed and that of the Ward Tribunal is restored. The Appeal is allowed with costs.

DATED at MUSOMA this 27th of July, 2021.



E. J. Mkasimongwa

JUDGE

27/7/2021