

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA**

MISCELLANEOUS LAND APPEAL NO. 09 OF 2020
*(Originating from the decision of the District Land and Housing
Tribunal for Kyela in Land Appeal No. 01 of 2019 and original
Land Case No. 03 of 2018 of Ndobo Ward Tribunal)*

DAUDI K. MWAKALEJA.....APPELLANT

VERSUS

ALIKO MWANGUNGULU.....RESPONDENT

JUDGMENT

Dated: 15th & 11th August, 2021

KARAYEMAHA, J

This is the second appeal. It stems from the Ndobo Ward Tribunal (WT) where the Appellant Daudi K. Mwakaleja sued the Respondent one Aliko Mwangungulu claiming that the latter invaded his land located at Isuba Village within Ndobo Ward. After a full trial, the chairman and assessors who sat with him at the trial unanimously decided in favour of the Respondent. Dissatisfied, the appellant appealed to the District Land and Housing Tribunal for Kyela which upheld the decision of the Ward Tribunal. Still aggrieved the appellant appealed to this court. His petition of appeal contains seven (7) grounds namely;

1. *That, the appellate Tribunal erred in law and facts when it heard the appeal before it that the land in dispute was belonged (sic) to the respondent while in reality there were no any evidence to support on how he acquired the said land and the appellant proved enough in his evidence which reveals that the land in dispute was not belonged to the respondent as there were no anybody else whom was given the said land.*
2. *That, the appellate tribunal erred in law and fact when it heard the appeal before it that the land in dispute was belonged (sic) to the respondent basing on the weak evidence that the respondent was in the position to use the land for a period of time while in reality the use of land does not validate to be in the position of possession rather than being for using only.*
3. *That, the appellate Tribunal erred in law and facts when it heard the appeal before it and decided the suit in favour of the respondent basing on the weak evidence that he acquired the disputed land by the way of purchase from the deceased while in reality it was false statement basing the forged documents and therefore he was not the real owner of the disputed land.*
4. *That, the appellate Tribunal erred in law and facts when it heard the appeal before it and moved into wrong decision after being*

disposed the land from the appellant and gave it to the respondent basing on the statement of irrelevant which states that the respondent is the owner of the disputed land which is contrary to the law.

- 5. That, the appellate Tribunal erred in law and facts when it heard the appeal before it and taking into account irrelevant facts and disregarding relevant facts in the circumstances of the case.*
- 6. That, the appellate Tribunal erred in law and facts when it heard the appeal before it and failed to analyze properly the evidences before it as a result it reached at wrong conclusion.*
- 7. That, the appellate Tribunal erred in law and facts when it failed to analyze properly the evidence which was testified at the ward Tribunal.*

The respondent did not file a reply to the petition of appeal.

At the hearing of the appeal, the appellant appeared in person, without legal representation, while the respondent enjoyed the service of Ms. Mgaya, learned counsel.

Getting us underway was the appellant whose submission was that DLHT erred in deciding in favour of the respondent as there was no exhibit showing how he obtained the suit land while his evidence proved that he was given the same as an administrator after the demise of his brother who was

the previous administrator of the estate of their late father Kitanganye Mkemele.

The appellant stated further that the DLHT relied on weak evidence to decide that the respondent was the lawful owner of the suit land. It was his argument that long usage of land did not entail legal ownership of the suit land by the respondent. Regarding his brother Michael Mwakalege who died on 26/09/2016, the appellant insisted that he was not the owner of the suit land. The appellant vehemently submitted that the WT and DLHT erred on basing their decisions on forged documents, to wit, the sale agreements. Amplifying on this point he said that no any clan member was involved in signing the said sale agreements. To him the DLHT was not correct to dismiss his appeal and declare the respondent the lawful owner of the suit land.

Wounding up, the appellant complained that the DLHT did not analyse and evaluate the evidence properly as a result it reached at a wrong decision.

In rebuttal, Ms. Mgaya resisted the appeal. In respect of the complaint that there were no exhibit tendered leading the respondent to win the case, the learned counsel submitted that the respondent tendered the sale agreement which were unmarked at the trial between Aliko Mwangunguru and Michael Kitangania Mwakaliya, which passed un objected, the exhibit that

made the WT and DLHT to believe him and ultimately declared him as a lawful owner of the suit land. She said further that apart from the exhibits there were witnesses as reflected at page 3 of the DLHT's judgment whose testimonies helped both tribunals in reaching at the decision as they did.

On the complaint that the DLHT did not consider the fact that the appellant was given the suit land by his brother who before his death was an administrator, the learned counsel argued that there is no evidence showing that his brother was an administrator. She held the view that the appellant did not tender any document to prove these allegations or produce his brother to back him up.

In respect of the weak evidence, the counsel for the respondent submitted that the respondent gave strong evidence which was not disputed. She argued that the sale agreement showed clearly that the respondent bought the suit land since 2002 from the owner namely Michael Mwakaleje who was the lawful owner and after buying it he continued to use it without disturbance during Mwakaleje's lifetime.

On the appellant's laments that the agreement was forged, the counsel for the respondent submitted that the same has no merits because forgery is a serious offence and the appellant failed to show which part of the agreement was forged, who forged it and which steps he took to initiate criminal proceedings.

Regarding the complaint that clan members were not involved in signing the sale agreement, Ms. Mgaya submitted that the suit land belonged to Michael Kitangania Mwakaliya not to the clan. To her he was not obliged to involve the clan in selling his property. She responded adding that the appellant had no evidence showing that he once owned legally the suit land. In view of that the WT and the DLHT cannot be faulted in their findings.

It was her further submission that the Ward Tribunal did not err to declare the respondent the owner. She said that the record does not entail that the appellant once owned the suit land. Conversely, the proceedings show that it was legally owned by Michael Kitangania Mwakaleje who decided to sell it.

Lastly on the long usage of land, it was the counsel's response that DLHT didn't base its decision on that point only. Instead it based its decision on the evidence as a whole including the sale agreement. The learned counsel wound up by urging this court to dismiss the unmerited appeal with cost.

Rejoining, the appellant stated that witnesses who were called on capacity that they signed the sale agreement denied the same. He said that when Andwele was summoned to testify he denied knowing how to read and write but the sale agreement contains his signature. He stated further that Paulo was not there but signed.

The appellant submitted adding that the counsel twisted the statement that the suit land belonged to Mwakaleja but actually it belonged to their father namely Kitanganye Mkemele. He contradicted the learned counsel's reply by arguing that the respondent could not be a legal owner because procedures for buying the suit land as stipulated in Tanzanian laws were not complied with.

Lastly, the appellant prayed those who signed on the sale agreement to be summoned to testify to get satisfied if they signed the sale agreement or not.

I have earnestly gone through the rival submissions by parties and the records of the entire matter and I am of the view that the issue for determination is whether this appeal has merit? I am going to resolve this issue by looking at the evidences available and the submissions made by parties.

As I said earlier that this is the second appeal and the court rarely interfere with concurrent findings of facts of the lower court. Happily, this area is not devoid of authorities. We have for example the case of **Nurdin Mohamed @ Mkula vs. Republic**, Criminal Appeal No. 112 of 2013 Court of Appeal Iringa and **Matem Leison & Another vs. Republic (1998) TLR 102** where in the later it was said:

"Appellate court may in rare circumstances interfere with trial court findings of facts, it may do so in the instance where the trial

courts had omitted to consider or had misconstrued some material evidence or had acted on a wrong principle or had erred in its approach to evaluate evidence."

In this journey, in order to interfere with the findings of the subordinate courts, it must be clear that the two lower courts omitted to consider or misconstrued some material evidence, acted on wrong principle or erred in its approach to evaluate evidence. Lack of these factors my scope is limited.

Before commencing my deliberations, I have one observation to make. It is related to the documentary evidences tendered during the trial. I have found out that they were photocopies but were unmarked. However, in its judgment, the WT considered them. The question is whether that is fatal. It is a common knowledge the WT's procedures must be simple and accessible. This position was discussed at length by the superior Bench's own decision in the case of **Yakobo Magoiga Gichere vs Peninah Yusuph**, Civil Appeal No. 55 Of 2017. The court said:

"... the Court should not read additional procedural technicalities into the simple and accessible way Ward Tribunals in Tanzania conduct their daily businesses".

The Superior sated further that:

With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous

Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act should be given more prominence to cut back on over-reliance on procedural technicalities. Section 45 provides:

*"S. 45. - **No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error; omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.**"*
[Emphasis].

Section 13 of the Land Disputes Courts Act underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary

functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements."

In view of the foregoing, I have to consider whether the irregularities manifesting themselves in the WT's proceedings have in fact occasioned a failure of justice or not. My reading and understanding of the whole evidence and proceedings of the WT, destines to the conclusion that there was no miscarriage of justice. In the final analysis, therefore, I have to proceed to determine this appeal on merits.

The foregoing brings me to a discussion of the grounds of appeal. I propose to start the discussion by joining grounds number 1, 2, 3, 6 and 7 because they relate to each other. Through them the appellant attack the DLHT on failure to re-evaluate and analyze the evidence. He believed that the DLHT considering that the evidence on long usage of land and sale agreement which was forged was a total error. I have gone through the records and the submissions. I agree with Ms. Mgaya that that the DLHT properly evaluated and analysed the evidence which was cogent and very healthy. I have as well gone through the sale agreement and I am satisfied that the same was between Michael Kitanganya Mwakaleja and Aliko Mwangungulu. It was signed before Village Executive Officer at different times on 10th July, 2002 at a price of four hundred thousands, on 11th

August, 2003 at a price of three hundred thousand and on 15th May, 2008 at a cow price estimated to three hundred seventy thousand. All these three agreements were witnessed by Andwele and Michael Paul. The evidence on record shows that the appellant was appointed as the administrator of the late Kitangania Nkemele Mwakaleje who died on 18th November, 1992 since 5th February, 2018. As correctly argued by Ms. Mgaya, the evidence is categorical that the respondent has been using the suit land without any disturbance from 2002, 2003 and 2008. If there was any query and if it was true that the suit land belonged to the clan, the appellant would have shown in his evidence that he once protested.

In truth and as matters in record stand, I am not agreeing with the appellant that the decision of both lower tribunals based on long usage of land. I have closely studied the DLHT's judgment. I am certain beyond doubt that the chairman considered the whole evidence without discrimination of any piece of it. His style of analysis and evaluation of evidence invites suffers no fault. I have a clear mind to hold that there was no omission of the evidence or that he misconstrued the evidence. In the event therefore, this court is not prepared to interfere with the concurrent findings of facts of the lower tribunals. Conclusively, grounds 1, 2 and 3 are rejected.

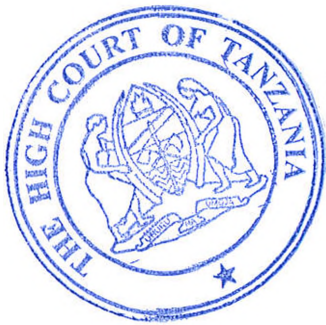
Grounds 6 and 7 can also be conveniently discussed together as they tend to front a complaint that the DLHT failed to analyze evidence adduced

at WT and appellate tribunal. First of all it must be clear that no evidence was taken at the appellate stage. However, the evidence in the records of the WT is obvious that the appellant has been an administrator of the late Kitangania Nkemele Mwakaleja since 5th February, 2018 while the sale agreements were effected way back on 2002, 2003 and 2008 and the respondent was in full time use of the land without any interference until the appellant instituted the suit in 2018. I find no point to fault the lower tribunals' decision because they properly considered the witnesses' testimonies and documentary evidences which all intimate how the respondent acquired that land, in that case even the 1st appellate tribunal had nothing to change on the evidence available. Under these circumstances these grounds too seem to be baseless.

I have also read grounds 4 and 5 and learned that the appellant is accusing the DLHT for failing to consider relevant facts and considered irrelevant facts. When the appellant was called on to submit he never said anything about these grounds. Therefore, it has been difficult to grasp what relevant facts were not considered and what irrelevant facts were considered. Where grounds of appeal are left unexplained, in my view it is equal to abandoning them. However, this will depend on the nature of the grounds as this finding cannot be taken whole sale.

In the circumstances, this court is of the considered view that the DLHT properly directed its mind to the evidence in record, evaluated it and reached to the sounding decision. Since there was no misapprehension of the evidence or that the DLHT misconstrued it there is no reason to interfere with the concurrent findings of the tribunals below. In the upshot, the unmerited appeal is consequently dismiss it with cost.

It is so ordered.



DATED at **MBEYA** this **11th August, 2021.**

A handwritten signature in blue ink, appearing to be "J. M. Karayemaha", is written over a faint, circular official stamp.

J. M. Karayemaha
JUDGE