

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(APPELLATE JURISDICTION)**

**MISC. LAND APPEAL NO. 04 OF 2022**

(Arising from Land Appeal No. 30/2021 of the District Land and Housing Tribunal of Kigoma Before F. Chinuku – Chairperson)

**JIRANI S/O RAMADHANI NKALA.....APPELLANT**

**VERSUS**

**WILBARD S/O MALIYATABU .....RESPONDENT**

**J U D G M E N T**

09/05/2022 & 03/06/2022

**L.M. Mlacha, J.**

At Uvinza Ward Tribunal in Application No. 1/2021, the appellant, Jirani Ramadhani Nkala filed an application against the respondent, Wilbard Malyatabu Lukonya claiming trespass to the family land measuring Six (6) acres which has 7 mango trees. On being summoned to answer the claim, the respondent said that he brought the land on 16/4/2004 from the late Ramadhani Nkala who is the appellant's father. The late Ramadhani died in 2008. The ward tribunal moved to a full trial.

It was the appellant's case at the ward tribunal that they have a big piece of land in the area. They decided to cut a small piece in 2015 to attend some

family problems. The respondent resisted the sale saying the land was his. He brought a sale agreement showing that his father had sold 6 acres to him in 2004. The sale was witnessed by the village executive secretary (VEO). He could not see the respondent in the land until 2015. He did not recognize the sale. The respondent said that he could not do anything on the land because he was still thinking on what to do. He went on to say that he could not see come to see the family after the death of their father because he believed that he had bought the land legally. The appellant's mother appeared at the tribunal and said that she was not aware of the sale. She added that her husband could not have declined to tell her if he had sold the land.

The ward tribunal doubted the sale agreement. It found that the appellant had heavy evidence than the respondent. It declared him the lawful owner of the land.

In declaring the appellant the lawful owner of the land, the ward tribunal had this in mind; (i) that, the respondent had failed to bring the VEO to testify on the sale agreement, (ii) that, there was need to have other witnesses to witness the sale. The VEO alone was not enough, (iii) that, the late Ramadhani Nkara signed using a thumb print not R. Nkara and (iv) that,

the sale agreement contradicted the village Land Act No. 5 of 1999. It declared the land to be the property of the family of the late Ramadhani Nkara and not the respondent.

The respondent was aggrieved by the decision of the ward tribunal and appealed to the District Land and Housing Tribunal (the DLHT) in Land Appeal No. 30/2021. The DLHT vacated the decision of the Ward Tribunal. It found that there was a valid sale agreement between the respondent and the late Ramadhani Nkala. The respondent was declared the lawful owner of the land. The appellant was aggrieved hence the appeal.

The grounds upon which the appeal is based reads;

- 1. That, appellant Tribunal seriously erred in both law and facts by ignoring the evidence tendered by the appellant's side.*
- 2. That, the appellant Tribunal erred in law and facts by failure to analyse and take into consideration evidence/explanation of both parties, hence reached to wrong decision.*
- 3. That, appellant tribunal erred in law and facts by concluding that the said land belonged to the deceased while the said land was a matrimonial property.*

The appellant appeared in person while the respondent had the services of Mr. Kagashe. Hearing was done by oral submissions. It was the submission of the appellant that the suit land is part of the family land which has 20 acres and 30 Mango trees. He went on to say that the respondent alleged to have bought the land from his late father but they never saw him on the land during the life of their father. They sold part of the land on 5/7/2015. The respondent came to invade the land in December 2015 by affixing a sign board on the land. He said that he had bought the land from their late father but could not say why he could not come earlier. He went on to say that the sale agreement had the thumb print of their father and the VEO only. He wonders the reason as to why there were no other witnesses. And why their mother could not be involved.

Submitting in reply, Mr. Kagashe said that the respondent bought from Ramadhani Nkala, the appellant's father in 2008. He built a foundation. He had no problem with the appellant's mother. The appellant was not at home by then. Their father was an employee somewhere. He used to sign. He knew how to write. Their mother was present but never opposed the respondent's occupation of the land. He had the view that the DLHT evaluated the evidence properly. He supported the judgment of the DLHT.



He asked the court to seek guidance from **Abdul Athumani v. R.** [2004] TLR 151. He argued the court to dismiss the appeal.

I had time to peruse the record closely. I have also taken into account the parties' submissions. I will start with the sale agreement for this is the center of controversy. A copy of the sale agreement which is in the record of the ward tribunal reads as under;

**"OFISI YA MTENDAJI – KIJIKI**

**UVINZA – KIGOMA (V)**

**16/01/2004**

**HATI YA MAUZIANO YA KUUZIANA SHAMBA LENYE UKUBWA WA  
EKARI 6 (NYAMBUTWE)**

*Mimi Ramadhani Nkara wa Kijiji cha Uvinza ninamuuzia Shamba langu lenye ukubwa wa ekari 6 ndugu Wilbard Malyatabu wa UVINZA. Lenye miche ya miembe 7 na mazao madogomadogo yasiyo ya kudumu kwa thamani ya shilingi 77,500/= elfu sabini na tano na mia tano tu.*

*Mbele ya Afisa Mtendaji wa Kijiji Uvinza. Nimelipwa fedha zote.*

*Sahihi ya Muuzaji (thumb print)*

*Sahihi ya Mnunuzi (Signed)*

*Uthibitisho (Signed)*

*Stamped – MTENDAJI WA KIJIKI UVINZA"*

The agreement shows that it was not witnessed by any other witness other than the VEO. The seller signed by a thumb print. Management of village Land is under the control of the village council (See section 8 of The Village Land Act, Cap 114). In matters of sale of Land at the village, parties have to go to the village office with their witnesses. The sale agreement must be witnessed by the village chairman and the VEO on behalf of the village council. Usually each of the parties come with witnesses, at least 2. They will then sign before the village leaders who will also sign and affix the stamp of the village council. The new member of the village will then be welcomed at the village in an arrangement which will be done by village leaders. In some cases, he will be invited in a meeting of the village council or village assembly and be introduced. People will then know that there is a new member of the village. It is not something to be done secretly or privately between the parties as if they are selling a goat. Sale of land in the village must be made known to villagers and the public. My brother Kilekamajenga J. had this mind in **Priskila Mwainunu vs Magongo Justus**, Land case Appeal No. 9/2020 (High Court Bukoba) pages 19-20 when he said:

*".... The village council has power over the customary right of occupancy including deemed right of occupancy. It is therefore*

*inappropriate and illegal to disregard the approval of the village council  
wherever selling customary right of occupancy"*

The sale agreement in this case was sanctioned by the Village Executive Secretary alone. There is no proof that the village council or at least the chairman of the village was aware of it. There was no other witness other than the VEO. I think that the fact that the document was witnessed by the VEO alone without the involvement of any other witness, not even the village chairman, put it in the doubtful position and illegal.

Further, the fact that the respondent could not appear at the suit land or make any development from 2004 up to 2015 brings more doubts to the sale agreement. One could expect him developing the land or at least visiting it now and then. But there was no such a thing from 2004 up to 2015, eleven years. This is very unusual. This conduct does not suggest that the respondent bought the land. This fact coupled with the weaknesses of the sale agreement makes the respondent's evidence very weak. To the contrary the evidence of the appellant which was supported by his mother appeared very strong. They all said that they were not aware of the sale agreement and the respondent. They just saw him in December 2015 saying that he had bought the land. I think that the ward tribunal was justified to

reject the document and the story of the respondent. The evidence of the appellant had more weight. It proved the case on the balance of probability that the land belongs to the appellant having inherited it from his late father.

That said, the decision of the DLHT is vacated and set aside. The appellant is declared to be the lawful owner of the land.

Appeal allowed with costs.



**Sgd: L.M. Mlacha**

**Judge**

**03/06/2022**

**Court:** Judgment delivered. Right of appeal explained.



**Sgd: L.M. MLACHA**

**JUDGE**

**3/6/2022**