

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 89 OF 2022

(C/F Land Application No. 129 of 2020 District Land and Housing Tribunal of Arusha at Arusha)

DANIEL SAITOTI APPELLANT

VERSUS

LONG'IDU KIDOMOITA RESPONDENT

JUDGMENT

19th July & 30th August, 2023

TIGANGA, J.

This appeal emanates from the decision of the District Land and Housing Tribunal of Arusha at Arusha (the trial tribunal) in Land Application No. 129 of 2020 in which the appellant herein unsuccessfully sued the respondent for trespassing into his piece of land measuring 5 acres located at Ujamaa Village in Oljoro Ward within Meru District (the suit land).

According to the trial tribunal's records, the appellant claimed that, he was sold the suit land by Lenasira Lekoyi and Lataswaraki Mesarieki way back in 2004. However, the sale transaction was finalized after the death of the second seller, but his son signed on his behalf while he was not appointed as administrator of his estate. The said sale agreement was admitted into evidence as exhibit P1.

On the other side, the respondent's evidence shows that, he owns a piece of land measuring 30 acres with the suit land inclusive since 1984. That, he was given the same by the Village Government but the appellant has trespassed therein. Further that, in 2020, they tried to settle the matter amicably through the meeting convened by the chairperson of the village government where the appellant was declared a trespasser. He however, filed this case instead of vacating the suit land.

At the end of the trial, the tribunal dismissed the application on the main ground that, exhibit P1 which is the foundation of the appellant's claims was illegally procured as the same is seen to be signed by Lotasarwaki Mesarieki who was dead at the time of signing. Henceforth, the same cannot declare him owner of the suit land. Aggrieved by the decision, he preferred this appeal with the following three grounds;

1. That, the trial tribunal erred in law and in fact in failing to evaluate the evidence therefore reach into a bad decision.
2. That, the trial tribunal erred in law and fact in relying on respondent's testimony which had no documentary evidence to support it.
3. That, the trial tribunal erred in law and in fact in disregarding the appellant's evidence and witness testimonies.

During hearing which was by way of written submissions, the appellant was represented by Mrs. Aziza Shakale while the respondents was represented by Mr. Lengai Sarunga Loitha both learned Advocates.

Supporting the appeal, Mrs. Shakale submitted on the grounds of appeal jointly that, the appellant bought the suit land legally from the Lenasira Lekoyi and Loitaswaraki Mesarieki. That, even if the latter died, his family through PW2 and PW4 has testified to acknowledge that, they had legally sold the suit land to the appellant, thus the trial tribunal erred in declaring the sale agreement unlawful. She further argued that, DW1 had no enough proof of how he acquired the suit land thus, the trial tribunal erred in holding that, the respondent owns the suit land because he had already won the case against one Tiiko which was determined by Oljoro Ward Tribunal while he did not tender any document to prove existence of such dispute.

Learned counsel further challenged DW2's testimony because at first he denied to have been a witness to the Sale agreement, exhibit P1, but at the same time acknowledged to have witnessed the sale agreement of appellant's another piece of land at "Bondeni" area and not the suit land. He however did not describe the size of the area he allegedly signed a sale agreement. She prayed that, DW2's testimony be discredited as he was not trustworthy and that, this Court step into the shoes of the trial

tribunal and reassess the evidence as held in the case of **Kaimu Saidi vs. The Republic**, Criminal Appeal No. 391 of 2019 CAT at Mtwara (unreported) and allow this appeal with cost.

Opposing the appeal Mr. Loitha submitted that, the trial tribunal did evaluate the testimonies of each party before making its final decision. Further to that, the trial tribunal did not err in disregarding the appellant's evidence because exhibit P1 was questionable and his witnesses gave contradictory evidence. This is because, the appellant tendered a forged document to prove his claims, and he admitted it being signed by a person who was dead at the time it was signed.

Mr. Loitha further submitted that, the respondent's evidence was heavier than that of the appellant as he managed to show that he owned the suit land since 1984. To cement his argument, he cited the cases of **Kamando Kimatare vs. Edward Mohamed** [1978] TLR 67 and **Shabani Nassoro vs. Rajabu Juma Simba** [1967] HCD 23 in where it was emphasised not to disturb a person from using a piece of land occupied for more than twenty years without disturbance and has made developments thereof. He prayed that, the appeal be dismissed with cost.

In his rejoinder, appellant's counsel reiterated her earlier submission, and maintained that appellant's case was proved at the

balance of probabilities that the suit land belonged to him through sale agreement. She cited the case of **Twaziirwa Abraham Mgema vs. James Christian Basil (as Administrator of the Estate of the late Christiam Basil Kiria, Deceased)** Civil Appeal No. 229 of 2018 CAT at Dsm (unreported) to support the contention that, one can acquire land through sale. She prayed the appeal be allowed with costs.

Having gone through the trial court's records as well as both parties submissions, I now proceed to determine the 1st and 3rd grounds of appeal jointly followed by the 2nd ground of appeal. This is because generally, on the 1st and 3rd grounds the appellant challenges the trial tribunal for holding that he did not prove his case that, the suit land belongs him.

It is a trite principle that, in land disputes, just like in normal civil cases, the onus of proving the case is at the balance of probabilities which lies on the one who alleges anything on his/her favour. This principle is enshrined under sections 3(2)(b) and 110 of the Evidence Act, Cap 6 R.E. 2022 (Evidence Act) and in a number of Court of Appeal Cases such as in the case of **Maria Amandus Kavishe vs. Norah Waziri Mzeru (Administratrix of the Estate of the late Silvanus Mzeru) & Another**, Civil Appeal No. 365 of 2019 CAT at Dsm (unreported) where the Court of Appeal had this to say;

*"It is a cherished principle of law that, generally in civil cases, the burden of proof lies on the person who alleges anything in his or her favour. This is the essence of the provisions of sections 110 (1), (2) and 111 of the Evidence Act. It is equally elementary that, since in this appeal the dispute between the parties was of civil nature, the standard of proof was on a balance of probabilities, which simply means that the court will sustain such evidence which is more credible than the other on a particular fact to be proved. See: **Anthony Masanga v. Penina Mama Ngesi & Another**, Civil Appeal No. 118 of 2014 and **Hamza Byarushengo vs Fulgencia Manya & 4 Others**, Civil Appeal No. 33 of 2017 (both unreported). It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies, discharges his and that the burden of proof is not diluted on account of the weakness of the opposite party's case."*

Applying the above principle in the appeal at hand, from the outset I find that, the trial tribunal was justified to reach the decision of dismissing the appellant's claims for want of proof. I hold so because, the main evidence in proving that the suit land was sold to the appellant is the Sale Agreement, exhibit P1. As rightly analysed by the trial tribunal, the said Sale Agreement shows that, the appellant was sold the suit land by Lenasira Lekoyi and Lotasarwaki Mesarieki on 10/02/2014. However, as per the evidence the latter was dead at the time it was signed hence the signature written "JOEL" was done by his son, PW3. This in itself

creates doubt as to its authenticity, because it raises questions as to why didn't the late Lotasarwaki sign the said sale at the time the allegedly transaction was done. Or rather, why didn't PW3 show that, he was signing on behalf of his father who was not alive. In his final analysis the trial chairman held as follows;

"Hata ukiangalia kielelezo P1 inaonekana wazi kwamba pamoja na kwamba nyaraka hiyo inaonyesha kwamba ardhi ya daawa iliuzwa na Lenasira Lekoyi na Lotasarwaki Mesarieki katika sahihi zilizowekwa kuthibitisha uuzaji huo sehemu ya Lotasarwaki Mesarieki imesainiwa na mtu ambaye sio yeye. SM3 alikiri kwenye ushahidi wake kuwa ni yeye ndle alitia sahihi hiyo. Hata hivyo, hakusema alipata wapi mamlaka ya kutia sahihi katika nafasi ya Lotasarwaki Mesarieki ikiwa mtu huyo kwa wakati huo alishafariki.

Nadhani ni kwa sababu hiyo ya SM3 kutia sahihi kwenye nafasi iliyotakiwa kutiwa sahihi na marehemu Lotasarwaki Mesarieki ndio maana mjibu maombi aliidai kwenye hati yake ya utetezi kwamba kielelezo P1 kilighushiwa. Kwa maoni yangu, mapungufu hayo yaliyobainika yanafanya kielelezo hicho kisiaminike na hivyo hakiwezi kuthibitisha mauziano yanayodaiwa kufanywa baina ya Lenasira Lekoyi na Lotasarwaki Mesarieki kwa upande mmoja na mleta maombi kwa upande mwingine.

Baada ya kielelezo P1 kuonekana kuwa haklaminiki na kwa kuwa mashahidi wote wa upande wa madai walijaribu kusimamia kwenye kielelezo hicho katika kujaribu kuthibitisha madai ya mleta maombi ni dhahiri kuwa hakuna ushahidi ambao Baraza

hili litaweza kuutumia na kuridhika kwamba ardhi ya daawa ni mali ya mleta maombi huyo."

In light of the above reasoning which I find sound and approve, it is my considered opinion that, PW3 who signed, or rather anyone with interest of the late Lotasarwaki Mesarieki's estate should have petitioned for letters of his administration so as to be appointed as the administrator of his estate so that, he can proceed to sale or distribute the estate legally. Short of that, any transaction done on behalf of a dead person without legal power to do so as the one exhibited in PE1 is void ab initio, and an absolute nullity. These two grounds fail.

On the 2nd ground the appellant challenged the trial tribunal in relying on the respondent's evidence and declared the respondent as the lawful owner of the suit land while he did not prove ownership of the suit land. The judgment shows that, the trial chairman made his reasoning regarding the case at the Ward tribunal that it was not related to the suit land. However at the end the trial tribunal's judgment did not declare the respondent as the owner of the suit land. The following is the holding of the trial tribunal regarding this matter;

"Kwa upande mwingine sikushawishika kutumia kielelezo D1 kama uthibitisho kuwa ardhi ya daawa ni mali ya mjibu maombi. Kielelezo hicho ni uamuzi wa Serikali ya Kijiji cha Oljoro katika kujaribu kusuluhisha mgogoro wa wadaawa katika shauri hili.

Kwa kuwa Mamlaka hiyo sio miongoni mwa vyombo vilivyotajwa katika Sheria kuwa vina mamlaka ya kutatua migogoro ya ardhi na kwa kuwa uamuzi wake ulikuwa ni wa kiusuluhishi tu na kwa kitendo cha mleta maombi kuleta tena mgogoro katika Baraza hili ni kiashiria tosha kwamba usuluhishi uliofanywa haukufanikwa na husingeweza kumfunga mleta maombi. Kwa sababu zote nilizojaribu kuzeleza nitajibu kiini namba 1 kwa kusema kwamba mleta maombi sio mmiliki wa ardhi ya daawa.”

This observation does not show that, the trial tribunal either relied on respondent's evidence or declare the him as the lawful owner of the suit land. However, for the respondent to be declared as the lawful owner, he was equally supposed to prove that he was entitled to that order. He was supposed to raise the counter claim, and bring evidence to prove the same. I hold so because, while the general principles under section 110 of the Evidence Act, requires the plaintiff to prove his claim, section 112 of the same law provides that where proof is of a particular fact, the burden 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.

Equally, as the respondent wanted the court to believe that the suit land was allocated to him by the village authority, then he was supposed to bring evidence to prove that particular fact for the Court to believe, and declare him to be the lawful owner. Since he did not do so, that justifies

the reasons as to why the trial tribunal did not declare him the owner. Just by way of passing, he is advised, if he has evidence to institute the case to the proper forum claiming the ownership of the piece of land in question. This ground also fails.

In light of the above, this appeal lacks merit and the same is dismissed with costs the trial tribunal's decision is hereby upheld.

It is accordingly ordered.

DATED and delivered at **ARUSHA** this 30th of August, 2023



A handwritten signature in black ink, appearing to read "J.C. Tiganga", written over a horizontal line.

J.C. TIGANGA

JUDGE