

IN THE HIGH COURT OF TANZANIA
(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 32 OF 2022

*(Originated from the decision of the District Land and Housing Tribunal for Rukwa at
Sumbawanga in Land Application No. 31 of 2019 dated 28.09.2022 before Hon. J.
Lwezaura-Chairperson)*

FAUSTINE STANSLAUS KAKUSA (As the Administrator of the

late Stanslaus Kakusa) APPELLANT

VERSUS

1. ADAM KITAMBI

2. DEUS FATAKI

3. BENSON SIKAZWE

.....RESPONDENTS

JUDGMENT

21st March & 8th April, 2024

MRISHA, J.

Stepping into the shoes of his late father namely Stanslaus Kakusa (the deceased person), the appellant Faustine Stanslaus Kakusa has approached this court armed with the eight (8) ground petition of appeal aimed at challenging the decision of the District Land and Housing

Tribunal for Rukwa at Sumbawanga which declared the respondents as the lawful owners of the suit land.

His main complaint which I find to be sufficing to dispose of the present appeal, is that the trial tribunal erred in law and fact when it decided that the suit land estimated to be 50 acres which is located at Mbuluma Village within Kalambo District in Rukwa Region belongs to the respondents while there was strong and enough evidence to show that the same belonged to him by virtue of inheritance from his late father.

Such proposition by the appellant is contained in the second and eighth grounds of appeal of his petition of appeal which goes thus:

- i. That the trial tribunal erred in law and fact by deciding the matter without evaluating the strong evidence and exhibits tendered by the appellant during trial.*
- ii. The trial tribunal erred in law and fact for deciding the matter in favour of the respondents while knowing that in the year 1998 there was a case which determined the same land dispute and declared the appellant's late father to be the lawful owner of the suit land.*

From the above introduction, my focus will base on determining the merits or otherwise of the above grounds of appeal and where need

arise, I will stretch my hand on the rest of the grounds of appeal, as described above.

It is the appellant's prayer that the instant appeal be allowed with costs, the court be pleased to quash the proceedings, judgment and decree of the trial tribunal and declare him as the lawful owner of the suit land. He has not ended there as he has also urged the court to grant him other reliefs as it will deem fit and just.

It is worth noting that the hearing of the instant appeal was through written submissions and as a rule of thumb directs, it was the appellant who began to take the floor, then the respondents. Finally, the appellant made a rejoinder submission after going through his counterparts' respective submissions.

In short, through their respective written submissions, the parties herein argued for and against all grounds of appeal as raised in the appellant's petition of appeal. However, for the reasons to be put apparent shortly, I will first focus on the parties' rival submissions in relation to the second and eighth ground of appeal. The determination on the merits or otherwise of that ground will make me in a good position to decide whether or not to proceed with other grounds of appeal.

Arguing about the second ground of appeal, the appellant submitted that in the course of testifying before the trial tribunal, he produced the strong evidence to prove ownership of the suit land and went on to tender a copy of judgment in respect of Civil Case No. 148 of 1998 between Stanslaus Kakusa (the appellant's father) and Adam Kitambi (the first respondent), which shows that the same land dispute had been determined in favour of the appellant, but in its decision the trial tribunal ignored such important evidence by its failure to evaluate it.

Submitting about the eighth ground of appeal, the appellant argued that the trial tribunal erred in law and fact by determining the land disputed in favour of the respondents while the same had already been determined in favour of him by Sumbawanga Urban Primary Court.

In their response to the second complaint as described above, the respondents contended that the evidence adduced by the appellant failed to prove his ownership of the suit land by his failure to summon two material witnesses mentioned by himself namely Alex Kayumba and Peter Kalipo, who are neighbours at the suit land. To cement that argument, the respondents relied on the case of **Abraham. Saigurani vs. Republic** [1981] TLR 265.

They also relied on the provisions of section 110 (1) of the Evidence Act, Cap 6 R.E. 2019 which provides for the burden of proof. Again, the respondents referred the court to the case of **Hemedi Said vs Mohamed Mbilu** [1984] TLR 113 which also cement on the standard of proof in civil cases.

However, in regard to the eighth ground, the respondents did not make any submission against it despite mentioning such ground on the first page of their written submission.

In rejoinder, the appellant submitted that the first respondent one Adam Kitambi, sold the disputed land to the second and third respondents unlawfully while knowing that the civil case about that land had already been disposed of the appellant's late father one Stanslaus Kakusa and neither the first respondent, nor his father challenged that decision before any court of law in the United Republic of Tanzania.

I have closely gone through the above rival submissions, the entire proceedings of the trial tribunal and considered all the grounds of appeal including the second and eighth grounds which I find to be the decisive ones. My task now is to determine whether the instant appeal is meritorious.

To start with the second ground, it is the appellant's complaint that the trial tribunal omitted to evaluate his strong evidence which included the exhibit (s). Conversely, the respondents have disputed such allegation by faulting the appellant for his failure to summon two material witnesses namely Alex Kayumba and Peter Kalipo who borders the suit land. Hence, it is their view that by such omission the appellant failed to prove his case against them on the balance of probabilities as required of him under section 110 (1) of the Evidence Act.

The typed records of the trial tribunal reveal that in the course of adducing his evidence before the trial tribunal, the appellant drew the attention of the said tribunal that there is a judgment of Sumbawanga Urban Primary Court in which his late father was declared a lawful owner of the suit land and that subsequent to the delivery the above decision, his late father continued to use the suit land until on 2002 when he passed away.

It is also on record that the appellant did not end there, but he also told the trial tribunal that even after demise of his late father he together with his siblings continued to use the suit land until on 2018 when the first respondent trespassed into the suit land and began to sell it to the second and the third respondents. As if that was not enough, the typed

records of the trial tribunal depicts that the appellant informed the trial tribunal that he had annexed a copy of judgment relating to the suit land in his application form and urged the said tribunal to take a judicial notice on its existence.

Also, it is on record that apart from the first and second respondents who did not ask any question to the appellant about the said copy of judgment, the third respondent had one, and in reply, the appellant narrated that:

"The decision of the court proves that the suit land belongs to the family of Kakusa"

All that is found at pages 5 to 6 of the trial tribunal typed records. Again, it appears plainly that at page 3 of her judgment, the honourable chairperson of the trial tribunal noted that the appellant urged the trial tribunal to take note of a copy of judgment from Sumbawanga Urban Primary Court about the suit land.

However, she did not consider that judgment when making her reasoning. Nor did she assign any reasons for such omission. It is a trite law that any judicial officer has a duty to give reasons for his or her decision. This position is fortified in the case of **Francis Mtawa vs Christina Raja Lipanduka & 2 Others**, Civil Appeal No. 15 of 2020

(CAT at Dar es Salaam, unreported) in which the Court Appeal reaffirmed the principle of law that:

*"...the duty of judicial officers and any other adjudicator to assign reasons for the decision given, needs no emphasis. **This is a mandatory requirement and a judgment which fails to comply with that requirement is null and void.**" [Emphasis is mine]*

On my part, I subscribe to the above principle and feel bound to apply it to the case at hand. Since it is apparent that despite realising that there was a judgment of the Primary Court which resolved the dispute in favour of the appellant's late father in respect of the suit land, the honourable chairperson of the trial tribunal omitted to consider it without assigning any reason, her failure to do so caused her judgment to be null and void.

Also, I revisited the said judgment and noted that it mentions the appellant's late father as the lawful owner of the suit land. Moreover, it is undisputed that since that judgment was handed down by Sumbawanga Urban Primary Court on 12.02.1999, none of the respondents took any legal measure to challenge it before the court of law, as rightly argued by the appellant at page 2 of his rejoinder written submission. Hence, in

the circumstances, it was erroneous for the honourable chairperson of the trial tribunal to find in favour of the respondents while there was unchallenged judgment (documentary evidence) which declared the appellant as the lawful owner of the suit land.

That apart, it is my settled view that the argument that the appellant's failure to summon material witnesses entails that he failed to discharge his legal duty of proving his case against the respondents on the required standard, would have hold water had there been no such unchallenged documentary evidence (judgment) which corroborates the appellant's evidence that the suit land is among the estate of his late father. Thus, based on the foregoing reasons, I find merits on the second ground of appeal.

Coming to ground eight, the same need not consume my time because as I have alluded earlier, none of the respondents argued about it in their respective written submissions which tells that what has been complained of by the appellant is nothing, but true. Also, such grounds relate to the judgment of the Primary Court which I have already talked about in the course of addressing the second ground of appeal. Hence, I also find the eighth ground of appeal to have merits.

Should the court proceed with the remaining grounds of appeal? Certainly, I would answer such question is in the negative because what has already been covered in the second and eighth grounds of appeal, caters for the credibility and weight of evidence which even when placed on the scale of a weighing machine, will definitely tilt on the side of the appellant, thus making him entitled to the victory as far as the land dispute between the parties herein is concerned and within the confines of section 110 (1) of the Evidence Act.

The above being said and done, I find the present appeal to be meritorious and proceed to allow it with costs. Consequently, I quash the judgment of the trial tribunal, set aside the orders passed thereto and declare that the suit land is the estate of the appellant's late father. Hence, the appellant is entitled to administer it as per the law.

Order accordingly.


A.A. MRISHA
JUDGE
08.04.2024

DATED at SUMBAWANGA this 8th day of April, 2024.




A.A. MRISHA
JUDGE
08.04.2024