

TANZANIA / JUDGMENT

Angelina v Maria Mfunya Land Appeal No

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LAND APPEAL NO. 000006679 OF 2024 ANGELINA BHAMVU
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS MARIA
MFUMYA RESPONDENT / DEFENDANT

JUDGMENT

J. NKWABI, J, Date: 06/08 & 30/10/2024 The appellant sued the respondent in the trial tribunal over a piece of land allegedly she had bought from Faustin Mfumya. On a full trial, the appellant's application was dismissed for failure to prove on the balance of probabilities because her evidence was tainted with contradictions while the evidence of the respondent was straight forward. The appellant side had three witnesses while the respondent's side had four witnesses. The disputed piece of land is situated in Kasange street at an area called Nzige within Heru Juu ward which is in Kasulu district and Kigoma region. The land is clearly described under paragraph 3 of the application. Perplexed by the decree of the trial tribunal, the appellant lodged this appeal. The petition of appeal lodged by the appellant is comprised of four grounds of appeal. They are:

1. That, the trial tribunal erred in both law and facts for the decision it reached without considering the evidence of PW2 and PW3 who testified to have witnessed the appellant purchasing the land in dispute from on the late Faustin Mfumya.
2. That, the trial tribunal erred in both law and facts for the decision it reached without considering the evidence of the appellant who witnessed that the respondent never invaded the land in dispute until when the seller of the land one Faustin Mfumya passed away.
3. That, the trial tribunal erred in both law and facts for the decision it reached while there was no contradiction of the evidence of the appellant. Page. 1
4. That, the trial tribunal erred in both law and facts for the decision it reached without considering the evidence of the appellant which had more weight compared to the evidence of the respondent. Consequently, and based on the above grounds of appeal she is eager to get from this Court the reliefs I list below:
 1. That, your honourable court quashes the decision and orders of the trial tribunal.

2. That the appellant be declared as the lawful owner of the land in dispute.
3. That the respondent be declared as a trespasser to the land in dispute.
4. That costs of this suit to be on the shoulders of the respondent.
5. That any other relief that this honourable Court deems fit and just to grant. The appeal was heard by way of oral submissions. Both parties appeared in person, unrepresented. It is the contention of the appellant, in her submission in chief, that trial tribunal did not consider what she said. She added that the trial tribunal chairman confused her evidence. She maintained that she explained the boundaries of her piece of land which she been owning for more than twenty years. The trial tribunal was biased against her, the appellant lamented. It was the appellant's further contention that the person who sold the piece of land to her had the blessing of his wife as they were together. The appellant went on to argue that the respondent admitted that she had never cultivated the piece of land. She also explained that the piece of land which has trees is not in dispute. She pressed that her evidence is not contradicted and added that the evidence of the respondent is that which contradicted. It is the appellant's further contention that the trial tribunal did not consider the testimony of her witnesses. If it is possible, the appellant pleaded, this Court orders for a retrial. She also elaborated that she started cultivating the piece of land in the year 2003 while in 2021 is when the respondent started trespassing in her piece of land. She stated that the respondent also trespassed in the year 2022 and 2023. In her brief response, the respondent maintained that she has never encroached into the piece of land of the appellant. She explained that the appellant is the one who is encroaching the respondent's piece of land. She explained that the pieces of land are separate and added that she sold a piece of her (respondent's) land to Ernest. She insisted that she won the case in the District Land and Housing Tribunal for Kasulu. The appellant did not sit back after the respondent closed her address in reply, she rose up and submitted in rejoinder. In it, she explained that she used to cultivate her piece of land in pieces and added that the respondent neither complained nor encroached into her piece of land. She elaborated that the respondent is mistreating her by Page. 2 trespassing into her piece of land. She prayed for justice and that the respondent should be stopped from encroaching into her piece of land. It is undoubtedly that in civil cases, the plaintiff/applicant has a duty to prove his case on the balance of probabilities, see *Barelia Karangirangi v. Asteria Nyalwambwa*, Civil Appeal No. 237 of 2017, CAT (unreported). Now, it is clear to me that the land application ought to have been decided on the credibility of witnesses. My stance is backed by *Sangaru Lugaira Mathias v. S.M.Z.*, Criminal Appeal No. 183 of 2005 (CAT) where it was authoritatively held that: "In ground two, Mr. Uhuru vehemently criticized the trial Chief Justice in basing the conviction on the alleged statement of the appellant to PW1, PW2, PW3 and PW6 at the Police Station that he had cut the deceased with a panga. These witnesses, the counsel further submitted, contradicted each other in their evidence. They were unreliable Mr. Uhuru charged. ... The issue raised in this ground turns on the credibility of the witnesses. ...The learned trial Chief Justice who had the opportunity of seeing, hearing and assessing the credibility of these

witnesses, found PW1 and PW3 truthful witnesses. This, we think, he was entitled and we can find no ground for faulting him as Mr. Uhuru urged. This finding, in our view, is in accord with the dying declaration of the deceased in which she said she was cut by the deceased with a panga." It appears to me that the trial tribunal did not pay attention to some authorities which categorically state that not all contradictions cause the case to flop and it is in human nature to describe an event differently. For an authority for this stand view see the recent decision of the Court of Appeal in Mychel Adriano Takahindengeng v. Republic, Criminal Appeal No. 76 of 2020, where it was stressed that: "In our re-evaluation of the evidence of PW5, PW6 and PW7, with the view of determining whether or not they are reliable, we are not oblivious to the fact of life that two or more people who witness an event, may not later tell it in exactly the same way." This Court too had an opportunity to address a similar situation (contradictions) in the case of Republic v. Agnes Doris Liundi [1980] T.L.R. 38, whose decision was upheld by the Court of Appeal, that: "PW.9 said that the letters found in the house were six, whereas Tenga PW.5, the superior police officer PW.9 accompanied and who took custody of the letters, said that they were merely four, I am satisfied that PW.9's recollection on this was faulty and that the letters were in fact four, the ones produced in court, and PW.5 said. I do not place much significance on the disharmony regarding the number of vomits." Page. 3 One may also wish to have a look at the decision in Hussein Ally Dotto v. Republic, Criminal Appeal No. 42 of 1996 (Unreported) (CAT) where it was emphasized that: "...The two additional grounds of appeal are that first, a knife was tendered in evidence instead of a panga which was said to have been used in the course of the robbery.We agree that although a knife was seized from the room in which the appellant was arrested and it was tendered in evidence it had no probative value in the case. The complainant in the case together with Hamis Salum were clear in their evidence that the robbers used pangas during the robbery. But the fact that pangas were not found in the room where the appellant was arrested does not prove anything either way. For two and half months there was ample time to dispose of the pangas if the appellant was the robber." Having indicated the position of the law as above, the trial tribunal ought to have addressed the contradictions in relation to the defence evidence. The defence clearly admitted that the appellant had ever bought a piece of land from Faustin Mfumya. The appellant, clearly stated that the respondent had encroached into another piece of land and she had to be compensated by the deceased by working as a casual labourer (kibarua). The appellant testified that the boundary was made of holes which had so far vanished, that was supported by the respondent's evidence that "Mleta maombi anataka kuvamia eneo kutoka kwenye alama za majembe." In re-examination the respondent stated, "Anjelina analima kufuata alama za Faustin." DW. 2 stated that, Shamba la Marika ipo juu ya shamba alilonunua Anjelina Kutoka kwa Faustin mimi ni Jirani wa shamba la Maria." It is more likely that the respondent was unhappy with the act of Faustin Mfumya selling the piece of land and that is why she was encroaching into the sold piece of land. The respondent admitted the size of the piece of land in dispute is three quarters of an acre which is just what is indicated in the application. Regarding the criticism raised by the trial tribunal for the appellant not using the piece of land, the same has no basis because neither the tribunal nor the respondent

have power to interfere with the appellant's use of her own property. If the piece of land was unused as it appears to have been taken by the trial tribunal, why not criticize the respondent in the same terms? Another disturbing reason given by the trial tribunal for dismissing the appellant's land application was that the appellant did not prove payment of money because payment could have been for another transaction and therefore not payment was for the purchase of the piece of land. The view of the trial tribunal is completely speculation and not based on evidence. The witnesses who witnessed the handover of the money said, it was for the transaction of sale of the piece of land. Page. 4 In my view, the case of the appellant was corroborated by oral evidence from the defence itself as underscored in Paschal Kitigwa v. Republic Criminal Appeal No. 161 of 1991 (Unreported) (CAT) (MWANZA) where it was clearly stated that: "... It is common ground that corroborative evidence may well be circumstantial or may be forthcoming from the conduct or words of the accused. On this, numerous decisions have been made by the then court of Appeal for Eastern Africa- see R v Said Magombe (1946) EACA 1645 and Migea Mbinga v. Uganda (1967) EA 71." See also Mathias Timoth v. Republic [1984] T.L.R. 86 HC Consequently, I allow the 4th ground of appeal and find no need to discuss the rest of the grounds of appeal. I hold that the appellant proved her ownership over the disputed piece of land to the required standard that she purchased the disputed piece of land by oral contract and paid consideration which was witnessed by her witness. I rely on Engen Petroleum (T) Limited v. Tanganyika Investment Oil & Transport Limited, Civil Appeal No. 103 of 2003, CAT, (unreported) where it was held that: "We are satisfied that the transaction involving the parties to this suit was an oral sale contract of petroleum products under which the appellant supplied petroleum products to the respondent for the due price of money in US Dollars, and, or local currency." See also Abas Kondo Gede v. Republic [2020] 2 T.L.R. where it was stated that: "Oral evidence if worthy of credit, like in circumstances obtaining in the present case is sufficient without documentary evidence to prove a fact or title, thus where a fact may be proved by oral evidence it is not necessary that documentary evidence must supplement that evidence as this is the other method of proving a fact." Flowing from the above discussion, I declare the appellant owner of the disputed piece of land. I proceed to hold that the respondent is a trespasser in the disputed piece of land. I issue permanent injunction against the respondent her agent(s), servant(s) and all other persons working under the said respondent's instructions from trespassing into the suit land. In doing what I have done, I hope, I have complied with the authority in The Registered Trustees of Joy in The Harvest v. Hamza K. Sungura, Civil Appeal No. 149 of 2017, CAT (unreported) where it was underscored that: "... it is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision." To sum up, I find that the appeal is merited, thus, it is allowed with costs in this Court and the trial tribunal. Judgment is quashed and the decree is set aside. It is so ordered. Page. 5 Dated at KIGOMA ZONE this 30th of October 2024. J. . NKWABI, J JUDGE OF THE HIGH COURT Page. 6

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/320277/source_file/6c4157119e2897d9/Angelina_v_Maria_Mfunya_Land_Appeal_No._6679_of_2024.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/angelina-bhamvu-v-maria-mfumya-ownershipdispute-tanzlii-2024--6a3ea52d3b1caa9129826d2b>

Prepared on 14 October 2026 · Esheria