

TANZANIA / JUDGMENT

faustine kingu vs ramadhani ally

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 49 OF 2022 (Arising from Klnondoni District Land and Housing Tribunai in Land Appeai No.58 of 2022; Originating from Kunduchi Ward Tribunai in Land Application No. 91 of 2022) FAUSTINE KINGU APPELLANT VERSUS RAMADHANİ ALLY RESPONDENT Date of Last Order: 19.12.2022 Date of Judgment; 30.01.2023

JUDGMENT

V.L. MAKANI.J. This is an appeal by FAUSTINE KINGU. He Is appealing against the decision of Kinondoni District Land and Housing Tribunal (the District Tribunal) In Land Appeal No. 58 of 2022(Hon. Mbilinyi Chairman). The matter originated from Kunduchi Ward Tribunal (the Ward Tribunal) In Land Application No. 15 of 2022. This is a second appeai by the appellant. He lost at the Ward Tribunai, and he lost his appeai once again at the District Tribunal. The gist of the dispute is a plot in Kunduchi Mtongani which was In the early years used for purposes of mining gravel {kuchimba kokoto) but later people developed the area. The plot in dispute is among those which were said to be developed and according to the Ward and District Tribunals the plot (the suit land) is owned by the respondent. The appellant being dissatisfied with the decision of the District Tribunal re-affirming the decision of the Ward Tribunal has fied this appeai with the following grounds of appeai:

1. That the Hon. Chairperson erred in Jaw and in fact in re affirming the decision of the Ward Tribunai for Kunduchi that the respondent proved ownership over the disputed iand relying on false testimonies that they had made developments thereon.
2. That the Hon. Chairperson erred in law and in fact in her reliance on contradictory statements on the Ward Tribunai decision in determining the respondent's actual piece of iand in dispute where he had not made any deveiopments.
3. That the Hon. Chairman erred in law and factin her faiiure to re-evaliuate the testimoniesgiven by eespOondetand his witnesses in respect to purported development made by him on the disputed iand hence reaching to an erroneous decision.

4. That the Hon. Chairman erred in law and in fact in re affirming the decision of the Ward Tribunal for Kunduchi when she statutoriiy understands that the said Tribunai's roie is iimited to mediation oniy. The appellant prays for the appeal to be allowed and the decision of the District Tribunal re-affirming the decision of the Ward Tribunai be quashed. He aiso prayed for costs of this appeal. With leave of the court, the appeal was argued by way of written submissions drawn and filed by the parties themselves. In his submissions the appellant abandoned the fourth ground and consolidated the second and third grounds. He said he is convinced that the Chairperson made erroneous finding that the respondent has proven ownership when she stated in her judgment that:
- (i) The respondent has made remarkable developments for a long time without being disturbed, (H) The appellant was a witness In another case between respondent and another person MWANAHAWA A, TABU Involving the same suit land but he did not make any objection as to the purported ownership therein. In respect, of (i) above he said, there are no remarkable developments made by the respondent on the suit land apart from what is stated in the Ward Tribunal at paragraph 3 {msingi wa banda katlka upande unaogombewa) which prompted him to seek redress first from the Local Government of Kunduchi Mtongani Street and thereafter instituted Land Application No. 15 of 2022 in the Ward Tribunal. As for (ii), he said the said Mwanahawa A. Tabu is the mother-in-law of the respondent and after seeing the appellant's move to stop them from invading his land he plotted the move to confuse him by fabricating Land Application No. 13 of 2021 in which the respondent won the case against his mmother- in-law. He said he has never been a witness in that case and further that it was concluded in the judgment that the respondent had won against the appellant. He said since the cases were in the same Tribunal and were running concurrently, then the Ward Tribunal would have consolidated the applications for justice to be done. He said it appears that the case between the respondent and his mother-in-law was a sham and the appellate Chairperson ought to have discovered this otherwise she erred in re-affirming that the respondent has proven ownership of the suit land. The appellant submitted further that the Chairperson erred in relying on fictitious and treacherous statements by the respondent as there are no remarkable developments on the suit land and he has never been a witness to the application by Mwanahawa A. Tabu. As regards the consolidated second and third grounds, the appellant submitted that the respondent's actual property which is not the centre of the dispute is located in the opposite side of the suit land. He went on saying that on the suit land the respondent attempted to construct "msingi was bandcf" an act which gave rise to Land Application No. 15 of 2021 which the Chairperson found that the appellant had caused disturbance to the purported developments made by the respondent which he said was erroneous. He insisted that there are no developments on the suit land and the respondent's actual residence is on the opposite side. He concluded by stating that the respondent has not proven ownership of the suit land and whatever has been testified by him in the Ward Tribunal is fabrication. The appellant reiterated the prayers in the Petition of Appeal. In his reply, the respondent gave a brief history of the matter and further stated that Ward Tribunal reached a concise judgment in that who alleges must prove according to

sections 110 and 111 of the Evidence Act CAP 6 RE 2019. He said the appellant failed to prove ownership of the suit land as opposed to the respondent who brought neighbours surrounding him to testify at the Ward Tribunal and through their testimonies it was decided that he was the owner of the suit land. He insisted that before the appellant filed an application at the Ward Tribunal there was an application by one Mwanahawa A. Tabu namely Land Application No. 13 of 2021 against him and the appellant was a witness of the said Mwanahawa A. Tabu. He said the matter upon its conclusion was in favour of the respondent and there no appeal or ! revision against the said decision. He said the appellant has created a lie for the purpose of misleading this court as he failed to prove ownership of the disputed land, he prayed for the court to dismiss the appeal with costs as it has no merit. The appellant did not file submissions in rejoinder. I have gone through the grounds of appeal; the submissions made by the parties and have examined the records of the Tribunals. I wish to be guided by a settled principle that, this being a second appeal, the court rarely interferes with the concurrent findings of the lower courts on the facts unless there has been a misapprehension of evidence occasioning a miscarriage of justice or violation of a principle of law or procedure. See *Wankuru Mwita v. Republic*, Criminal Appeal No. 219 of 2012(CAT)(unreported). Where the Court of Appeal stated that: "...The law is well-settled that on second appeal the Court will not readily disturb concurrent findings of facts by the trial court and first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of a complete misapprehension of the substance, nature or non-direction on the evidence; a violation of some principle of law or procedure or have occasioned a miscarriage of Justice."

- 'I will consider the grounds of appeal generally. The main complaint by the appellant is that the Ward Tribunal did not properly evaluate evidence. I have gone through the records, and I agree with the District Tribunal that the evidence at the Ward Tribunal was properly evaluated. The Ward Tribunal even moved to the locus in quo to assess and satisfy itself if there were any developments therein and they found a long-time foundation which was constructed by the respondent. As correctly said by both the Ward and the District Tribunals, the witnesses by the respondent who were his neighbours stated that they have known him as the owner of the suit plot since 1998 and he was the one who had developed the plot. The appellant claimed to have taken the suit land in 2000 and his witnesses only testified to have taken gravel (kokoto) from the appellant but in essence they said nothing about ownership or development of the suit plot. According to these witnesses. It was the appellant himself who told him that he was owner of the said suit plot, so this can be nothing else but hearsay evidence. It has been established that there is a foundation constructed by the respondent which fact the appellant has not controverted and looking at the evidence by the parties at the Ward Tribunal it is clear that the evidence by the respondent was stronger and heavier than that of the appellant. In that regard, the Chairperson of the District Tribunal correctly relied on the case of *Hemed Said vs. Mohamed Mbili* [1984] TLR 113 where it was held as follows: "In law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win." In

the result and for the reasons stated above, this court finds no reason to fault the decisions of the Ward and District Tribunals. Consequently, the appeal is dismissed with costs. It is so ordered. cou^r C:> X V- V.L. JUDGE 30/01/2023 omsvot

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