

TANZANIA / JUDGMENT

ibrahim mzule and two others vs jesca mgonja 2023 tzhc 23514 18 december 2023

COURT
TZHCDECIDED
18 December 2023

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

IN THE HIGH COURT OF TANZANIA (MOROGORO SUB-REGISTRY) AT MOROGORO LAND
APPEAL NO. 135 OF 2022 (Originating from Land Application No. 135 of 2022; in the District Land
and Housing Tribunal for Kilosa at Kilosa) BETWEEN IBRAHIM MZULE ISTAPPELLANT REHEMA
MOHAMMED 2nd APPELLANT ELIAS CHIBUSI APPELLANT VERSUS JESCA MAGONJA.....
RESPONDENT

JUDGMENT

18th Dec, 2023 CHABA, J. The appellants herein are contesting the judgment and decree of the District Land and Housing Tribunal for Kilosa at Kilosa (the DLHT) in Land Application No. 135 of 2022 which was adjudicated in favour of the respondent herein. Aggrieved by the decision of the DLHT, on 26th October, 2022, the appellants through the legal services of Professor Cyriacus Binamungu, learned Advocate from CBS Law Chamber's based in Morogoro, filed before this Court the memorandum of appeal comprising of four (4) grounds of appeal reproduced hereunder: VAHT OA .0 Z. o Page 1 of 12 V9H ¥ > -I- ft

1. That, the trial DLHT erred in law and In fact when It entered "the judgment I against the appellants while the respondent lost the case on the same land ! in dispute between Rehema Mohammed and Elias Chibusi in Land Case No. i 11 of 2017 at Mvumi Ward Tribunal and the decision has never been i overturned by any appellate Tribunal/Court. !
2. That, the trial DLHT erred in law when it entertained the matter which had 1 not gone through the Ward Tribunal. j 1
3. That, the DLHT erred in law when the Chairperson of the DLHT recorded the evidence in chief (examination in chief) in the judgment without indicating cross-examination responses and evidence in re-examination I i making the entire picture of what transpired in the DLHT erroneous and i misleading. j 1
4. That, the Chairperson of the DLHT erred in law when believed the applicant to be the lawful owner of the plot in dispute while there was no evidence j reliable to prove the same. | At the hearing of the appeal, the appellants were represented by Professor I Cyriacus Binamungu, learned Advocate whereas the respondent appeared in person, and unrepresented. With

parties' consensus, the matter was argued and ! disposed of by way of written submissions, and both parties dutifully adhered to the i scheduled order. i/^ Page 2 of 12 UJ ^ li :X w ^'1 In his submission, Prof. Binamungu expressly abandoned the 2"^^ ground of I i appeal and silently dropped the 3^^ ground and proceeded to submit only in respect of the and 4^^ grounds of appeal. Submitting in support of the ground of appeal, placing reliance on the case of *James Funke Ngwagilo v. AG* [2004] T.L.R. 161, Prof. Binamungu averred that, before the DLHT, the appellants' defence on the fact that, respondent lost the case on the same land in dispute betv\een Rehema Mohammed and Elias Chlbusi in Land Case No. 11 of 2016 at ■I Mvumi Ward Tribunal was not cross-examined by the respondent, Jesca Mgonja and the same was not disputed. Fortified by the holding of this Court in the case (of *Salome John v. John Matonge Baru*, (PC) Matrimonial Civil Appeal No. 10/2014, HCT at Mwanza, quoting the decision of the Court Appeal of Tanzania (the CAT) in the case of *Moses Norbert Achiula Vs. The Republic*, Criminal Appeal No. 63 of 2012 (CAT sitting at Mbeya); Prof. Binamungu concluded that, failure to cross-examine the appellants; the implication thereof is that, the respondent accepted their defence. On the 4'^ ground, Prof. Binamungu contended that, the dispute involves a parcel of land measuring 7-8 feet size; and that the dispute is neither over the entire area owned by the respondent nor the whole land owned by the first I appellant. He added that, the testimony by AWl, Jesca Rajabu Mgonja shows that, she purchased the land in 2004 without describing the size and boundaries. The Page 3 of 12 >1 1 Advocate stressed that, all witnesses called by the appellants herein did not describe the size, location and boundaries of the land in dispute to ascertain the alleged invaded area. Based on that observation, Prof. Binamungu wound up his submission by highlighting that, the case against the appellants herein was not proved at all before the trial DLHT which according to him, lost his way when it thought that what was In dispute was ownership of the entire land owned by AWl (respondent herein), while the issue was not on land ownership but on the boundaries. On the strength of the above submission, Prof. Binamungu for the appellant beckoned upon this Court to allow the appeal with costs. To her part, the respondent response to the first ground of appeal, accentuated that, in Land Case No. 11 of 2017 tried at Mvumi Ward Tribunal was not a party but rather a witness and that she never won or lost in the said matter. She averred that, having found out that the decision in Land Case No. 11 of 2017 touched her land, she decided to open the case against all parties who litigated in that case. As regards to the 4^" ground, respondent argued that, it is not true that there was no reliable evidence to prove the respondent's case in the trial DLHT as in proving the same, she tendered a sale agreement over the plot in dispute whose admissibility was not objected by the appellants and fortified her argument by OA Fage 4 of 12 O C X LU > -31 referring this Court to the case of *Bomu Mohammed v. Hamisi"Amiri*, Civil ij Appeal No. 99 of 2018 (unreported) which quoted with approval the decision of the Court of Appeal of Tanzania in the case of *Nyerere Nyague v. R*, Criminal Appeal No. 67 of 2017 (unreported) where the Court held that: "As a matter of principle, a party who fails to cross-examine a witness on a certain matter is deemed to have accepted that !l matter and will be estopped from asking the trial court to 11 disbelieve what the witness said". : Based on above submission, respondent urged this Court toj dismiss this appeal in its entirety with costs for lacking

merits. Having assimilated and considered parties submissions as well as the records of the trial DLHT and the parties' pleadings, the central issue for determination is whether or not the present appeal has merit. For a smooth determination of the appeal, I have opted to start testing the 4th ground of appeal since, I am fortified that on the face of it, if allowed the same judge is capable of disposing of the whole matter at hand. In this ground, the learned advocate for the appellants is attacking the trial DLHT for believing the respondent herein to be the lawful owner of the plot in dispute while the same was not properly described by the respondent and her witnesses. On my part, I took pain to go through the records of the DLHT, and in so doing, I am straight away in all four corners with the counsel for the appellants that the proper description of the disputed suit land was neither given by the respondent herein nor her witnesses. Moreover, my scanning of the application lodged by the respondent who was the applicant at the trial DLHT has revealed that, the respondent made a blanket description of the land in dispute at paragraph six. For ease of reference, I find it pertinent to reproduce an excerpt from such an application: The disputed premises is located at Mvumi Makwabe - KHosa District". In my considerate view, the above description of the suit land in dispute was not sufficient enough for identifying it or identification. No wonder even in the impugned judgment of the DLHT, there have been contradiction as to what exactly was the land in dispute. I say so because in most occasions in its judgment, the Chairperson of the trial DLHT referred the land in dispute to be the whole land which the respondent alleged to have bought it from one Said Rajabu where in some few instances, he referred to only 7-8 paces of the same land. For easy of reference, I find apt to reproduce the second paragraph of the judgment of the DLHT as hereunder: OF O c r l W T Page 6 of 12 O X > LU "Eneo la ukubwa wa kukadiria miguu 7 kwa 8 iH Hopo Makwambi ndani ya Kitongoji cha Makwambe^ katika Kijiji cha Makwambe^ ndani ya WiJaya ya KUosa, Morogoro ndUoeneo bishaniwa, mleta maombi ameeieza katika hati yake ya madai kwamba wajibu maombi wamevarnia eneo bishaniwa^ alirjndeiea kveieza kwiunba aUnunua eneo bishaniwa kutoka kwa SAID RAJABU mwaka 2004, eneo la ukubwa wa miguu 20 upana kwa 72 urefu, aiidai kuwa mjibu maombi namba 1 aiidai kuwa aiinunua eneo bishaniwa kutoka kwa mjibu maombi namba 2 na mjibu maombi namba 2 aiidai kuwa aiiuziwa na mjibu maombi namba 3, aiidai ya kuwa wajibu maombi wote watatu sio wamiUki wa eneo bishaniwa".[Emphasis Added]. Additionally, the DLHT via its impugned judgment made the following order as regards to the disputed land, I quote; "Imetamkwa kuwa, eneo bishaniwa ni mali ya mleta maombi, eneo la ukubwa wa hatua 72 urefu na upana hatua 20, (ambapo ndani yake kuna hatua 7 kwa 8 bishaniwa) lililopo ndani ya kitongoji cha Makwambe, katika Kijiji cha Makwambe, ndani ya WHaya ya KHosa - Morogoro, Unahpakana na kusini - Teddy kwa upande, Kaskazini - Pendo Mguye na Biasi Chibusi, Magharibi- Barabara, na Mashariki - Kawembe."[Emphasis Added]. Of o PaJ'e 7 of 12 c y - I > X V uJ -5:- 3^ k From the above excerpts, it is crystal clear that even the judgment of the DLHT did not as well describe the suit land in dispute which as indicated in the last order, the same is estimated to be 7 to 8 paces. The Hon. Chairperson did not specifically describe the 7 to 8 paces in terms of its location so that it could be in a better position to effectively resolve the controversy between the parties. Instead, the records are apparent that he gave

the proper descriptions of the whole land in which the one in question is inclusive. Similarly, as hinted above, the application filed by Jesca Mgonja (respondent) before the DLHT did not indicate the description of the suit property contrary to the provision of Order VII, Rule 3 of the Civil Procedure Code [CAP. 33 R.E. 2019] which stipulates that: "Where the subject matter of the suit is immovable property^ \ the plaintiff shall contain a description of the property sufficient to identify it and in case such property can be identified by a title number under the Land Registration Act, the plaintiff shall specify such title number." The above cited provision of the law, has been amplified and interpreted by the Apex Court of our Land and this Court in a number of authorities as far as the descriptions of the suit property in land disputes are concerned. [See: Daniel Dagala Kanuda v. Masaka Ibeho and Others, Land Appeal No. 26 of 2015, Page 8 of 12 OF O 4^ C T c? X > LU •5^ V" HCT at Tabora; Njake Enterprises Limited v. Blue Rock Limited and Rock Venture Company Limited, Civil Appeal No. 69 of 2017, CAT sitting at Arusha; Fereji Said Fereji v. Jaluna General Supplies Ltd and Others; Land Case No. 86 of 2020; and Mbwana M. Mchuma and Others v. Dar es Salaam Park Land Housing Ltd, Land Appeal No. 34 of 2022 (All unreported), where in all those cases, the respective suits were struck out after being found incompetent for want of proper descriptions of the suit properties. Having so reasoned and observed, I find merit on the 4^^ ground of appeal. Suffice it to say that the respondent's application was improperly filed before the District Land and Housing Tribunal for Kilosa, at Kilosa for improper descriptions of the disputed suit land. Under the circumstances, I am therefore inclined to invoke my revisionary powers bestowed upon this Court under section 43 (1)(a)

- (b) and (2) of the Land Disputes Courts Act, [CAP. 216 R.E, 2019], which articulates that; - "(1) In addition to any other powers in that behalf conferred upon the High Courts the High Court:
- (a) shall exercise general powers of supervision over all District Land and Housing Tribunals and may, at any time, call for and inspect the records of such tribunal and give directions as it considers necessary in the interests of justice^ and all such tribunals shall comply with such I direction without undue delay; (b) may in any proceedings determined in the District Land and Housing Tribunal in the exercise of its original^ appellate or revisional jurisdiction, on application being made in that behalf by any party or of its own motion, if it appears that there has been an error material to the merits of the case involving injustice, revise the proceedings and make such decision or order therein as it may think fit. (2) In the exercise of its revisional Jurisdiction, the High Court shall have all the powers in the exercise of its appellate \ Jurisdiction. [Emphasis Added]. In the upshot, I proceed to quash the proceedings of the District Land and Housing Tribunal for Kilosa, at Kilosa in Land Application No. 11 of 2019 and set aside the judgment, decree and any other orders stemming therefrom. Consequently, I allow the appeal with no order as to costs. Since the finding on the 4^^ ground of appeal suffices to dispose of the appeal, I find it unnecessary to test the 2^^ ground of appeal. Respondent is at liberty to file a fresh suit at the competent Tribunal with proper description of the disputed parcel of land, if she is still interested to pursue the matter. It is so ordered. Or O c Pagi TO of LU X v: ^ i DATED at MOROGORO this 18*^^ day of December, 2023. OF O c T e? X > M. J. CHABA LU v< JUDGE 18/12/2023 Page 11

of 12 Court: I I Judgment delivered under my hand and the Seal of the Court this 18th day of October, 2023, in the absence of both parties. OF O c A.W. Mmbando (J? X IU V. 4 > UTY REGISTRAR -s- 18/12/2023 Court: Appeal rights fully explained. Of o .W. Mrnbando c X UJ REGISTRAR 8/12/2023 Paue 12 of 12

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/307126/source_file/ibrahim-mzule-and-two-others-vs-jesca-mgonja-2023-tzhc-23514-18-december-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/ibrahim-mzule-v-jesca-mgonja-descriptionofimmoveableproperty-tzhc-2023>

Prepared on 14 October 2026 · Esheria