

TANZANIA / JUDGMENT

20151117 TZHC Mwanza

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IN THE HIGH COURT OF TANZANIA MWANZA REGIONAL LAND APPEAL NO.33 OF 2015 (From the Decision of the District Land and Housing Tribunal of Musoma . District at Mara in Land Case No.45 of 2011) JUDICA SIAGI 11 ■■■ 11 ■■■■■ ■■■ ■■■ ■■■ ■■■ 1 ■ ■■■ er ■■ 11 ■■■■■ ■■ 1 ■ 11 APPELLANT 11 11 11 11 VERSUS DAVID KYANZI GOBI RESPONDENT

JUDGEMENT

!Ebrahim, J. This appeal emanates from the District Land and Housing Tribunal where the appellant herein unsuccessfully sued the respondent that he has encroached into her 2112 of land left by her late husband one Godfrey Siagi. At the trial Tribunal the appellant alleged that the disputed land was belonged to her late husband who died in 1998. The husband was a come from Kiabakani village but went to Nyamkoma in 1986. They further got married in 1977 and in 2008 he went to Mwanza and came back in 2010 and found the respondent has invaded the suit land. She called a total of four witnesses to prove her claim. The respondent on the other claimed that the disputed land is the family land and that the appellant and that in 1974 the application was in (Arusha with her husband. She came in Nyamtumanya in 1986. He paraded , three witnesses. to prove his case. The trial Tribunal after evaluation of evidence decided in favour of the respondent At the hearing of the appeal, both the appellant and the respondent appeared in person, unrepresented. The appellant raised four grounds of appeal that:-

1. That, the trial District Land and Housing Tribunal erred on point of law and fact to find that there were contradictions in the evidence of the appellant, while neglecting the fact that the dates in question were for 2 (two) distinct periods that were interrelated and connected.
2. That, the trial tribunal chairman erred on point of law to search for new evidence at the scene/locus in quo and rely on the same that the evidence in record as adduced by the parties in the cause of the proceedings on trial.
3. That the trial tribunal chairman erred on point of facts to introduce and act on evidence that was never produced and or given by the appellant and thus prejudicing her case.
4. That the trial tribunal chairman erred on both points of law and facts to find that. the appellant has never used the suit land despite evidence on the record. Submitting at the hearing of the appeal, the appellant adopted her grounds of appeal and argued that the

decision of the trial Chairman was one sided only and therefore she wanted the Court to analyze the evidence on record. She insisted that her late husband was allocated the land on 14.08.1974 during the villagization programme and in 1986 they were given the land. She contended further that the trial Chairman did not consider the permits that she tendered. Further to that the village secretary adduced the evidence and he was involved in allocating land and also allowed them to stay in that village. She submitted also that the 2nd witness was the elder brother of the respondent and 3rd witness was her neighbor. She contended also that at the locus quo, there are no graves and all the trees are hers. She submitted further that the area is not three acres but 80 x 80 1h. Therefore, she prayed for the appeal to be allowed. In reply, the respondent also adopted his reply to the grounds of appeal and averred that, the trial tribunal visited locus in quo in the presence of the applicant. He averred further that the chairman called the evidence of other people who gave evidence and the appellant also came with her witnesses at the locus quo. The chairman observed the dispute on boundaries and what was inside the area. He contended that, his farm is 32 acres and there are graves of his fathers and ancestors on the disputed land. Further in his land, the chairman found the trees and cassava and other trees together with the river. The respondent contended further that the appellant was only given one acre and not 21h acre as she claims. He contended also that in 1955 he was very young when they moved to that lane: and during operation vijiji started she was not among those people. He posed a question that how could they bury their relatives c- in her plot? He thus prayed for the Court to dismiss the appeal. / In rejoinder, the appellant denied that they were given one acre each and that the graves are in their plot not hers as the respondent lived at the upper side and they were down. She added further that in 1974 no one was allowed to own 32 acres in villagization programme: Thus reiterated her prayer that, the appeal be allowed. This being a first appeal, this Court is obliged to analyze the evidence on record and arrive to its own findings of facts. See the case of Charles Matoisangala and 2 others Vs. The Republic, Criminal Appeal No. 308 of 2013. The appellant claim on ground number one is that the trial Tribunal erred by finding that there were contradictions on the evidence of the appellant. The appellant adduced evidence in chief that the suit land belonged to her husband who went to the Nyamkoma Village in 1986 and she tendered a letter from the village Chairman dated 1h November 1986. The appellant further in her oral submission told this Court that, her late husband was allocated the land on 14.08.1974 during the villagization programme and in 1986 they were given the land. Evidently, one cannot be allocated land in 1974 and at the same time be given the same land in

1986. For the sake of clarity, I would repeat the testimony of the appellant at the trial Tribunal, at page 4 of the typed proceedings, she said, and I quote: "My husband was a resident of Nyamkoma who come (sic- came) from Kiabakari village. He came at Nyamkoma vii/age in 1986 and his name is Godfrey Siagi" She continues at page 5 that; C "My de~ased husband applied the disputed land from the village council and he was granted the same// The appellant then proceeded to tender exhibit PE1 being the . evidence of the allocation of the said land. At page 6 of the typed proceedings, the appellant continued: "In 2010/2011 I have

not remained with anything and when I was given the suit land in 1986/ it was the property of the village not respondent The respondent began to claim the suit land in 2010 the suit land was allocated to us in 1986 and we have been using the same since then to date. I know Joseph Igobias my neighbor and he is found to the north (si~). Joseph Igobi is the brother of respondent and he was called by the village council and said that the suit land belongs to Godfrey Siagr She continued that:- "The respondent was present when his brother said his words and the same were put in writing. I would like to tender the letter dated 24.01.2011 and form part of these proceedings. The letter is admitted and marked PE2/~ Before I begin analyzing the validity and of the two letters, I would like to point out that in her entire testimony at the trial Tribunal there was no where that the appellant stated that her husband was allocated the land in 14.08.1974 as she submitted in this Court or even tendered document to that effect. Therefore, from her testimony, they acquired the disputed land in 1986. Now coming to the validity the allocation of the said land. The procedure of allocation of Village Land which are normally taken by the Village Council is that, after getting the blessing of the Village Assembly, the Village Council allocate land to people. When sitting to allocate land, the Village Assembly gives minute of the meeting signed by the Chairman of the meeting or the villagers who attended the meeting, and when the allocation of the land is approved by the Village Council, it also prepares minutes of the meeting signed by the Chairman and the Secretary. The Village Council also issues a Certificate of title for ownership of the land, receipts for payment of village royalties/fees are issued. In the present case, the appellant only tendered a letter signed by the Village Chairman and four people who are alleged to be members (kamati) who are not known of which committee. Further, there are no minutes that at least could substantiate that the said committee sat and the Village Chairman was the Chairman of that Committee, hence mandated to write a letter of allocating land. Thus, it is glaringly clear that exhibit PE1 could not be termed as a Certificate of title for Ownership that was issued by the Village Council. Like the trial Tribunal, I also find that the said letter does not substantiate the allocation of the land to the appellant husband as per the law. The appellant further tendered exhibit PE2 to indicate that Mr. Joseph Igobi evidenced on the ownership of the disputed land to the appellant. My reading of the contents of the said exhibit shows that the said letter was written in 24.01.2011 and it evidenced that the disputed land was the property of the appellant since 1974 contrary to what the appellant herself adduced before the Tribunal. Such contradiction clearly shows that the appellant has failed to substantiate the ownership of the land. Surprisingly, much as the said Joseph Igobi who is the author of PE2 adduced evidence, but he was not the one who tendered the said letter so that he can be cross examined. Another evidence are the testimonies of PW2, PW3 and PW4. All these witnesses evidenced that the Land was allocated to the applicant's husband in 1974 by the Village Council. However, their testimony differs with the testimony of the appellant together with PE1 that was tendered by the appellant. Therefore, the said discrepancies discredit the appellant's evidential value that she is the rightful owner of the disputed land. Unlike, the appellant, the respondent's evidence tallied with the testimonies of his witnesses that the disputed land has been the respondent's father way before 1974. The

appellant complained on ground two and three of the grounds of appeal that the trial Tribunal erred by searching for new evidence at the locus in quo and that he acted on them. Such argument has no basis as the trial Tribunal has mandate to visit locus quo and call for evidences or witnesses that will assist in reaching a fair decision. Nevertheless, the decision of the trial Tribunal did not base on the evidence collected at the locus in quo only. Rather, on all the evidence that. As for the fourth ground of appeal, the trial Chairman observed that the appellant has never lived at the suit land and cultivated the same. I find no evidence on record to convince me otherwise. From the analysis of the evidence above, I find that I have no reason or justification to reverse the decision of the trial tribunal without having new findings. I share the views of Moshi, J (as he then was) in the case of Materu Leison & J. Foya V Republic, [1988] TLR 102, where he held that:- "The appellate courts may in case circumstances interfere with the trial court finding of facts. It may do so in instance where trial court had omitted to consider or had misconstrued some material evidence, or had acted on a wrong principle or had erred in its approach to evaluate evidence// That said and done, I dismiss the appeal for being non-meritorious with costs.

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Prepared on 13 October 2026 · Esheria