

TANZANIA / JUDGMENT

richard amnaay vs philipo daffi lolo

2023 tzhc 23540 29 december 2023

COURT
TZHCDECIDED
29 December 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA DISTRICT REGISTRY OF
ARUSHA AT ARUSHA LAND APPEAL NO. 185 OF 2022 (C/F Land Application No. 08 of 2016
District Land and Housing Tribunal for Karatu at Karatu) RICHARD A M N A A
YAPPELLANT VERSUS PHILLIPO DAFFI L O L
ORESPONDENT

JUDGMENT

22nd November & 29th December, 2023 TIGANGA, 3. This land dispute has chequered history, it has been in various tribunals and courts since 2007. Initially, the appellant herein filed his complaint as Application No. 18 of 2007 before Endashangwet Ward Tribunal claiming that, the respondent herein had invaded his land measuring three

- (3) acres located at Endashangwet Village, Kati Hamlet in Karatu District (the suit land) and took possession of the same. The ward tribunal decided in his favour. Aggrieved, the respondent appealed to the District Land and Housing Tribunal of Karatu at Karatu, in Land Appeal No. 21 of 2008, the appeal was dismissed and ward tribunal's decision was upheld. Still aggrieved, he appealed to this Court, Mansoor, J. in Misc. Land Appeal No. 11 of 2009 which quashed and set aside all lower tribunals' decision for want of territorial jurisdiction and improper quorum of the ward tribunal members. The matter started afresh as the appellant herein filed Application No. 08 of 2016 before the District Land and Housing Tribunal of Karatu at Karatu (the trial tribunal) still claiming that the respondent has invaded into his land, the suit land, which he was allocated during Operesheni Vijiji in 1975. The respondent also claimed that the suit land is his as he inherited the same from his parents. After the trial, the tribunal decided in favour of the respondent herein. Aggrieved with the decision, the appellant preferred this appeal on the following three (3) grounds;
1. That, the trial tribunal of the tribunal erred in law and fact in failing to agree the appellants crucial witness who were allocated the suit land during Operesheni Vijiji since 1975.
 2. That, the trial tribunal erred in law and fact for not receiving the appellant's witness statements.

3. That, the trial tribunal erred in law and in fact in failing to consider that the appellant was given the land in dispute by the Village Government Council of Endashwangwet. 2 During hearing of the appeal, both appellant and respondent appeared in person and unrepresented. Supporting the appeal, the appellant submitted that, the suit land is his, he has been using it for more than 30 years after he was given the same during Operesheni Vijiji back in the year 1975 in the presence of villagers and village leaders. That, at the time he was given the suit land, the respondent herein was still pursuing his further studies, and after he finished, he was employed as Land Officer and he invaded the suit land in the year 2007 when he was in hospital taking care of his sick child. He Went On Submitting that, he reported the matter to the village authorities with no avail and that is when he decided to file his complaint at the trial tribunal. He argued that, despite the good evidence given by his witnesses who are village leaders, the trial tribunal still decided in respondent's favour hence this appeal. Opposing the appeal, the respondent submitted that, the suit land belongs to his late father who purchased the same from one Baahondi and that, he managed to prove such ownership before the trial tribunal. He averred that, after the death of his father, his mother kept on using the suit land and when she became of old age, she handed the same and he has 3 been using the same to date. He therefore denies the allegation that, he invaded the suit land as alleged by the appellant. In his brief rejoinder, the appellant claimed that, the said Baahondi had never lived in their village and that, when he was given the suit land the same was virgin. He also challenged the sale agreement not to be genuine. He maintained that the suit land is his and he proved the same before the trial tribunal. Having gone through the trial court's records as well as both parties' submissions, I now proceed to determine grounds of appeal which are to prove Only one issue; whether the trial tribunal was justified to hold that the suit land belongs to the respondent. It goes without saying that, in land disputes, being a nature, the onus of proving the case is at the balance of probabilities which lies on the one who alleges anything on his/her favour just like in normal civil cases. This principle is enshrined under section 110 of the Evidence Act, [Cap 6 R.E. 2019] (Evidence Act) and in a number of Court of Appeal Cases such as in the case of Miller vs. Minister of Pensions [1937] 2 ALL. ER 372 as quoted with approval in the case of Paulina Samson Ndawavya vs. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017, CAT at Mwanza (Unreported), Lord Denning had this to say; "If at the end of the case the evidence turns the scale definitely one way or other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to determine conclusion one way or other, then the man must be given the benefit of a doubt. This means that the case must be decided in favour of the man unless the evidence against him reaches the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry a reasonable degree of probability, but not so high as required in a criminal case. If the evidence is such that the tribunal can say-We think it more probable than not, the burden is discharged, but, if the probabilities are equal, it is not..." See also Maria Amandus Kavishe vs. Norah Waziri Mzeru (Administratrix of the Estate of the late Silvanus Mzeru) & Another, Civil Appeal No. 365 of 2019 CAT at Dsm (unreported) where the Court of Appeal had this to say; It is a cherished principle of law that, generally in civil

cases, the burden of proof lies on the person who alleges anything in his or her favour. This is the essence of the provisions of sections 110 (1),

- (2) and 111 of the Evidence Act. It is equally elementary that, since in this appeal the dispute between the parties was of civil nature, the standard of proof was on a balance of probabilities, which simply means that the court will sustain such evidence which is more credible than the other on a particular fact to be proved. See; Anthony Masanga v. Penina Mama Ngesi & Another, Civil Appeal No. 118 of 2014 and Hamza Byarushengo vs Fulgencia Manyamba & 4 Others, Civil Appeal No. 33 of 2017 (both unreported). It is again trite that the burden of proof never shifts to the adverse party until the party on whom onus lies, discharges his and that the burden of proof is not diluted on account of the weakness of the opposite party's case. Applying the above principle in the appeal at hand, from the outset I find that the appellant failed to prove that, the suit land belonged to him at the balance of probability. His evidence was that, he was allocated such land during Operesheni Vijiji back in the year 1975, however, there is no any kind of proof of any documentation showing him as the legal owner of the suit land. On the other hand, the respondent's evidence that, he received the same as a gift from his parents who bought the same from one Baha Hondi carries more weight. I hold so because the Sale Agreement, exhibit D1, proves that respondent's father bought the suit land for the consideration of three (goats) back in the year 1973 and after his demise, the respondent's mother went on using the same until 1981 when she bequeathed it to the respondent as a gift as seen in exhibit D2. These two documents were neither objected when tendered as exhibits nor did the appellant cross examine the respondent concerning the validity of the same which implied that, he admitted their contents. For him to raise an allegation that the said documents are forged in this appeal is an afterthought. The law is clear that, allegations of fraud ought to be proven by evidence as held in the case of Twazihirwa Abraham Mgema vs. James Christian Basil (As Administrator of the Estate of the Late Christian Basil Kiria, Deceased), Civil Appeal No. 229 of 2018, CAT at Dsm, the Court of Appeal Cited With authority the case Of Ratilal Gordhanbhai Patel vs. Lalji Makanji [1957] E.A 314, where the defunct East African Court Appeal had this to say regarding allegations of fraud in civil cases; "Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required." Court of Appeal went on holding that; "...Likewise, in the Court's earlier decision in the case of Omari Yusuph v. Rahma Ahmed Abdulkadir [1987] T.L.R 169, it was held inter alia as follows: 7 "When the question whether someone has committed a crime is raised in civil proceedings that allegation need be established on a higher degree of probability than that which is required in ordinary civil cases. " In the circumstances, I find that the appellant failed to prove his claims before the trial tribunal, and the latter did not err in holding that, the suit land belonged to the respondent as the appellant failed to prove his ownership of the same. In light of the above, this appeal lacks merit and the same is dismissed. Taking into account that this case has been in the courts of different jurisdictions for more than fifteen years, I give no order as to the costs. It is accordingly ordered. DATED and delivered

at ARUSHA this 29th day of December, 2023 8

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Prepared on 14 October 2026 · Esheria