

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISCELLANEOUS LAND CASE APPEAL NO. 4 OF 2018

(From the Decision of District Land and Housing Tribunal of Babati District at Babati in Land Case Appeal No. 30 of 2017 and Original Ward Tribunal of Magugu Ward in Application No. 10 of 2015)

AHMED SAAD.....APPELLANT

VERSUS

MAGRETH MASawe..... RESPONDENT

JUDGEMENT

2ND OCTOBER, 2018

MWENEMPAZI, J.

The appellant is aggrieved by the decision of the Babati District Land and Housing Tribunal which was delivered on the 5th December, 2017 by Honourable C.P. Kamugisha, and he has therefore filed this appeal against the said Judgement on the following grounds:

1. That, the Trial Tribunal erred in law and fact for giving the judgement which favoured the Respondent.

2. That, the Trial Tribunal erred both in law and in fact for not considering the evidence adduced by the Appellant that he was given the said plot by the family of one **Juma Rajabu Mei** since 1996.
3. That, the Trial Tribunal erred both in law and in fact visually reasons which was no adduced by the Respondent at all.
4. That, the trial Tribunal erred both in law and in fact for delivering a judgment which is not understandable.
5. That, the trial Tribunal erred in law and in fact for not considering the boundaries of the disputed property.

When the appeal came for hearing both parties were unrepresented. The appellant in submitting his appeal stated that the first thing he would like to complain about is that the District Land and Housing Tribunal delivered a judgement which wrongly favoured the respondent. The appellate Tribunal did not take into consideration that the appellant was at the dispute premises since 1996. The decision of the District Land and Housing Tribunal was based on explanations and on issues which were not complained against by the respondent herself. Generally speaking the judgement was not clear. The order was given to the effect that the respondent Magreth Masawe should leave the premises. However, the appellant was in occupation of the premises. With due respect to the appellant's submission, this latter argument is not true. From the record of the judgement annexed to the petition of appeal, the appellate tribunal decided and ordered that the respondent(Appellant) is entitled to vacant possession.

The appellant submitted that the District Land and Housing Tribunal did not take into consideration the boundaries of the dispute premises. The Sale agreement which Magreth Massawe had on the North side was being bordering by Rakhesh.

The appellant was bordering Abbas Saad on the North side; on the south the appellant was bordering the street road; on the East side the appellant was bordering with Arusha-Babati Road and on the west the appellant was bordering with another plot belonging to himself. The appellant submitted that the area of land which he owns was given to him by Juma Rajabu Mei.

The appellant submitted that in the Ward Tribunal, Magreth Massawe was questioned as to what made her believe that the plot she is claiming to have bought from Choi Chakara belonged to him. She said she saw a name listed in the ledger book in the office of the Village Executive Officer. She was also asked whether she was given any receipt. Her answer was negative. In the submission of the appellant she would expect the respondent to have a receipt or any document. His argument is that if Choi Chakala was given the area by the Village, there would be evidence in the village government documents. So that, the same would entitle him to sell to Magreth Massawe.

The respondent in her reply submitted that, although the appellant has been submitting and the same was recorded, the contents are lies by the appellant. She submitted that she went to the village of Magugu and bought a plot for her Children. When she was looking for the plot, one person by the name of Yusufu Kirangi told Shaban Abdallah that there is a plot available for sale. She committed herself that she wants to buy. Then Shaban Abdallah looked for Yusuf Kirangi who in turn looked for Choi Chokala. The latter is the owner of the plot who was looking for the buyer. They then went to the village Executive Officer's office who showed them a register. The register showed that plot No. J/92 belonged to Choi Chokala. That is when the respondent agreed to purchase. The respondent bought the plot before the Village Executive Officer, Shaban Abdallah and Yusufu

Kilangi. When the sale document was being prepared she was absent but she came for signature and to prove that really there is a plot. She personally paid money to Choi Chokala.

The Respondent submitted that this dispute has taken a long time and at one time during hearing in the Ward Tribunal the appellant offered to give the respondent an alternative plot. This never bore fruits. As the plots offered were not preferred by the respondent and the amount for compensation was low. The record in the trial tribunal shows the respondent wanted to be compensated Tshs. 4,000,000/=, she was ready to go down to Tshs.3,000,000/=. The appellant was ready to pay Tshs. 2,000,000/=. The matter proceeded for hearing and decided in favour of the appellant only to be reversed and give right to the respondent in the appellate Tribunal. The respondent thus prayed that this appeal should be dismissed with cost.

I have had time to peruse records of both lower tribunals. The appellant in this appeal was a respondent in the application filed in the Magugu Ward Tribunal in Land Case No. 10 of 2015 and also the respondent in the appellate tribunal. This is the second appeal. The grounds of appeal as seen above seems to be more directed to fault the decision of the Ward Tribunal of Magugu rather than the decision in the District Land and Housing Tribunal in Miscellaneous Land Appeal No. 30 of 2017. May be, the focus was to maintain the decision of the Ward Tribunal. I understand the parties are not lawyers. Or at least they are not skilled in the legal knowledge. Therefore, before considering whether the decision in the appellate Tribunal was made against the law and or was prejudicial to the appellant's rights, I have the opinion, it will serve to look at what was the evidence in the trial tribunal.

It is in the record of the trial tribunal proceedings that the respondent herein filed an application in the trial Ward Tribunal to recover her piece of land which she bought from one Chui Chokala by the assistance of one Shaban Abdallah and Yusuf Idd Kirangi. All these testified in the trial tribunal. The respondent bought a piece of land registered as plot No. 92 Block J. It was registered in the ledger kept in village executive officer's office and also the land office at Babati District Council. According to the records the plot of land belonged to one Choi Chokala. Nobody has disproved that. It was firmly testified by Matwali Mwita who was Acting Village Executive officer, that the plot which was sold by the said Choi Chokala before him was identified by registration number, Block J/92 and the same is found in the map at the land office.

When it comes to the case for the appellant in the trial tribunal, it is recorded that his plot which he is contesting belonged to that of Juma Rajabu Mei. The first witness to say so was Amina Rajabu Mei. This witness is the sister of Juma Rajabu Mei. Another witness is Marikuta Alex, who identified herself is the Administrator of the Estate of late Juma Rajab Mei testified that the dispute land was encroached into by four persons. Some of them stood by the appellant went to court but the family of Juma Rajabu Mei. It is not clear how the plot once belonging to Juma Rajabu Mei shifted hands to be owned by the appellant. One witness Ally Hamza testified that Ahmed Saad was given two plots of land and mbugani and was required to pay Tshs. 77,370. 50/. Then, he paid Tshs. 100,000/-. However, no witness testified from the village office that they allocated a plot to the appellant. Witnesses have been concerned with boundaries which, in my view, are obvious once the area is surveyed.

The record of the District Land and Housing Tribunal (hereinafter it will be called the 'appellate Tribunal') shows that at the appeal, parties herein just filed their grounds appeal and reply grounds of appeal and then left for the Chairman of the District Land and Housing Tribunal to proceed determining their case. They were however, questioned by the assessors. And the respondent clarified her position that she bought the said plot in dispute from Choi Chokala. Her plot was Block J NO. 92 and the appellant owned Block J Plot No. 91. In the trial tribunal evidence there is evidence that the plots of Choi Chokala and Juma Rajabu Mei were close separated by a canal. The respondent in the appellate tribunal maintained that the Suitland has never been a property of Choi Chokala but he (the appellant) has two plots.

It is evident that the record in both tribunals does not support the idea that the appellant had a plot and the respondent had nothing. The evidence on the appellant's side to dispute is not supportive of how he came to own the dispute plot. However, the story by the respondent and witnesses in support of her case has a logical flow of the evidence bringing her into ownership. Under the circumstances it is just to conclude that the appellant may have had a plot from Juma Rajabu Mei irrespective how he came to own it. But that piece of land is not the same as that which was bought by the appellant from Choi Chokala in presence of the Acting village Executive officer and other two witnesses. The land being surveyed and given a block number, it must appear in the map kept by relevant authorities. I have a view that the appellate tribunal was right in its decision and order that the respondent, Magreth Masawe, is entitled to vacant possession of the suit land, labeled as Block J/92. The decision of the appellate Tribunal is therefore upheld, the appeal therefore is dismissed in its entirety.

It is ordered accordingly.

T.M. Mwenempazi

JUDGE

8TH OCTOBER, 2018

I hereby certify this to be a true copy of the original



A handwritten signature in black ink, appearing to read "J.F. Nkwabi".

J.F. NKWABI

DEPUTY REGISTRAR

ARUSHA

31/10/2018