

IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA

MISC. LAND CASE APPEAL NO. 12 OF 2017

(Arising from the Decision of the District Land and Housing Tribunal of
Chato District at Chato in Land Case Appeal No. 29 of 2014)

GEORGE GERALD APPELLANT

VERSUS

WILSON RUCHWELE RESPONDENT

JUDGMENT

27/09/2018 & 15/01/2019

RUMANYIKA, J.:

The 2nd appeal is against the 18/11/2015 judgement and decree of the District Land and Housing Tribunal for Chato at Chato (The DLHT). Having upheld decision of Kasulo Ward Tribunal (the wt). Which declared Willison Ruchwele (herein the respondent) lawful owner of the disputed land. George Gerald (the appellant) is not happy. Here he is.

Rephrased, the two grounds of appeal read as follows:-

1. The learned chair ignored a ground of appeal.
2. The learned chair improperly evaluated the evidence on record.

Both appeared in person.

Additional to his petition of appeal, the appellant submitted that in fact the disputed land belonged to one Alhaj Abdallah Sadala. That is it.

The respondent submitted that the DLHT's chair actually evaluated the evidence on record. That is all.

A brief account of the evidence on record will show that with regard to the disputed land, the appellant enjoined usufructuary rights (as it belonged to one Abdallah Sadala of Bukoba). Having been dully allocated to him in 2007 by Kasulo Village Council, he occupied and utilized it since then undisputed.

On his part, the respondent's evidence reads that the disputed land belonged to their group. Having been allocated the same by the local ward agricultural/extension officer. That is all.

It appears now on the balance of probabilities convinced, rightly so in my considered opinion, the DLHT's chair held that the trespassing appellant had no locus or cause of action. Much as admittedly, the disputed land belonged if at all to a 3rd party.

The issue is whether the disputed land belonged to the respondent. I will answer the question in the affirmative for one main reason:- The appellant may have had through Abdallah Sadala usufructuary rights, therefore the disputed land belonged to the said Abdallah. Save for the plain allegations. No documentary or tangible evidence from the said 3rd party was led in court. Possibilities of the

appellant only assuming special title therefore could not be ruled out. Perhaps out of it, the said Abdallah Sadala claimed no title. Who knows! Like any others, usufructuary rights are not simply assumed/imaginary.

It is until such time when, by way of evidence true owner of the disputed land for that matter or plaintiff established principal/agent relationship respectively. Now that in his evidence the appellant never met this criterion, he could not be said that he had proved his case on the balance of probabilities. Whether or not, if at all the land was allocated to the respondent by a mere local ward extension officer (with no legal mandate) is, in my considered opinion immaterial under the circumstances. Decision of the DLHT is upheld.

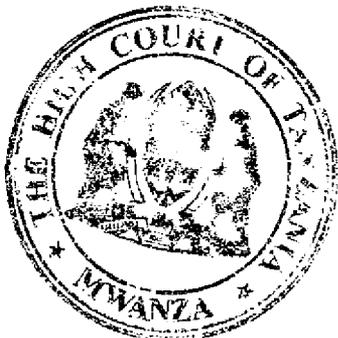
Appeal is dismissed with costs here and at the two tribunals below.

Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
07/01/2019

Delivered under my hand and seal of the court in chambers this 15th day of January, 2019 in the presence of both parties in person.




O.H.KINGWELE
DR
15/01/019