

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 123 OF 2020

BETWEEN

JEREMIA OTIEGO RYAGA _____ **APPELLANT**

VERSUS

1. ODDA AORO _____ **1st RESPONDENT**

2. OYOO AORO _____ **2nd RESPONDENT**

*(Arising from the decision and orders of the District Land and Housing Tribunal for Tarime at Tarime
Hon. Ngukulike, Chairman, in Land Appeal no 13 of 2019 dated 07.08.2020).*

EX PARTE JUDGEMENT

7th December 2020 & 22nd January 2021

GALEBA, J.

This appeal is in respect of land located at Kanyopudo area in Raranya ward within Rorya district. The land was subject of litigation in civil case no 9 of 2018 at Raranya ward tribunal and the appellant lost in favour of the respondents who are mother and son respectively. He appealed to the District Land and Housing Tribunal for Tarime, but still he lost. This is therefore an appeal targeting to turn down two concurrent decisions.

The background to the dispute between the parties is that **Odda Aoro** and her husband, **Aoro Burucha** were owners and occupants of the land in dispute until 1978 when they were transferred to Kabwana and

later to Shirati Health Center, as they were public servants. When they left, the land was temporarily allocated to other clan members including the appellant but when they retired in 2004 they came back to their land, and those who had occupied it returned the land to their previous owners **Odda Aoro** and **Aoro Burucha**. Among those who returned the land was the appellant. The position of the appellant was however slightly different in the ward tribunal. His argument was that when **Odda Aoro** and **Aoro Burucha** relocated for public assignments to Shirati, the land in dispute was allocated to his father **Otiego Ryaga** in 1978 who in turn gave it to him in 1979. In 1980, he too, the appellant, gave the land to his young brothers **Andrea** and **Joshua Otiego Ryaga** to cultivate. Based on this position he claimed to be the lawful owner of the land. This is the story that the two tribunals disbelieved and dismissed his actions.

In this appeal the appellant raised 5 grounds of appeal which may be paraphrased as follows; *firstly*, that the appellate tribunal erred by declaring the respondents as owners of the land without considering the appellant's right to ownership of the land. *Secondly*, that the appellate tribunal erred because it did not consider the weight of the evidence that was tendered by the appellant's side and *thirdly*, that the appellate tribunal erred because it declared the respondents as lawful owners of the

land without them tendering any document to show that the village authorities granted the land to them. **Fourthly**, that the appellate tribunal erred in law and in fact because it did not consider that when the 1st respondent and her husband left Raranya village they removed everything on the land and later the land was granted to his father who in turn granted it to him in 1979. **Lastly**, the appellant complained that the appellate tribunal erred in law and in fact for holding that the respondents are rightful owners of the land, without considering the fact that the appellant has been in occupation of the land since 1979 to 2017.

When this appeal came up for hearing on 07.12.2020, whereas the appellant was present in person, the respondents did not appear. After satisfying myself that the respondents were duly served, this court made orders that the appeal be argued **ex parte** the respondents. In arguing the 1st ground of appeal the appellant submitted that to show that he was the lawful owner of the land, he had a receipt which showed that Raranya Village authorities granted the disputed land to his father which the latter granted to him. He however he submitted that the said receipt was not admitted by the ward tribunal because he sought to tender it sometime after he had given his evidence. The appellant added that that was the document which would have shown that his father was allocated the land.

From the submissions of the appellant, it is clear that his complaint in this ground has no basis because, the document he told the court that, it would have established his ownership of the land was not tendered, which means, in the ward tribunal he failed to prove his ownership to the land. In the circumstances, the 1st ground of appeal is dismissed.

As for the 2nd ground of appeal, the appellant submitted that his evidence was more credible than that of the respondents because the latter's witness, **Mr. Joseph Kumba** did not tender any document to show that the respondents were lawful owners of the land. When I asked the appellant whether he had any village leader who tendered any document or gave any evidence that the disputed land belonged to him, he readily submitted that, no leader testified that the land was allocated to the appellant or his father. In this case it was abundantly proved that the 1st respondent and her husband were owners of the land before 1978 when they were transferred to some other work stations. When they were transferred the land was temporarily allocated to other people mainly their clan members and when they retired, all those who were occupying the land vacated, and they resumed occupancy of the land including the disputed land. With such evidence, it is not clear why is the appellant alleging to have tendered more credible evidence than that of the

respondents. For the above reasons the 2nd ground of appeal has no merit and the same is dismissed.

In supporting the 3rd ground, the appellant submitted that the respondents did not tender any document in the ward tribunal to show that they owned the land and that such document was tendered in the district land and housing tribunal. This argument is not tenable at law. It was for the appellant who was the claimant in the ward tribunal to tender necessary documents and give appropriate evidence in proving that the respondents were not lawful owners of the land. That is so because, in law, he who alleges to own property he must prove; see the provisions of **section 119 of the Evidence Act [Cap 6 RE 2019]**. It was therefore not for the respondents to prove that they were lawful owners of the land. Based on the above discussion this ground of appeal has no merit.

As for the 4th ground, the appellant did not have any submissions, but he prayed that this court be pleased to consider that his ground had merit. The complaint in the 4th ground is that the appellate tribunal failed to appreciate the fact that when the 1st respondent and her husband relocated to Shirati, the land was allocated to his father who later gave it to him. That complaint of the appellant has no basis because when submitting

in support of the 1st ground of appeal he argued that the only evidence which would prove that his father was allocated the land was a receipt that was not accepted by the ward tribunal for reasons that an attempt to tender it was made long time after the appellant had testified. In this case there was no proof that the land was allocated to the appellant's father or to the appellant himself. The 4th ground therefore has no substance.

The complaint in the 5th ground is that of time bar. The appellant is complaining that he has been living on the land since 1978 to 2017 when the dispute arose. In this case, there was no evidence that the appellant or his father was permanently allocated the land by Raranya village authorities. The credible evidence is that of **DW3 Joseph Kumba, DW4, Makori Nonkwe** and **DW5 Otieno Otende. DW5** testified that he was the Village Chairman at the time and when the 1st respondent and her husband came back in 2014 all those who were using their land surrendered it to them and that they even assisted him to build a house in setting up a home. According to **DW5** who was a local community leader, the family of Ryaga which means the family of the appellant was also in agreement with the resettlement of the **Aoros**. There is therefore no plausible explanation as to how the applicant could be the lawful owner of

the land in dispute. In the circumstances this ground of appeal is dismissed.

Based on the above reasons this court upholds the decision of both the Raranya Ward Tribunal and that of the District Land and Housing Tribunal. This court further dismisses this appeal in its entirety with costs, but the appellant has a right appeal to the Court of Appeal of Tanzania.

DATED at MUSOMA this 22nd January 2021



Z. N. Galeba
JUDGE
22.01.2021

This judgment has been delivered in the presence of Jeremia Otiego Ryaga, the appellant, Ms. Odda Aoro and Mr. Oyoo Aoro the 1st and 2nd Respondents respectively. Parties have also been availed with copies of this judgment and the decree today 22.01.2021.



Z. N. Galeba
JUDGE
22.01.2021