

**IN THE HIGH COURT OF TANZANIA**

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO 104 OF 2020**

**ARISTARICO KAUMI BWIRE** \_\_\_\_\_ **APPELLANT**  
**VERSUS**

**BWERE MANYAMA** \_\_\_\_\_ **RESPONDENT**

*(Arising from the Decision and Orders of the District Land and Housing Tribunal for Mara at Musoma,  
Hon. Kitungulu Chairman, in Land Appeal no 290 of 2019 dated 30.04.2020)*

**JUDGEMENT**

*4<sup>th</sup> & 27<sup>th</sup> November 2020*

**GALEBA, J.**

This is a second appeal, in which **MR. ARISTARICO KAUMI BWIRE (MR. BWIRE)** is seeking to fault the decision of the District Land and Housing Tribunal at Musoma (the DLHT), in land appeal no 290 of 2019 having lost in favour of **MR. BWERE MANYAMA (MR. MANYAMA)**. The latter had earlier lost in civil case no 5 of 2018 before Nyambono ward tribunal in Rorya district, where the appellant was declared a lawful owner of the land in dispute. However on appeal, the DLHT reversed that order and held that the land belonged to the estate of the late **BWERE MANYAMA** and the respondent in this appeal, its administrator.

The land subject of this appeal, measuring 127 by 37 paces, is situated at Nyambono village within Nyambono ward in Rorya. According to the appellant in this appeal, his father **BWIRE JARALYA** was originally granted 40 acres of land in 1952 by a local chief called **MWANANGWA MISANGO MAGUSU**. His father died in 1975 and her mother, **NYANTENDE** who remained in occupation of the land passed away later in 1985. When the appellant's mother died, it vested unto him and a dispute arose on 01.08.2016 when the respondent trespassed on the land ceding a sizable chunk of it in the above specified measurements. On his part, **MANYAMA** in the ward tribunal was of the position that the land is his because it was granted to his father **MR. MANYAMA BWERE** in 1950 by **MR. BWERE BURARO**, **MR. MANYAMA's** grandfather. **MR. MANYAMA** continued to own the land till the year 2004 when his father passed away. Nyambono ward tribunal with a casting vote of the chairman, after tying of votes of regular members believed **MR. BWIRE's** case and held that **MR. MANYAMA** was a trespasser in the land. The latter successfully appealed to the DLHT which decision aggrieved **MR. BWIRE**, who filed the present appeal.

**MR. BWIRE** had originally filed 3 grounds of appeal, but when this matter came up for hearing, Ms. Flora Okombo, learned advocate for the appellant abandoned the 1<sup>st</sup> ground of appeal and maintained the following two grounds;

***'1. (was abandoned)***

***2. That the Honourable tribunal erred in law and in fact in failure to consider and evaluate the evidence fairly as to the length and width of the disputed plot by holding that, the matter was time barred and that the respondent's family has been undisputedly occupying the disputed land for more than 12 years.***

***3. That the Honourable tribunal erred in law and in fact by holding in favour of the respondent in relying only on contradictory evidence of the respondent and his witness.'***

When this appeal came up for hearing on 04.11.2020, after due assurance that the respondent was served but was absent in court I made orders that this appeal was to proceed ***ex parte*** right then.

The issue in this appeal is whether the two grounds raised were that tough to be able to overturn the judgment of the DLHT.

An attempt to understand the 2<sup>nd</sup> ground as one clear complaint is not a simple venture for that ground is composed of two components diametrically opposed in nature; the drawer implying that the first led into the second. A careful dissection of the ground is that, ***first*** the DLHT erred in law and in fact ***in failure to consider and evaluate the evidence fairly as to the length and width of the disputed plot. Secondly,*** because of the above failure, the failure to evaluate evidence relating to the size of land, the tribunal held ***that, the matter was time barred and that the respondent's family has been undisputedly occupying the disputed land for more than 12 years.*** The plain understanding of the ground shows that none of the complaints can lead to the other. That is to say a misunderstanding on the size of land cannot lead the tribunal to hold that the matter was time barred. But anyhow, Ms. Okombo simplified the complaint in that ground and argued it.

Her argument in that ground was linear and easy to grasp. She submitted that what that ground meant was that the DLHT tribunal erred in holding that the matter was time barred in the ward tribunal, while the two parties were both in the land all the time. It is however the holding of

this court that, the fact that parties were both present all along on the land cannot *per se* be a good reason for this court to fault the decision of the DLHT. It is actually a disincentive to the complaint because if parties were present throughout why is it that the appellant did not sue the respondent in time? It is different if the argument of the appellant was that a trespass occurred recently, which was not an argument in this appeal. That said this court holds that the 2<sup>nd</sup> ground of appeal has no merit.

The complaint in the 3<sup>rd</sup> ground was that the DLHT relied on hearsay evidence which was contradictory. In supporting this ground Ms. Okombo, submitted that the contradiction was between the evidence of **MLANGIRA BITA** and **PHIRIADA MANYAMA**. Elaborating on that point she submitted that whereas the former testified that **MANYAMA BWERE**, the father of the respondent was living on the land conducting two economic activities of *farming* and *hunting*, **PHIRIADA MANYAMA** testified that **MANYAMA BWERE** was conducting the same activities of *farming* and *hunting* but that witness added that the said **MANYAMA BWERE** shifted to some other location. When I asked learned counsel as to what was the actual contradiction or difference between the two pieces of evidence, she

submitted that the difference is that **MLANGIRA** did not testify that **MANYAMA BWERE** relocated from the land to settle elsewhere. When this court wanted to know whether the tribunal was influenced by that difference in the statements of the two witnesses to decide the way it decided the appeal, she responded that she was not certain whether the tribunal was influenced by the contradiction.

***First, PHIRIADA MANYAMA*** never testified that the land was used for hunting at any point, ***secondly*** for the court to entertain a contradiction to the extent of affecting the evidence or a decision, that contradiction must not be a minor inconsistency, it has to be a major contradiction with ability to reach the tap root of the case and shake the whole of its merits. In this case for instance, if the differences were in respect of ownership of the land, it could be said that the contradiction if any could be going to the root of the matter. However the complaint in the 3<sup>rd</sup> ground is that the two witnesses had a difference in their views on the use of the land and not its ownership which aspect was at issue. It is different if one said that the land belonged to the appellant and another the respondent. In the circumstances, this ground too has no merit.

Based on the above reasons this appeal is dismissed with no orders as to costs; parties have a right of appeal after seeking and obtaining a certificate from this court that a point of law is involved in this judgment, meriting attention of the Court of Appeal of Tanzania.

DATED at MUSOMA this 27<sup>th</sup> November 2020



Z. N. Galeba  
**JUDGE**  
**27.11.2020**