IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

MISC. LAND APPEAL No. 42 OF 2017

(Arising from the District Land and Housing Tribunal of Geita at Geita Land Appeal No. 45 of 2015, originating from Application No. 7/2015)

DANIEL BAHATI .....APPELLANT

VERSUS

MAGOME MELI..... RESPONDENT

JUDGMENT

01st & 16th December, 2020

TIGANGA, J

Before the Ward Tribunal of Kazunzu in Sengerema District, Magome Meli, the respondent, sued Daniel Bahati, the appellant, for trespassing his land and farming therein. After hearing the parties and their respective witnesses, the Ward Tribunal decided in the favour of the appellant. The

base of that decision was that, the respondent failed to prove his case by evidence.

Dissatisfied by the decision of the Ward Tribunal, Magome Meli appealed to the District Land and Housing Tribunal for Geita in Appeal No. 45 of 2015. Having heard the appeal, the appellate tribunal allowed the appeal on the ground that, there was enough evidence presented by Magome Meli, the respondent in this appeal, that he has been living on the suit land uninterrupted since 1975, a period of more than 30 thirty years. On that base, he was therefore declared the lawful owner of the suit premises.

Dissatisfied by the decision of the appellate tribunal, Daniel Bahati, the appellant, filed this appeal challenging the decision of the District Land and Housing Tribunal for Geita. The appeal is predicated on a total of five grounds as follows;

i. That, the District Land and Housing Tribunal chairman erred in law and fact for failure to evaluate the evidence of the appellant hence reached into erroneous decision.
ii. That, the District Land and Housing Tribunal chairman erred in law and in fact by relying on the false and cooked evidence, hence reached into erroneous conclusion.

iii. That, the District Land and Housing Tribunal chairman erred in law and in fact to proceed and determine the case and deliver the judgment in favour of the respondent.

iv. That, the District Land and Housing Tribunal chairman erred in law and in fact to obtain the decision which is one sided and biased as it took into consideration only the respondent evidence disregarding the appellant's evidence.

v. That, the District Land and Housing Tribunal chairman erred in law and in fact for improper evaluation of evidence due to the fact that the land in dispute was bought by appellant since 2002 from one person known as Lemy Nyanda by following legal procedures.

In the end the appellant asked for the appeal to be allowed, the decision of the District Land and Housing Tribunal for Geita in Appeal No. 45 of 2015 be quashed and the appellant be declared to be the lawful owner of the suit land. He also asked for the costs of the appeal and any other relief as the court may deem fit and just to grant.

When the appeal was put before the then assigned Judge, Hon. Siyani, J, he noted that the appeal was filed in contravention of Order XXXIX, Rule 1 (1), of the Civil Procedure Code [Cap. 33 R.E 2019]. Following that findings, on 04/09/2018, the appeal was struck out for contravening the above cited law. However, on 16/10/2019 through

application for Review No. 08/2019, the appellant applied for this court to review the order which struck out the appeal on 04/09/2018. That application was granted, the decision was reviewed and the appeal was restored as prayed.

Before the appeal was struck out, the respondent had opposed the appeal by filing a reply to the memorandum of appeal as follows;

a) That the District Land and Housing Tribunal lawfully evaluated the evidence which was adduced before it and found that the respondent's evidence was heavier than that of the appellant, hence entered a verdict in favour of the respondent.
b) That there was no cooked or false evidence which was relied upon but the appellate tribunal based its decision on the relevant and conclusive proof of evidence which was adduced by the respondent.
c) That the District Land and Housing Tribunal evaluated the evidence properly and rightly rejected the appellant's evidence on a balance of probability to enter the judgment in favour of the respondent.
d) That, the appellant is put to strict proof thereof as to why the District Land and Housing Tribunal decision was one sided and biased.
e) That, the District Land and Housing Tribunal considered the failure by the appellant to prove that he bought the disputed land since

2002 because the respondent has been uninterruptedly using the suit land since 1975.

He prayed the appeal to be dismissed, the judgment of the appellate tribunal be upheld and the appellant be declared the lawful owner of the suit land, and any other relief as the honourable court may deem fit and right to grant.

After the restoration of the appeal, the respondent was served twice but did not appear to defend the appeal this fact is proved by the endorsement of Senta Harmlet chairperson one Jacob M. Mabula that the respondent was served.

Following the non appearance of the respondent, the appeal was heard exparte. In the submission made by the appellant in support of the appeal, he submitted that, the Ward Tribunal gave him the victory which he deserved as he had been in occupation of that land for 12 years. He prayed this court to allow the appeal and revive the findings of the Ward Tribunal. He asked the court to adopt his grounds of appeal and base on the said grounds of appeal to decide the appeal.

That being the case, I will thus deal with the grounds of appeal one after the other. Starting with the first ground of appeal which raises a complaint about the failure of the District Land and Housing Tribunal to evaluate evidence of the appellant which was heavier than that of the respondent, I have passed through the evidence of both parties as presented before the ward tribunal, I am entirely in agreement that the appellate District Land and Housing Tribunal did not analyse the evidence on record before making its findings. Now in the circumstances what is the right recourse to be taken by this court. In the case **Deemay Daat & 2 Others, vs Republic,** Crim. Appeal No. 80 of 1994, the Court of Appeal of Tanzania, while in **Salum Mhando V. Republic** (1993) T.L.R. 170, the Court held *inter alia* that;

> *"Where there are mis-directions and no-directions on the evidence, a court of second appeal is entitled to look at the relevant evidence, and make its own findings of facts".*

Looking in that evidence, both parties claim to have acquired and possessed the land through sale, claiming to have purchased the land from different persons and on different times. By their evidence, no one is claiming to have been allocated the land by the village authority. According

to the evidence adduced before the tribunal, the appellant claims to have purchased the land from one Lemi Nyanda who appears to be his relative. This is evidenced by his evidence before the Ward Tribunal which is to the effect that;

> *"eneo hilo tangu zamani lilikuwa la nyumbani, eneo analolalamikiwa mdai aligawia mama aitwaye Lemi Nyanda yeye aligawiwa na serikali ya kijiji na mwaka 2002, Lemi Nyanda aliniuzia shamba hilo"*

The appellant did not tender the sales agreement between him and Lemi Nyanda, through which he purchased this land from the said Lemi Nyanda as exhibit to prove that he actually purchased such land from that person. Further to that, he did not call the said Lemi Nyanda as one of his witness to prove that she actually sold him the said land and did not give reason as to why he did not call Lemi Nyanda as witness to prove that important fact of how he acquired the land and owned it.

On the other hand, the respondent tendered a sale agreement which shows that, he purchased the said land from one Mandabili Makonda in the year 1976. That sale agreement was discredited by the Ward Tribunal on

the ground that, it did not relate to the land in dispute but to "Bonde la kulima Mpunga" i.e the paddy.

In its judgment, the ward tribunal alleged to have visited the locus in quo, however, this finding is not supported by the record, as proceedings do not show that the tribunal visited the locus and the evidence recorded thereat. What can be seen on record is the sketch map filed in the case file but without backup of the proceedings on how the same was obtained and filed. Further to that, in its findings the Ward Tribunal found that there was no sign to prove that, the sisal boundary marks were uprooted. Following that observation, the Ward Tribunal held in its findings that, the land allegedly to be owned by the parties are not even bordering each other, and lastly that, there is no evidence to prove that the respondent has been in occupation and use of the land for so long.

It also found the evidence of the appellant to be heavy than that of the respondent, as although the appellant did not tender sale agreement, he called one eye witness who said to be present and signed on the sale agreement as one of the witnesses when the sale was effected.

Although in the entire evidence neither parties to the case nor their respective witnesses precisely described the size and location of the land in dispute, the description is shown in the findings the Ward Tribunal as reflected on the drawn sketch map to be 72 paces North, 41 paces East, 123 paces South and 20 paces West.

That being the case, the District Land and Housing Tribunal in its findings skipped and did not consider the findings of the trial tribunal that the lands owned by the parties were not bordering each other.

As already indicated herein above, as each party claimed to have acquired land through sales, sales of land however section 31 if the Village Land Act, [Cap 144 R.E 2019] requires every disposition of village land to be approved by the village council, it was expected of the appellant to prove his purchase by the sale agreement which he did not tender and to prove that the disposition in his favour was approved by the village council.

In his evidence before the trial tribunal, the appellant did not tender the contract through which he purchased the land without explanation as to why he failed to do so. He also failed to call a person who sold him the land as a witness to prove that she actually sold him the land. Failure to

tender the sale agreement and to call the witness who sold him the land leaves the evidence of the respondent unchallenged, and makes the evidence by the defence witness No. 3 to have nothing to corroborate.

That said, weighing on the weigh balance regarding the ownership of the land, the evidence of the respondent is heavier than that of the appellant as it has proved that he acquired the land in 1976 and proved that fact by the sale agreement he tendered before the trial tribunal.

I am aware that the Ward Tribunal found the land to be unrelated as it talked about the "bonde la mpunga", but they did not by evidence distinguish the said "bonde la mpunga" with the land in dispute. That said, as the rest of the ground of appeal have been premised on this main fact of proving the ownership, I find all grounds of appeal to have no merit, I find that the appellant had a chance to prove that he had a better little than the respondent but did not do so before the trial tribunal.

I find the appeal to have no merits and it is hereby dismissed in its entirety, the findings of the District Land and Housing Tribunal is hereby upheld for the reasons given.

It is so ordered.

DATED at **MWANZA**, this 16th day of December, 2020

J. C. TIGANGA

JUDGE

16/12/2020