

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT ARUSHA

LAND APPEAL NO. 14 OF 2020

*(Originating from the District Land and Housing Tribunal for Manyara at Babati Application
No. 82 of 2016)*

NATHA CHANA MODHIWADIA (Suing as Administrator of the Estate of the
late **Chana Uka Modhiwadia**) **APPELLANT**
Versus

JASHU JETA (As the Administratrix of the Estate of the late **Jeta Chana
Modhiwadia**) **RESPONDENT**

JUDGMENT

12th August & 27th August, 2021

Masara, J.

The dispute giving rise to this appeal concerns a farm known as Dudumera Plantation originally owned by the late Chana Uka Modhiwadia. The farm measures 3114 acres and is located at Malangi village, Magugu Ward in Babati District Manyara Region (the suit land). In the District Land and Housing Tribunal for Manyara (the trial tribunal), the Respondent herein, in the capacity of administratrix of the Estate of the late Jeta Chana Modhiwadia, sued Natha Chana Modhiwadia who is also the administrator of the Estate of the late Chana Uka Modhiwadia. The cause of action by the Respondent was said to be the fact that the Appellant included the suit land in the Estate of the late Chana Uka Modhiwadia, while the same had been given to the late Jeta Chana Modhiwadia in 2002.

In his written statement of defence before the trial tribunal, the Appellant denied the claim and also raised a counterclaim seeking a declaration that the suit land is part of the Estate of the late Chana Uka Modhiwadia, his late father. The trial tribunal allowed the application and declared the suit land to be part of the Estate of the Respondent's deceased husband, Jeta Chana Modhiwadia. Ownership was vested on the Respondent and the counter claim was dismissed

henceforth. The Appellant was aggrieved by that decision; he has preferred this appeal on the following grounds:

- a) That, the learned Trial Tribunal Chairman grossly erred in law and in fact in not finding and holding that the Appellant at the trial Tribunal was wrongly sued in his personal capacity while he was a duly appointed as Administrator of his late father estate (sic) (Chana Uka Modhiwadia) while had no locus standi;*
- b) That, the learned Trial Tribunal Chairman grossly erred in law and in fact for finding and holding that Exhibit P2 is sufficient proof of transfer of the suit land to the late JETA CHANA MODHIWADIA while the said Exhibit P2 had no any legal effect in transfer of the registered land;*
- c) That the learned Trial Tribunal Chairman grossly erred in law and in fact for declaring the Administratrix of the late Jeta Chana Modhiwadia as a lawfully (sic) owner of the landed property of the late Chana Uka Modhiwadia while the said land had never been transferred nor owned by the late Jeta Chana Modhiwadia had nothing to pass to the Respondent/Administratrix (**nemo dat quod non habet**);*
- d) That the learned Trial Tribunal Chairman grossly erred in law and in fact as was not (sic) legally justified in applying the decision of the High Court in the case of HEMED SAID VS MOHAMED MBILU (1984) TLR 113;*
- e) That, the learned Trial Tribunal Chairman grossly erred in law and in fact for failure to properly evaluate the evidence available on record hence failure to find that not always the long stay of an invitee grants him ownership of land;*
- f) That, the learned Trial Tribunal Chairman grossly erred in law and in fact for failure to made (sic) decision/judgment in respect of the Counter Claim raised by the appellant/counter claimant; and*
- g) That, the learned Trial Tribunal Chairman grossly erred in law and in fact for failure to decide in favour of the Appellant/Counter Claimant in counter Claim while there was ample evidence on record which prove this case on balance of probability.*

Before dealing with the grounds above stated, it is appropriate to recount facts leading to this appeal, albeit in brief. It was not in dispute that before he died the late Chana Uka Modhiwadia owned a farm known as Dudumera Plantation (the suit land). As shown above, the suit land measured 3114 acres and it is registered with a certificate of title No. 2477, Land office No. 44431 issued on 30/12/1983. The late Uka Chana Modhiwadia had five children; namely, Jeta Modhiwadia, Dewish Modhiwadia, Natha Modhiwadia, Urmila Odedra and

Nilmamelela Odedra. Chana Uka Modhiwadia died on 16/5/2008 at Magugu. Jeta Chana married the Respondent herein in 1984. In 2015, Jeta Chana Modhiwadia died. On 22/12/2015, his wife, the Respondent herein, was appointed as the administratrix of his Estate by Magugu Primary Court.

The Appellant applied for and was appointed as the administrator of the Estate of his father, the late Chana Uka Modhiwadia by Babati Primary Court on 26/7/2016. While filing the inventory at the Primary Court, the Appellant included the suit land as part of the deceased's estate. The Respondent was aggrieved as she claimed the suit land to be the property of her deceased husband which was handed to him by the late Chana Uka Modhiwadia in 2002.

After hearing the parties and scrutinizing the exhibits tendered, the trial tribunal found that the suit land does not fall in the Estate of the late Chana Uka Modhiwadia, as the same was dully transferred to the late Jeta Chana Modhiwadia by his late father prior to his death. The suit land was vested on the Respondent as the administratrix of the Estate of her deceased husband. As already stated, the decision did not please the Appellant culminating to this appeal. The appeal was argued through filing written submissions.

Submitting in support of the first ground of appeal, Mr. Jeremiah Mjema, learned counsel for the Appellant, contended that it was wrong for the trial Tribunal to sustain the matter before it as he had been sued, in his personal capacity and not as the administrator of the Estate of the late Chana Uka Modhiwadia. He averred that in order for the Appellant to have requisite *locus standi*, he ought to have been sued as the administrator of the deceased's estate as he was appointed on 26/7/2016. To support his contention Mr. Mjema cited Order XXX Rule 1 of the Civil Procedure Code, Cap. 33 [R.E 2002] (the CPC), and the decisions in ***Ally Ahmed Ally Vs. Wastara Kipati***, Land Case No. 126

of 2017 H.C and the Court of Appeal decision in ***Bifa Fiita Vs. Mawamairo Village Government and Another***, Civil Appeal No. 6 of 2015 (both unreported).

The 2nd and 3rd grounds of appeal were argued jointly. Mr. Mjema submitted that exhibit P2 included Land forms No. 29, 30 and 35. He maintained that authenticity of such documents is questionable since they were neither dated, stamped nor signed by any competent authority authorized to witness such documents. According to Mr. Mjema, exhibit P2 have no evidential value to transfer the suit land from the late Chana Uka Modhiwadia to the late Jeta Chana Modhiwadia, hence there is nothing capable of being transferred and inherited by the Respondent's husband.

According to Mr. Mjema, even if exhibit P2 had complied with the legal requirements; that is, by being signed, stamped and dated as they ought to, the transfer could not be effected for lacking approval of the Commissioner for Lands as per section 37(5) of the Land Act, Cap. 113 [R.E 2019]. According to Mr. Mjema, sections 36 makes it mandatory for dispositions of the right of occupancy to comply with sections 36, 37, 39 and 40 of Cap 113, otherwise such dispositions will be declared void. Mr. Mjema further referred to sections 62(2) of Cap. 113 and section 41 of the Land Registrations Act, Cap. 334 [R.E 2019], which require documents effecting dispositions of right of occupancy to be registered with the Registrar of Titles. In Mr. Mjema's view, the trial tribunal was in error to declare the Respondent the lawful owner of the suit land basing on exhibit P2 which was has no probative value.

Submitting on the 4th ground of appeal, Mr. Mjema asserted that the trial tribunal failed to assign reasons for its findings that the Appellant feared to call his relatives as witnesses while there is no any legal requirement for one to

bring certain number of witnesses in order to prove one's case. He fortified that in ***Hemed Said Vs. Mohamed Mbilu*** (supra), which was relied on by the trial tribunal, was erroneously applied since that case insisted that it is not the number of witnesses that matters in proving the case but what matters is the quality of the evidence. Mr. Mjema faulted the decision of the trial tribunal for condemning the Appellant before reading the entire decision relied upon.

Regarding the 5th ground of appeal, Mr. Mjema was of the view that the trial tribunal did not evaluate the evidence properly, since the Appellant tendered documentary evidence proving that the suit land was still registered in the name of the late Uka Chana Modhiwadia as per exhibits C2 and C3. Therefore, being the administrator of the estate of the late Uka Chana Modhiwadia, he deserved to be declared the lawful owner of the suit land since the Respondent tendered nothing to substantiate her oral testimony. He amplified that the contention by the Respondent that they have been utilizing the suit land for some time without proof that it was transferred to her husband makes her a mere invitee who cannot be said to have owned the suit land. On that account, Mr. Mjema cited the decision in ***Samson Mwambene Vs. Edson Mwanyingili*** [2001] TLR 1 to support his argument.

The 6th and 7th grounds of appeal were argued simultaneously. Those grounds centre on the evaluation and analysis of the evidence and exhibits tendered. Mr. Mjema submitted that the trial tribunal sided with the Respondent by believing exhibit P2 as proof of ownership of the house in England while denying exhibit D4 which was tendered by the Appellant in his defence. Mr. Mjema added that such exhibit D4 was nowhere considered in the tribunal's judgment when it held that the Appellant failed to prove that the Respondent was allocated a house in England. This being the first Appellate Court, Mr. Mjema called upon the Court to go through the entire record and re-evaluate the

evidence as it was held in the case of ***Martha Wejja Vs. Attorney General and Another*** [1982] TLR 35. He insisted that in the trial tribunal judgment there is no record that the tribunal evaluated the evidence in the counterclaim. He maintained that the trial tribunal failed to make a decision in respect of the counter claim. He cited various decisions of the Court of Appeal, which emphasize for the need to consider defence evidence. Such cases include: ***Anord Adam Vs. Republic***, Criminal Appeal No. 171 of 2019 (unreported) and ***Jeremiah Shemweta Vs. Republic*** [1985] TLR 228. Basing on his submission, Mr. Mjema prays that the appeal be allowed by quashing and setting aside the decision of the trial tribunal and allow the counterclaim with costs.

Contesting the appeal, Mr. Daud Samailie Lairumbe contended that the Appellant was sued in his own capacity because the suit land does not form part and parcel of the estate of the late Uka Chana Modhiwadia, the same having been already distributed to the Respondent's husband way back in 2002. Mr. Lairumbe further submitted that the Appellant was sued in his own capacity because of his attempt to include the suit land in the estate of the late Uka Chana Modhiwadia. Mr. Lairumbe stated further that the transfer forms which were tendered and admitted as exhibit P2 were never objected by the Appellant's advocate. He insisted that the complaint that the Appellant was sued in his personal capacity was canvassed by the trial tribunal in its judgment at page 7, where it was found to have no weight. According to Mr. Lairumbe, the cases cited by Mr. Mjema in respect of this ground are distinguishable to the facts of the case at hand since in the instant case the suit land was properly allocated to the Respondent's husband in 2002.

Submitting on the 2nd and 3rd grounds of appeal, Mr. Lairumbe propounded that exhibit P2 was tendered and admitted without any objection from the

Appellant's advocate. He submitted that at this appellate stage the Appellant cannot raise new issues regarding authenticity of exhibit P2 since its admission was never challenged. He added that the Appellant's counsel did not cross examine the Respondent on the authenticity of exhibit P2. To buttress his argument, Mr. Lairumbe made reference to the decision in ***Elimringi Joseph @ Mlay Vs. Republic***, Criminal Appeal No. 243 of 2010 (unreported). According to Mr. Lairumbe, the Appellant ought to have addressed the grievances before the trial tribunal and not at this stage. To support his contention, he cited the case of ***Hassan Bundala @ Swaga Vs. Republic***, Criminal Appeal No. 416 of 2016 (unreported).

Mr. Lairumbe further stated that the contention by the Appellant's counsel that exhibit P2 was not signed, stamped and dated is an afterthought since it was not raised in the trial tribunal. Mr. Lairumbe opined that even if such shortfalls exist, exhibit P2 is not the only evidence that was relied on by the trial tribunal to declare the Respondent the lawful owner of the suit land. He maintained that the suit land was properly declared the property of the Respondent as the same ought to be transferred to the Respondent as the administratrix of her deceased husband's estate in accordance with sections 67 and 68 of the Land Registration Act, Cap. 334 [R.E 2019].

Responding to the 4th ground of appeal, Mr. Lairumbe postulated that the case of ***Hemed Said*** (supra) was properly relied on by the trial tribunal since the late Uka Chana Modhiwadia had five children but none of them was called on to prove that the suit land was not distributed to the Respondent's husband. He was of the view that the tribunal chairman found out that the evidence of the Respondent was heavier than that of the Appellant. That the testimonies of PW2, PW3 and DW2 proved that the evidence of the Respondent was heavier; therefore, it was right to find the Respondent the lawful owner of the suit land.

With respect to the 5th ground of appeal, Mr. Lairumbe contended that there was no dispute that the suit land was given to the Respondent's husband sometimes in 2002, as exhibited by exhibit P2. That in his evidence, the Appellant admitted that the Respondent's husband used to live with his father in the suit land, and he did not know the one in possession of the certificate of title over the suit land. Mr. Lairumbe distinguished the decision in ***Samson Mwambone*** (supra) cited by Mr. Mjema, stating that the Respondent and her husband were not invitees to the suit land but they were allocated the same in 2002 by the Appellant's father before his death in 2002.

Responding to the 6th and 7th grounds of appeal, Mr. Lairumbe was of the view that these grounds were covered while responding to grounds 2 and 3. He argued that it is undisputed that all the children of the late Uka Chana Modhiwadia were given properties by their father prior to his death. That the Appellant was given a house in England while the Respondent's husband was allocated the suit land. According to Mr. Lairumbe, the burden of proving existence of a fact lies with the party who so alleges. He referred to section 110 of the Evidence Act, Cap. 6 [R.E 2019]. He insisted that the Appellant miserably failed to prove his counter claim before the trial tribunal. Mr. Lairumbe fortified further that the trial tribunal is not duty bound to record each and everything in the judgment, as promulgated by Mr. Mjema. He also said that it is not true that exhibits D1 and D4 were not objected by the Respondent's counsel, referring to page 30 of the proceedings. In Mr. Lairumbe's view, the trial tribunal evaluated the evidence properly as stated in the case of ***Tayaira Vs. Yusuph Tayaira*** [1971] HCD 324. Mr. Lairumbe prayed for the dismissal of the appeal with costs.

In a rejoinder submission, Mr. Mjema fortified that after perusing the court file, the typed and handwritten proceedings of the trial tribunal differ. Particularly,

he faulted Mr. Lairumbe's contention that he did not object to the admission of exhibit P2 and that he did not cross examine on its authenticity. Mr. Mjema stated that the record shows that he cross examined about the exhibit on the proceedings of 26/1/2018. That during his cross examination, the Respondent admitted that exhibit P2 was not witnessed; therefore, that document cannot be relied on to transfer the suit land from the late Uka Chana Modhiwadia to the Respondent's husband. Mr. Mjema insisted that according to section 143 of the Evidence Act, there is no particular number of witnesses required in proving any case.

Having considered the grounds of appeal, the trial tribunal's records and the the rival submissions by counsel for the parties, I am now in a position to determine the appeal. I will determine the grounds of appeal as presented, save that the 5th, 6th, and 7th grounds of appeal will be determined jointly since they all revolve around evaluation of the evidence by the trial tribunal.

On the first ground of appeal, I agree with Mr. Mjema's contention that the Appellant was to be sued as the administrator of the Estate of the late Uka Chana Modhawadia. I do not agree with Mr. Lairumbe that it was proper for the Appellant to be sued in his own capacity. While I agree with Mr. Mjema that the Appellant ought to have been sued as the administrator of the Estate of the late Uka Chana Modhawadia, I do not agree with him that the Appellant was sued in his own capacity. The only omission leading to such suggestion is the fact that in the application form the Appellant was not referred to as the administrator of the Estate of the late Uka Chana Modhawadia in the title. I do agree that the words "*as the administrator of the Estate of the late Uka Chana Modhawadia*" ought to have been included in the title after the name of the Appellant. In this respect, I am guided by the Court of Appeal decision in

Suzana S. Waryoba Vs. Shija Dalawa, Civil Appeal No. 44 of 2017 (unreported), where the Court of Appeal held:

"Before we pen off, we wish to address one little disquieting aspect. This is that the appellant sued as an administratrix of the estate of the late Stanslaus Waryoba. However, that aspect did not reflect in the title of the case. We are of the considered view that the fact that Suzana Waryoba was suing in her capacity as an administratrix of the estate of the late Stanslaus Waryoba should have been reflected in the title of the case. However, we haste the remark that the omission is not fatal given that it was clear throughout that she was suing in that capacity and the judgment of the Primary Court which appointed her as such, was tendered in evidence at the very outset. We only wish to accentuate that when a litigant sues as an administrator or administratrix of estate, it is desirable that the same should be reflected in the title."(Emphasis added)

In the appeal under determination, it is not disputed that the Appellant was dully appointed as the administrator of the Estate of the late Chana Uka Modhiwadia by Babati Primary Court on 26/7/2016. I have no doubts that the Respondent intended to sue the Appellant as the administrator of the Estate of the late Chana Uka Modhiwadia as reflected in the pleadings. Paragraphs 6(e) and (f) of the Application Form are self-explanatory. They read as follows:

"(e) That, the respondent herein who is a son of the late CHANA UKA MODHIWADIA filed before Babati Primary Court at Babati District in Manyara Region to be appointed as an administrator of his deceased father one CHANA UKA MODHIWADIA vide Probate and Administration Cause No. 45 of 2016;

(f) That, the Respondent herein listed Suit farm at Dudumera Plantation having 3114 acres which does not form part and parcel of the estate of CHANA UKA MODHIWADIA as stated in paragraph d(i) above"

From the above paragraphs, the Respondent intended to sue the Appellant not in his own capacity but as the administrator of the Estate of the late Uka Chana Modhiwadia. It is further noted that the cause of action arose when the Appellant was in the course of executing his duties as the administrator, because the Respondent filed the suit the moment the suit land was made part

of the estate of the late Uka Chana Modhawadia in the inventory that was to be filed in the Primary court. Further, while testifying in support of his counterclaim, the Appellant tendered letters of administration as evidence and the same was admitted as exhibit C1. This suffices to conclude that the Appellant was sued as the administrator of the Estate of the late Uka Chana Modhawadia despite the fact that such capacity was not reflected in the title. It is my holding that the omission did not prejudice any of the parties herein. The first ground of appeal therefore lacks merits.

Regarding the 2nd and 3rd grounds of appeal it is the contention of Mr. Mjema that exhibit P2 could not effect transfer. Mr. Lairumbe's has a different view. He contends that because the said exhibit was not objected to and that its authenticity was not challenged through cross examination, it cannot be faulted at this appellate stage. I have revisited the trial tribunal's records on this aspect. I do agree with what is submitted by Mr. Mjema in his rejoinder submission that the typed proceedings of the trial tribunal omitted some evidence particularly the part where the Respondent was cross examined by Mr. Mjema. I believe this was not intentional, but an unintended skip while typing. I find the handwriting records to be complete. It is my assumption that Mr. Lairumbe's submissions relied on the typed proceedings supplied to him. As he represented the Respondent in the trial tribunal, it is assumed that he is privy to what transpired therein.

In the hand written proceedings, the record shows that on 26/1/2018 when the Respondent (Applicant in the tribunal) was testifying, she tendered the transfer forms as exhibit, and Mr. Mjema did not object to their admission. The same were admitted as exhibit P2. During cross examination regarding exhibit P2, the Respondent made the following responses:

"I have recently obtained Exhibit P2: Exhibit P2 is not witnessed."

From the above excerpt, exhibit P2 was not objected to, but its contents were subjected to cross examination. Mr. Lairumbe further stated that at this appellate stage, the Appellant is barred from raising issues of authenticity of exhibit P2 since its admission was not objected. I do not agree with him. Contents of a documentary evidence can be challenged even at the appellate stage. After all, it is trite law that admission of an exhibit is one thing and the weight to be placed on that exhibit is a different thing. In this respect, I am guided by the decision of the Court of Appeal in the case of ***Asia Mohamed Rashid Vs. Mgeni Seif***, Civil Appeal No. 128 of 2011 in which the Court of Appeal relied on its previous decision in ***Steven Jason and Two Others Vs. Republic***, Criminal Appeal No. 79 of 1999, (both unreported) where it was observed:

"However, it is common ground that the admissibility of evidence during the trial is one thing and the weight to be attached to it is a different matter."(Emphasis added)

Authenticity of exhibit P2 can be challenged even at this appellate stage. Mr. Lairumbe's contention that exhibit P2 was not cross examined is found to be untrue. I will proceed to examine Mr. Mjema's concern regarding the weight accorded to exhibit P2. Mr. Mjema's contends that the trial tribunal erred in relying on exhibit P2, while the same was not dated, signed or stamped. Exhibit P2 contained land forms No. 29, 30 and 35. I note that they were only signed by the Applicant, purported to be the late Uka Chana Modhawadia. Form No. 29, which is a form used in notifying the Commissioner for Lands of the intended transfer of the Right of Occupancy, was not dated. It was not signed by the Commissioner for Lands or any authorised officer. It was also not stamped. The same applies to Land Form No. 30, which is the application for approval to the Commissioner for Lands. Land form No. 35 which is the transfer of the Right of Occupancy was only signed by the transferee and transferor. but it was not witnessed by Commissioner for oaths nor was it dated.

The above highlighted shortfalls suffice to find exhibit P2 unauthentic, as submitted Mr. Mjema. Transfer of a Right of Occupancy has to go through a stipulated process, including payment of various government fees. There is nothing on record showing that the process and payments were adhered to by the Respondent. It is undisputed that the suit land was the property of the late Uka Chana Modhawadia, and to date it is still registered in that name, as reflected in exhibit C3.

The trial tribunal at page 7 of the typed judgment had the following to say regarding exhibit P2:

*"PW2 and PW3 confirmed the land in dispute to be under the applicant's husband and that Chana told them the land is under Jeta. **Also she tendered a proof that the suit property was transferred to Jeta-exhibit P2.** The evidence further is supported by DW2 in the counter claim."* (Emphasis added)

The tribunal went further:

*"The allegation by the respondent that he was sued in his personal capacity not as administrator has no weight for the **premise in dispute does not fall under premises of the deceased Chana for the same was dully transferred to the Applicant's husband.**"* (Emphasis added)

From the above, the decision of the trial tribunal heavily relied on exhibit P2 as proof of transfer of the suit land from the late Uka Chana Modhawadia to the late Jeta Chana Modhawadia. In my view, the trial tribunal misdirected itself because there is no document tendered to prove that the suit land was transferred to the late Jeta Chana Modhawadia. The said exhibit P2, as I have pointed out above, has no material upon which one can rely to justify the transfer of the right of occupancy to the Respondent's husband. The same were neither signed nor dated. They were not even taken to the appropriate authorities for official steps. By relying on exhibit P2 to conclude that the suit land was dully transferred to the Respondent's husband, the trial tribunal made a material error. The suit land being a registered property, its transfer has to

be evidenced by formal transfer documents dully executed by both parties, and subsequently approved by the relevant authorities. This was the holding of the Court of Appeal in ***The Honourable Attorney General Vs. Mwahezi Mohamed (As the administratrix of the Estate of the late Dolly Maria Eustace) and 3 Others***, Civil Appeal No. 391 of 2019 (unreported), it was held:

*"We have scanned the entire record of appeal and it is obvious that, though the appellant claimed to have acquired possession over the suit property for a long time since 1970s through a grant given to the Government of Cyprus and later transferred to the Government of Tanzania, had failed completely to adduce material evidence (oral or documentary) to prove those facts. There was no deed of gift or transfer deed availed before the trial court to that effect. The appellant's witnesses PW1, PW2, PW3 and PW4 ended up producing communication letters **which at any rate cannot manage to prove ownership over a registered land.**"*(Emphasis added)

From the above analysis, I am inclined to agree with Mr. Mjema that exhibit P2 could not be the basis of proving transfer of ownership of the suit land from the late Uka Chana Modhawadia to the late Jeta Chana Modhawadia. Further, the suit land was never transferred to the Respondent's husband since up to the time of the trial the certificate of occupancy was in the names of its original owner, Uka Chana Modhawadia, as evidenced in exhibit C3. I therefore sustain the 2nd and 3rd grounds on that basis.

The 4th ground of appeal challenges the trial tribunal decision for relying on the decision in ***Hemed Said Vs. Mohamed Mbilu*** (supra). According to Mr. Mjema, that case was inappropriately applied by the trial tribunal. Mr. Lairumbe on the other hand, insisted that it was properly applied by the trial tribunal since the late Chana Uka Modhawadia had five children, but it was only the Appellant who testified. In his view, the Appellant ought to have summoned the other siblings to prove that the suit land was not allocated to the Respondent's husband prior to his death.

In its judgment, the trial tribunal, while referring to the above cited case, had the following to say:

*"The respondent in both the applicant's case and his case did not call any witness even not call (sic) any witnesses from his family to assist him in justifying his claim and in my view **he is fearing for those witnesses would have given evidence contrary to his interest as stated in the case of Hemed Said Vs. Mohamed Mbilu 1984 TLR 113.**" (Emphasis added)*

Undoubtedly, the above forms the basis of Mr. Mjema's complaint. It is quite intriguing to fathom the reasoning of the trial tribunal in this respect. How could the trial chairman know that in the event the Appellant's relatives testified they could do so against him? By so holding, the trial tribunal chairman abdicated his duty to act and reason impartially. It has been said times and again that there is no specific number of witnesses required in order to prove one's case. That position is provided under section 143 of the Evidence Act, Cap. 6 [R.E 2019] and has been so determined by courts including the decision in **John Malinzi @Sheyo Shungu Vs. Republic**, Criminal Appeal No. 4 of 2000 (unreported), where it was observed:

"It is trite law that no particular number of witnesses is required for the proof of any fact. What is important is for the witnesses to have the opportunity to see what they claimed to have seen and their credibility."

As far as the Appellant was satisfied that his evidence sufficed, he had no reasons to procure attendance of other witnesses. It was not appropriate for the trial tribunal chairman to make a finding that the Appellant waived to call his relatives to testify for fear that they would give evidence against him. Indeed, that is not the spirit in the case of **Hemed Said Vs. Mohamed Mbilu** (supra) relied upon by the trial tribunal. In the premises, the 4th ground of appeal has merits.

I now turn to the 5th, 6th and 7th grounds of appeal which, as pointed out above, hinge on the evaluation of evidence in both the main case and in the counter

claim. I wish to note that, this being a first appeal, the Court is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted arrive at its own decision. In this stance I am fortified by the decision of the Court of Appeal in ***Leopold Mutembei Vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development & Another***, Civil Appeal No. 57 of 2017 (unreported).

The evidence adduced, in both the main suit and the counter claim, is to the effect that the suit land belonged to the late Uka Chana Modhiwadia. The main issue for contention was whether the suit land was allocated to the Respondent's husband in 2002 as testified by the Respondent's witnesses. According to PW1 (the Respondent) in the main suit and her daughter, DW2, in the counter claim, the late Uka Chana Modhiwadia passed away in 2008. It was their further evidence that the suit land was given to the Respondent's husband in 2002 and that the Appellant was given a house in England. PW1 stated that she has been occupying the suit land for more than 25 years and that Jeta was the one utilising the suit land from 2008 after his father's death.

PW2 and PW3, the Village Executive Officer and Councillor of where the Respondent's husband lived, testified that they knew the late Uka Chana Modhawadia and the late Jeta Chana Modhiwadia. They stated that after the death of the late Uka Chana Modhawadia ownership of the suit land reverted to his son, the late Jeta. PW3 added that prior to his death, the late Uka Chana Modhiwadia told him that Jeta was given the suit land while his other children were given a house in England.

From the above evidence, there is no proof that the suit land was given to the Respondent's husband. Among those who testified, there is no witness who saw the Respondent's husband being handed over the suit land, nor participated in

a meeting purporting to allocate the suit land to the Respondent's husband. All that was said by the Respondent's witnesses were mere words that the land was allocated to the late Jeta Chana Modiwadhia in 2002, without any documentary proof. The Respondent's contention that she has been utilising the suit land for a long time does not in itself confer ownership of the suit land to her.

Further, as the record speaks, it was said that the suit land was allocated to the late Jeta Chana Modhiwadia in 2002, but transfer of ownership remained in his father to date. The evidence by the Respondent that the land was allocated to her husband since the Appellant was given a house in England is also wanting. The fact that the Appellant was given a house in England cannot in itself be conclusive evidence that the suit land was given to the Respondent's husband. All in all, in his defence and in the counter claim, the Appellant stated that the Respondent's husband was also given a house in England and exhibit D4 was tendered to that effect.

It is difficult for one to digest how it was possible for the late Uka Chana Modhiwadia, who had five children, give the suit land to the Respondent's husband without notifying the other four children. This adds to the thesis that the contention that the suit land was allocated to the late Jeta Chana Modhiwadia remains to be hypothetical without a scintilla of supporting proof. In proving ownership of a registered land, the holder of a certificate of occupancy has paramount interest, unless the said certificate of title was obtained through fraud. In a registered land, the register is conclusive proof of the title. The Court of Appeal in ***Leopold Mutembei Vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development & Another*** (supra), relied in a book by Dr. R.W. Tenga and Dr. S.J. Mramba

bearing the title **Conveyancing and Disposition of Land in Tanzania: Law and Procedure**, Law Africa, Dar es Salaam, 2017, at page 330: which reads:

*"... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect or terminate that ownership or interest. **Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title.**"*(Emphasis added)

In the above cited case, the Court made further observation that:


*"We wholly subscribe to the above view. On this basis, we find Exhibit D.2 is not just proof of the state of ownership over the property in dispute by the persons named therein, **but also evidence confirming the underlying transactions that conferred or terminated the respective titles to the persons named therein.**"*(Emphasis added).

Applying the above position in the case at hand, it is undisputed that the suit land is registered in the name of the late Uka Chana Modhiwadia. This implies that ownership of the same was never transferred to the Respondent's husband as contended. Considering the fact that the Appellant is the administrator of the Estate of the late Uka Chana Modhiwadia, he is declared the lawful owner of the suit land in trust of the Estate of the late Uka Chana Modhiwadia. That said, the 5th, 6th and 7th grounds are upheld in the sense that the trial tribunal did not subject the evidence on record to a close scrutiny, otherwise it would not have made the decision it made.

From what I have endeavoured to discuss above, the appeal has merits. It is allowed in its entirety. The decision of the trial tribunal is hereby quashed and set aside. The suit land is declared the lawful property of the late Uka Chana Modhiwadia, as the administrator of the estate of the late Uka Chana Modhiwadia. The Appellant is hereby ordered to proceed with administration of

the Estate by distributing the suit land to the lawful heirs. Considering this to be a family dispute, I desist from making any orders as to costs.

Order accordingly.



Y. B. Masara

JUDGE

27th August, 2021

