

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF MBEYA**

**AT MBEYA**

**LAND APPEAL NO. 08 OF 2021**

(Originating from the District Land and Housing Tribunal for Mbeya,  
at Mbeya, in Application No. 80 of 2020)

**WAZIRI ARON.....APPELLANT**

**VERSUS**

**MARIAM MWACHABALA.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 15.09.2021*

*Date of Ruling: 29.10.2021*

**Ebrahim, J.**

This is the first appeal, the appellant and respondent are nephew and aunt respectively. The appellant has filed the instant appeal contesting the decision of the District Land and Housing Tribunal (the DLHT) for Mbeya at Mbeya that declared the suit land the property of the respondent.

The background of the matter can be briefly narrated as follows: the respondent sued the appellant for invading a piece of farm located at Isonta street, Itende area in Mbeya Region. The

respondent claimed to have acquired it from her late father since the year 1960. The appellant refuted the claim and contended that he purchased the same from the respondent in 2009.

After hearing both sides the DLHT decided in favour of the respondent. Aggrieved, the appellant has lodged the instant appeal raising four grounds of appeal as follows:

1. That the original tribunal erred in law and facts when it delivered the judgment in favour of the respondent above without taking measures to visit the scene of the land in dispute to satisfy itself before delivering the judgment.
2. That the original land tribunal erred in law and facts when it failed to consider the sell agreement of the land in dispute attached which was concluded between the parties of this suit.
3. That the original tribunal erred in law and facts when it failed to consider the evidence adduced before it by the witnesses of the appellant whereby the judgment so delivered by it to explain the evidence of the chairman of the local Government (mtaa) whose Signature and its appropriate Rubber Stamp appear in the sell agreement document.

4. That the original tribunal erred in law and facts when it failed to consider that, in the sell agreement the respondent had signed the document and her appropriate fingerprint, and that the appellant had occupied it.

Owing to the above grounds of appeal, the appellant urged this court to allow the appeal with costs.

When the appeal was called for hearing, both parties appeared in person having no legal representation. They had nothing to argue, everyone prayed for this court to adopt his grounds of appeal and reply to the grounds of appeal respectively.

I have carefully examined the grounds of appeal and the reply thereto. I will consider the grounds of appeal as presented by the appellant. However, I shall merge grounds 2 and 4 and discuss them together since they are interrelated.

Regarding ground one, on the complaint that the DLHT erred when it failed to visit a *locus in quo*; I state at the outset that visiting a *locus in quo* is at the discretion of the court. There is no law which compels the court/tribunal to visit a *locus in quo*. The visit depends on the evidence adduced by the parties. The

proceedings in the record of the Tribunal shows that, during the trial no party prayed for the tribunal to visit the *locus in quo*. The tribunal could not thus, visit it if it did not see the necessity for doing so. In the cases of **Sikuzani Said Magambo and Another v. Mohamed Roble**, Civil Appeal No. 197 of 2018 and **Nizar M.H. Ladak v. Gulamali Fazal Jan Mohamed (1980) TLR 29**. It was observed that the court should only, in exceptional circumstances, inspect a *locus in quo*, or else it would unconsciously take the role of a witness than of an adjudicator. It is my position therefore that the complaint by the appellant is baseless.

As to the 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal, essentially the appellant complains that the Tribunal failed to consider a sale agreement attached. These grounds are not clear as to whether the sale agreement was attached. I have gone through the record; at page 4 of the typed judgment, the Tribunal Chairman said that no sale agreement was tendered. Indeed, when I visited the proceedings of the Tribunal the appellant gave his evidence at page 11 to 12. His evidence and answers during cross-examination does not show the tendering of the sale agreement.

Besides, it is trite law that, court records are presumed to be serious and genuine documents that cannot be easily impeached unless there is evidence to the contrary; see **Halfani Sudi v. Abieza Chichili, [1998] TLR. 527**. However, there is no scintilla of evidence in the matter at hand to challenge the record of the trial tribunal. The two grounds of appeal therefore have no merits.

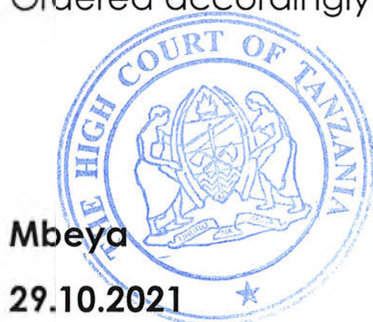
About the 3<sup>rd</sup> ground of appeal, the appellant specifically challenged the Tribunal for non-consideration of the evidence by the so called 'mtaa' Chairman. The appellant contended that the mtaa chairman signed and rubber stamped the sale agreement. However, I have already decided on the sale agreement and concluded that there was no such document in the record. This complaint therefore is not tenable. For sake of clarity, I have revisited the proceedings to ascertain the evidence adduced by the appellant's witnesses. He called two witnesses i.e (Athuman Ndeni and Dancho Mwakibinga) at pages 13 to 15 of the typed proceedings.


Athuman Ndeni testified that there was an agreement between the appellant and respondent, that he did not witness it and he knew nothing else. On his part, Dancho Mwakibinga testified that

he was asked by the appellant to go to the respondent, there the respondent requested the appellant to cover her house with iron sheets for consideration of giving him a small farm. He continued to testify that he did not see the said farm and he knew nothing else. From these testimonies of the appellant's witnesses, I have grasped nothing relating to his complaint. I am also not sure if one of the witnesses was the mtaa Chairman. Whatever the case, no witness testified that he either witnessed the sale agreement or stamped it. On the circumstances, the third ground of appeal also lacks merits.

Basing on the above findings, the appellant's appeal is unmeritorious. I therefore dismiss it on its entirety. The appellant shall pay costs to the respondent.

Ordered accordingly.



  
**R.A. Ebrahim**  
**Judge**