

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MOROGORO REGISTRY

AT MOROGORO

LAND APPEAL NO. 31 OF 2021

(Appeal from Judgment and Decree in Land Application No. 49 of 2020; in the District Land and Housing Tribunal for Morogoro, at Morogoro)

HURUMA SAMSON APPELLANT

VERSUS

1. MENLEY MGATA ABWAO.....1st RESPONDENT

2. FATUMA FLORAH MWAKASITU 2nd RESPONDENT

3. SOFIA S. DUWE 3rd RESPONDENT

JUDGMENT

15.12.2021 & 31.03.2022

CHABA, J.

This Appeal involves a dispute over parcels of land demarcated and divided into small pieces of plots located at Mkundi area in the outskirts of Morogoro Municipality.

At first, the respondents herein namely; Menley Mgata Abwao, Fatuma Flora Richard Mwakasitu, Sophia S. Duwe and Abenance Likenike Kamomonga (who appeared at the trial tribunal and featured as AW1 representing Mossi Kaseke Selonda under the umbrella of special power of attorney but not party to this appeal), jointly and together instituted a land matter at the trial tribunal registered as Land Application No. 49 of 2020 and sued jointly and severally the Appellant, Huruma Samson and Five Others (who are not party to this appeal) namely; Sebastian Singano, Mecky Lupindu, Boniphace Edward, Jaribu Simbe and Sixbert Mubiligi for trespassing over their respective suit lands situated at Plots Nos. 74, 75,

76, 77 Block "B" and Plot 81 Block "S", located at Mkundi, within Morogoro Municipality.

Dissatisfied with the decision of the trial tribunal, the appellant, Huruma Samson (the 5th respondent at the trial) preferred an appeal before this court. However, before laying down the grounds of appeal, I find it prudent to preface a brief historical account of matter which led to this appeal.

Originally, the disputed lands were owned and possessed by one Waziri Abdallah Mwikalo (who testified as AW5 at the trial tribunal) for more than thirty (30) years, who entered into an agreement with one Abenance Kamomonga to survey the area and sub-divide the same into plots. It is on record that the respondents, Menley Mgata Abwao and Three Others who were the applicants at trial, used the land in disputes and occupied it until 2020 when the Appellant and Five Others (the respondents at trial), trespassed their plots. The records further reveal that upon trespassing the suit properties, the Appellant and Five Others were busy carrying on construction activities on the suit properties alleged to have been owned and occupied by the 1st respondent, Menley Mgata Abwao and Three Others. It is further stated that the 1st respondent and Three Others on different times tried to settle the matter amicably, but their efforts proved futile. The fracas between the parties forced the 1st respondent and Three Others to institute a land matter against the Appellant and Five Others before the trial tribunal for recovery of their suit properties.

The respondents herein and one Abenance Likenike Kamomonga (not part to this appeal) contended at the trial tribunal through their joint application that, the 1st applicant, Mossi Luseke Selonda (not party

to this appeal) is a lawful owner of Plots Nos. 74 and 76, Block B, Title No. 124839, LO 452250, 33222 SQM, the 2nd respondent, Fatuma Florah Mwakasitu (the 2nd applicant at the trial), claimed to be the lawful owner of Plot No. 75, Block B, Title No. 137276, LO No. 521279, 1348 SQM, the 1st respondent, Menley Mgata Abwao, (3rd applicant at the trial), purported to be the lawful owner of Plot No. 77, Block B, 3121 SQM, and the 3rd respondent, Sophia S. Duwe (the 4th applicant at the trial), alleged to be the lawful owner of Plot No. 81, Block S. All Plots are located at Mkundi area within Morogoro Municipality.

On the contrary, the Appellant, Huruma Samson and Five Others (not party to this appeal), opposed the applicants' claims through a joint written statement of defence. They all denied the applicants' allegations and asserted that the respondents herein are the ones who trespassed on their suit properties and that they had illegally acquired the plots in dispute.

Consequently, the respondents herein instituted a suit at the trial tribunal for Morogoro, at Morogoro registered as Land Application No. 49 of 2020 against the Appellant and Five Others (not party to this appeal) praying for the following reliefs: **One**, *declaration that the applicants are the lawful owners of the suit properties*, **Two**, *declaration that the respondents' actions and conducts constitute trespass onto the applicants' plots*, **Three**, *that the respondents be ordered to vacate from the applicants' plots and be permanently restrained from interfering with the applicants right and interests over the suit land*, **Four**, *general damages be assessed by the tribunal*, and **Five**, *costs of the suit*.

After a full trial, the trial tribunal declared among other orders that the respondents herein (who featured as the 2nd, 3rd and 4th Applicants at the trial tribunal) are the lawful owners of the land in disputes.

Dissatisfied with the decision of the trial tribunal, the Appellant, Huruma Samson (the 5th respondent at the trial tribunal) preferred an appeal before this court. In her Memorandum of Appeal, which was opposed by the respondents through the services of Mr. Ignas Punge, learned advocate, the Appellant presented nine (9) grounds of complaints as follows:

- 1. That, the honourable chairman of the tribunal erred in law and fact when held the 2nd, 3rd and 4th applicant lawful owners based on the certificates of occupancy and other document issued by Morogoro Authority without joining the allocating authority (Morogoro Municipal Council) as necessary party or bringing it to court as witnesses.*
- 2. That, the honourable chairman erred in law and facts when declared 2nd, 3rd and 4th applicants as lawful owners without satisfying himself on whether the disputed land was surveyed and if the survey was conducted in compliance with the law of the land.*
- 3. That, the honourable chairman of the tribunal erred in law and fact for not rejecting the respondents' application and continued hearing the case while the joint application filed by the respondents did not disclose who was claiming against who hence the appellant was taken by surprise on hearing.*
- 4. That, the honourable chairman of the tribunal erred in law and fact for condemning costs for the 4th respondent (Jaribu Simbe) while it was proved to the required standard that, the 2nd applicant (Fatuma Florah*

Richard Mwakasitu) wrongly sued the 4th respondent as he had no-any piece of land at Mkundi Nguvukazi Street in Morogoro Municipality.

- 5. That, the trial tribunal chairman erred in law and fact by giving decision in favour of the 2nd, 3rd and 4th applicants based on the weak evidence of the seller AW5 (Waziri Abdallah Mwikalo) who failed to bring in court any neighbour witness who allocated with him the same disputed land.*
- 6. That, the trial chairman erred in law and facts and seriously misdirected himself by believing the certificates of occupancy and letters of offer tendered by respondents that it was legally obtained while the seller (AW5) himself categorically told the honourable tribunal that he did not make any application to the Morogoro Municipal Authority for his farm to be surveyed rather he entered in agreement with AW1 (the land officer who did everything).*
- 7. That, the Hon. Tribunal's judgment and decree in land application No. 49 of 2020 is seriously problematic and purely incapable of legal support.*
- 8. That, the trial chairman erred in law and fact by not rejecting the respondent's prayer after finding that AW5 (first owner) had no tangible evidence to prove his ownership.*
- 9. That, the trial chairman erred in law and fact by not taking into account that AW1 (Abenance Kamomonga) was a land officer as clearly shown in the court record and not an independent licensed land surveyor at the time entered into agreement with AW5 (the seller) and acted ultra vires for want of locus standi, hence whatever dealing by AW1 was null and void.*

When the appeal came up for hearing, parties agreed to argue the appeal by way of written submissions. Mr. Gabriel Maros, learned

advocate appeared for the appellant, whereas Mr. Ignas Punge, learned advocate entered appearance for respondents.

At commencement of hearing of this appeal, Mr. Gabriel abandoned grounds 1 and 3. He submitted that while grounds 2 and 9 will lastly be jointly argued, grounds 5, 6, 7 and 8 will equally be argued jointly, and ground 4 will be argued separately. In reply to the written submissions in chief, Mr. Punge also argued the appeal in pattern accordingly. Basically, Mr. Gabriel and Mr. Punge submitted at lengthy and cited a number of cases in support of their stances. I will not reproduce the parties' submissions, but the same will be referred in the course of determining this appeal.

Upon considered this rivalry contentious from both sides as per written submissions, it is time to decide whether this appeal has merits or not. However, before embarking on a deeper analysis, it is thought prudent to note that all pleadings before this court shows that the respondents are Menley Mgata Abwao and Three Others to means that all the original applicants at the trial are now the respondents in this appeal. But the truth is, the trial tribunal did strike out the 1st applicant's claim against the 1st, 2nd and 3rd respondents at trial with costs in respect of the Plots Nos. 74 and 76, Block B situated at Mkundi, within Morogoro Municipality for a reason that the 1st applicant lacked *locus standi* to sue the 1st, 2nd and 3rd respondents at the trial tribunal. In that view, only three respondents namely; Menley Mgata Abwao, Fatuma Flora Richard Mwakasitu, and Sophia S. Duwe are parties to this appeal and they shall be referred to as 1st, 2nd and 3rd respondents, respectively.

At this juncture, it is worth to note that the question whether the land in dispute was surveyed or otherwise, it is apparent on record that it was neither a fact in issue nor controversial issue between parties. Again, whether the allocating authority made double allocation of the disputed land (plots) to the parties, this fact not featured at the trial tribunal's proceedings. The issues which were in the minds of parties are; who are the lawful owners of the suit land, and to what relief parties are (were) entitled, and the other two issues raised *suo mottu* by the trial Chairperson.

Coming to the instant appeal, this being the first appeal, I find it pertinent to be guided by the decision of the Court of Appeal of Tanzania in **Philipo Joseph Lukonde v. faraji Ally Saidi**, Civil Appeal No. 74 of 2019, CAT Dodoma District Registry (unreported) where the Court of Appeal quoted with approval the decision in the case of **Tanzania Sewing Machine Co. Ltd v. Njake Enterprises Ltd**, Civil Appeal No. 15 of 2016, CAT, Arusha where the Court held inter-alia that:

"This Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusion. The conclusion may affirm the trial Court decision finding of facts, or this Court may even arrive at a totally different conclusion on the same facts".

Guided by the above precedent, I shall exercise my power to re-evaluate evidence very cautiously because the trial court was at a better position to handle the matter, that is to see, hear and appreciate the evidence as it was underscored in the above cited case.

In this appeal, the Appellant Huruma Samson (RW5) is appealing against the impugned decision of the trial tribunal. As gathered from

record of appeal, it would appear that the appellant has opted to choose for holistic approach and stepped into the shoes of Other Five Respondents to front her appeal before this court. As hinted above, the appellant was accused by the 1st respondent, Menley Mgata Abwao that she trespassed his Plot No. 77, Block B situated at Mkundi area.

Mr. Gabriel in his submission was of the view that the trial Chairman erred in law and fact when he decided in favour of the respondents based on weak evidence and believed their exhibits while they all illegally obtained the demarcated plots. Further, the seller Waziri Abdallah Mwikalo (AW5) who is not party to this appeal, did not make any application to Morogoro Municipal Authority for his farm to be surveyed, rather he entered in agreement with the land officer who did everything.

As I have indicated above, the question whether the disputed land was surveyed or un-surveyed area this was not at all an issue between parties. In my view, this is a new issue and postscript. It is apparent on records that the Appellant, Huruma Samson was sued by the 1st respondent, Menley Mgata Abwao for trespassing his parcel of land which he asserted that it was surveyed and demarcated as Plot No. 77, Block B. To prove his claim, he recounted how he acquired the parcel of land. He told the trial tribunal that he bought the same from Waziri Abdallah Mwikalo (AW5) and the two concluded a Sale Agreement (Exhibit AE.7) dated 5/7/2012 and later secured an Offer (Exhibit AE.8) from the relevant authority. He then made follow up to the authority and managed to obtain building permit (Exhibit AE.9). On the other hand, the testimony of the seller Waziri Abdallah Mwikalo (AW5) shows that he acquired the land in dispute and became the original owner, and later

sold to the 1st respondent, Menley Mgata Abwao. He denied to have known Almasi Charles Mvungi (featured as RW.7 at the trial tribunal) who sold the parcel of land related to Plot No. 77, Block B to the appellant and one Sixbeth Eldard Mubiligi (featured as RW1 at the trial, but not party to this appeal). The original seller of the said plot one Waziri Abdallah Mwikalo (AW5) did identify an agreement entered between him and Abenance Likenike Kamomonga (AW1) to survey his land (Exhibits AE.3) and Sale Agreement over a parcel of land (Exhibit AE.7) dated 5/7/2012 between him (AW5) and the 1st respondent, Menley Mgata Abwao (AW.3).

On her part, the Appellant, Huruma Samson told the trial tribunal that she bought the disputed land from Almasi Charles Mvungi (RW.7) on 18/08/2019 (Exhibit RE.2) and proceeded to erect a house/building in the disputed land on 25/08/2021. She further recounted that at the material time had no idea whether the disputed land was surveyed or not. He added that her evidence is supported by the evidence of the seller (RW7). She also testified that her neighbours were unknown to her. While advancing his testimony before the trial tribunal, the seller (RW7) did not dispute the fact that he sold the land in dispute to the appellant and other persons who are not part to this appeal (featured as the 1st, 2nd, 3rd and 6th respondents at the trial tribunal). He told the trial tribunal that the parcel of land belonged to him after he had bought the same from different sellers in different period of times from 1986 up to 1988. Although the seller (RW7) who sold the parcel of land to the appellant, claimed to buy the said parcels of land from different sellers, but did not summon even a single seller to appear before the trial tribunal to prove his allegation.

Record of the trial tribunal indicates that Waziri Abdallah Mwikalo (AW5) was the original owner of the land in disputes, whereas the Almasi Charles Mvungi (RW.7) also claimed that he was the original owner of the disputed land who afterward sold the land to the appellant. However, it is elementary that in civil suits parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win. In the case of **Hemedi Saidi v. Mohamedi Mbilu**, (1984) TLR 113, the Court underscored that, it is not the number of witnesses that counts most but the quality of the evidence. In my view, the evidence adduced by Almasi Charles Mvungi (RW.7) leaves a lot to be desired. Moreover, there is evidence that so-called Morogoro Municipal Authority through her Land Office acquired the disputed area and afterward legally surveyed it before allocating the same to the 1st, 2nd and 3rd respondents herein. Placing reliance on this piece of evidence, there is no doubt that Almasi Charles Mvungi (RW.7) who sold the disputed land to the appellant neither was a lawful owner of the disputed land, nor had good title to pass to the appellant. Thus, the argument advanced by the appellant that Waziri Abdallah Mwikalo (AW5) had no good title to pass to the respondents herein, in my view, is devoid of merit because the disputed land upon surveyed by the relevant Authority was demarcated and divided into plots whereas the respondents herein acquired their plots legally and all tendered documentary exhibits to prove ownership of their plots.

From the above discussion, it is clear that the 1st respondent, Menley Mgata Abwao (AW3 at the trial tribunal) who sued the appellant for encroaching his parcel of land demarcated and marked as Plot No. 77, Block B situated as Mkundi area within Morogoro Municipality, was a lawful owner of the land in dispute. As correctly found and decided by

the trial Chairperson, I am also in agreement with his findings when he declared the 1st, 2nd and 3rd respondents (2nd, 3rd and 4th applicants at trial) that were the lawful owners of the suit lands to wit; the 1st respondent is the lawful owner of Plot No. 77, Block B, 3121 SQM, the 2nd respondent is the lawful owner of a Plot No. 75, Block B, Title No. 137276, LO No. 521279, 1348 SQM, and the 3rd respondent is the lawful owner of Plot No. 81, Block S. All Plots are located at Mkundi area within the outskirts of Morogoro Municipality.

Apart from the above observations, it is important to note that the appellant's complaints against Fatma Flora Richard Mwakasitu and Sophia Sixbert Duwe, herein 2nd and 3rd respectively, are non-meritorious because her grievance has no iota of connection whatsoever against these two respondents. I say so because, it is trite law that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist, and the burden of proof lies on that person who would fail if no evidence at all were given on either side. See Sections 110 (1) and (2) and 111 of the Evidence Act [Cap. 6 R.E. 2019]. Going through the trial tribunal's record, there is no dispute that the appellant did not adduce even a single piece of evidence against the 2nd and 3rd respondents in respect of a plot she purported to be the lawful owner.

As regards to 7th and 8th grounds, the appellant's grievances are to the effect that the judgment and decree issued by the trial tribunal in Land Application No. 49 of 2020 is seriously *problematic and purely incapable of legal support*. Although this ground of appeal seems to be imprecise, I will endeavour to determine in line with submissions preferred by both sides. My observation on these grounds is that having

found that the respondents were lawful owners of land in disputes, without hesitation the trial Chairperson declared the respondents herein as the lawful owners in respect of the parcels of land demarcated as plots as alluded to above. Further, it is my findings that, the appellant grievances on this facet have no merits. As correctly submitted by the learned advocate for the respondents, when the persons have competing interests in a landed property, the person with a certificate will always be taken to be a lawful owner. See: **Amina Maulid Ambali & Others v. Ramadhani Juma** (Civil Appeal 35 of 2019) [2020] TZCA 19 (25 February 2020). In the end, grounds 5, 6, 7 and 8 are answered in negative.

As regards to the 2nd and 9th grounds, Mr. Gabriel faulted the decision of the trial tribunal's by declaring the respondents herein, as lawful owners of the suit properties without satisfying himself whether the land in dispute was surveyed or not. He further complained that the trial Chairperson did not consider the fact that the respondent's witness namely Abenance Kamomonga (AW1) was a land officer and not an independent licensed land surveyor at the time entered into agreement with the seller (AW5). He said, AW1 acted ultra vires for want of *locus standi*, hence whatever dealing he involved was null and void.

I have keenly read and examined the trial tribunal's proceedings, documentary exhibits and judgment of the trial tribunal. I have also followed the rival contentious from both sides as per written submissions. In my considered opinion, I find no reason to fault the findings of the trial Chairperson. It is pertinent, to note that in this appeal as hinted above, the question whether the disputed land was surveyed or un-surveyed was not an issue for controversy between

parties and that the allocating Authority did not make any double allocations to the parties in respect of the disputed land (plots). However, the 2nd respondent, Fatma Flora Richard Mwakasitu (AW2), the 3rd respondent, Sophia Sixbert Duwe (AW4) and applicants' witness namely; Waziri Abdallah Mwikalo (AW5) (not party to this appeal) testified that the land in dispute was surveyed. Being the original owner of the land in dispute AW5 stated that when the area was surveyed, he managed to get 8 plots in total but later he gave Abenance Kamomonga 2 plots and remained with 6 plots. He further admitted the fact that he sold the parcels of land to the 2nd and 3rd respondents. To prove his stance, he gave an account on how he got the parcel of land that he retained for about thirty (30) years before disposed it to the 2nd and 3rd respondents. He further identified Exhibit AE.3 and AE.7, which are Sale Agreement between him and Abenance Kamomonga and Sale Agreement between him and the 1st respondent, Menley Mgata Abwao. On her part, the 3rd respondent herein, Sophia Sixbert Duwe recounted how she acquired her parcel of land, surveyed and afterward was allocated Plot No. 81, Block S by the relevant Authority. To buttress her testimony, she tendered her Offer which was admitted in evidence and marked as Exhibit AE.10. She also tendered a Land Rent Assessment issued on 15/01/2020 and the receipts for payment of tax pertaining to her plot and all were admitted and marked as Exhibits AE.11 and AE.12 respectively.

On the other hand, the 1st respondent, Menley Mgata Abwao told the trial tribunal that he acquired his parcel of land from AW5 (Waziri Abdallah Mwikalo) upon concluded a Sale Agreement with him (Exhibit AE.7) and later secured an Offer (Exhibit AE.8) and a building permit (Exhibit AE.8) from the Municipal Council. His evidence shows that the

appellant encroached his parcel of land in November or December, 2019.

The trial tribunals' records further reveal that Jaribu Omary Simbe (4th respondent and RW2 at trial but not party to this appeal, was blamed to encroach Plot No. 75, Block B owned by Fatuma Flora Richard Mwakasitu (2nd respondent herein) while the Appellant, Huruma Samson, (5th respondent at trial) was alleged to trespassed Plot No. 77, Block B the property of Menley Mgata Abwao (1st respondent herein). On the other hand, Sixbert Mbilinyi (6th respondent at trial and not party to this appeal) was accused to trespass Plot No. 81, Block S, the property of Sophia Sixbert Duwe (the 3rd respondent herein). As hinted above, the appellant (RW5) testified that she is the lawful owner of parcel of land associated with Plot No. 77, Block B. She said, she bought the said parcel of land from Almasi Charles Mvungi (RW.7) on 18/08/2019 and thereafter erected her building on 25/08/2019 upon concluded a Sale Agreement (Exhibit RE.2) with RW7. However, she told the trial tribunal that at the material time had no idea whether the land in dispute was surveyed or not. Meanwhile, she was unable to identify her neighbours within the locality. To him, RW7 testified at lengthy, but the material part of his testimony is to the effect that he bought the parcels of land from different sellers (*5 acres in 1986, then he bought another Plot - 3 acres from Salumu Juma, and another shamba measured at 5 acres and finally he bought 28 acres of shamba*). He later sold some parcels of land (un-surveyed) to the appellant, and other persons who are not party to this appeal including Sebastian, Mecky Lupindu, Boniphace Edward and Sixbert Mubiligi, who featured at trial as 1st, 2nd, 3rd, and 6th respondents.

Looking at the evidence adduced by Almasi Charles Mvungi (RW.7) against RW.3, Mecky Lupindu (the 2nd respondent at trial), it is apparent that RW.7 is not a trustworthy person for a reason that his testimony is full of uncertainties. In my opinion, this piece of evidence culminates the credibility of the seller of parcel of land (RW7) to the appellant as unworthiness of credit. I say so because, relying on the evidence of Mecky Lupindu (RW3) there is every reason to believe that RW.7 was a con man, which means that a man who cheats others using confidence tricks. On this facet, I am inspired with the decision of this Court through the voice of (Masanche, J. As he then was) when held inter-alia that:

"... squatters in the eyes of the law cannot equate themselves to any person holding a title under right of occupancy even where the squatter occupies land under customary law. Once an area is declared an urban planning area and land surveyed and plot demarcated whoever occupies land under customary law has to be quick to apply for right of occupancy. If such person sleeps on such right and the plot is given to another, he becomes a squatter in law and would have to move away; he strictly would not be entitled to anything ... "

From the above position of the law, it is my observation that since the respondents did manage to apply for rights of occupancy and acquired the relevant documents showing that are the lawful owners of the land in dispute, and that the suit properties were surveyed and the trial tribunal correctly declared the respondents as lawful owners of the suit properties, then the 2nd and 9th grounds of appeal crumbles for lack of merits.

On the 4th ground, the appellant's main complaint is that the trial Chairman erred in law and fact for condemning costs for the 4th respondent (Jaribu Omary Simbe who is not party to this appeal) while it was proved that the 2nd respondent herein and 2nd applicant at the trial tribunal, Fatuma Florah Richard Mwakasitu wrongly sued him as he had no-any parcel of land at Mkundi Nguvukazi Street in Morogoro Municipality. Reverting to the record at trial, it is true that the 4th respondent (Jaribu Omary Simbe) was sued by the 2nd respondent for encroaching her suit land, identified as Plot No. 75, Block B situated at Mkundi area. During trial, Jaribu Omary Simbe was faithful as he told the trial tribunal's that he owned nothing in the disputed land. He testified that he used to go to Mkundi area for his own business of supplying water and selling the same by using his Bajaji. His main clients were women and those who were involving in construction of buildings as evidenced at pages 30 - 32 of the typed trial tribunal's proceedings. He denied owning a parcel of land (plot) around the disputed land. Jaribu Omary Simbe also denied paragraphs 9 and 10 of their joint written submissions. Alike, Mecky Lupindu (RW3) who featured as the 2nd respondent at trial, he gave evidence of material particulars.

With these pieces of evidence, I have considered what the learned counsel for the appellant highlighted on this point and found nothing to fault.

On the other hand, it is clear on records that, the 4th and 6th respondents at the trial tribunal, Jaribu Omary Simbe and Sixbert Mubilinyi, respectively, did not appeal against the impugned decision. However, I wonder to see that the appellant was aggrieved by the decision pronounced against Jaribu Omary and Sixbert Mubilinyi. The

appellant didn't have any locus standi and such decision did not affect her. On this facet, it is my observation that, altruist behaviour or spirit should not be allowed in civil proceedings at any stages of a particular case. It is for that reason I will dismiss this ground of appeal.

Before I conclude, I will briefly make some remarks as to whether the sellers of the land in disputes and the allocating Authority ought to have been joined as necessary parties at the trial tribunal. It was Mr. Gabriel's contentions that AW5 (Waziri Abdallah Mwikalo) and RW7 (Almasi Charles Mvungi) who are the sellers of the land in disputes, had to be and indeed were supposed to be joined as necessary parties to this case. He submitted that failure to join them that was an irregularity on the face of records of the trial tribunal's proceedings. With due respect, this argument is not worth to buy. The question whether the sellers of the disputed lands ought to have been joined as necessary parties, is a postscript. This point, in as much as the trial tribunal's record is concerned, was not pleaded at trial. It is elementary legal principle that parties to the case are always bound by their own pleadings. The tests or factors to be considered to a person who is supposed to be joined as necessary party are: **One**; there has to be a right of relief against such a party in respect of the matters involved in the suit, and **Two**; the court must not be in a position to pass an effective decree in the absence of such a party. Therefore, this appeal being distinctive, the buyers were parties at the trial tribunal and some of them before this court. The persons who sold the parcels of land (AW5 and RW7) to the parties, both appeared at the tribunal as witnesses to support their respective sides. In the circumstance of this case, it is therefore undoubted that any order made by the trial tribunal would have not affected AW5 and RW7 because at the material time

neither AW5 nor RW7 had interest in the disputed land. More so, nor reliefs were sought against them. The rationale of joinder of necessary parties, is to afford a person with a right to be heard before making any order affecting his or her right. In that view, I see no impropriety on the trial tribunal's proceedings as correctly submitted by Mr. Punge, learned counsel for the respondents.

In view of the forgoing analysis, I find no merits on the grounds of appeal. Consequently, I dismiss the appeal in its entirety with costs. **It is so order.**

DATED at MOROGORO this 31st day of March, 2022.



M. J. Chaba

Judge

31/03/2022

Court: Judgment delivered at my hand and Seal of the Court this 31st day of March, 2022 in Chambers in the presence of the appellant and the 1st respondent who both appeared in persons, unrepresented but in absence of the 2nd and 3rd respondents.



M. J. Chaba

Judge

31/03/2022

Right of the parties fully explained.



M. J. Chaba

Judge

31/03/2022

