IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 101 OF 2021

(Arising from the decision of the district land and Housing Tribunal for mara at Musoma Application No 01 /2020 by honourable KITUNGULU, Chairman of the tribunal dated 17/10/2021)

MISHAEL BULILO.....1st APPELLANT

SENGEREMA MAJI.....2nd APPELLANT

VERSUS

STEVEN MATANGA.....RESPONDENT

JUDGMENT

1/6/2021 & 26/7/2022

F. H. Mahimbali, J.

The appellants unsuccessfully claimed the right of ownership of the land in dispute against the respondent before the District Land and Housing Tribunal for Mara at Musoma.

Upon a due consideration of the evidence adduced by both parties, the District Land and Housing Tribunal for Mara at Musoma declared the disputed land belong to the respondent, which decision aggrieved the appellants and thus this appeal on the following grounds:

1. *That the honourable chairman grossly erred both in law and in fact by failing to make proper analysis and evaluation of the evidence adduced by the appellants.*
2. *That the chairman grossly erred in law and fact for failure to consider that the appellants were formerly declared to be the lawful owners of the same land in dispute in application No 108/2011 decided by the District Land Housing Tribunal of Mara at Musoma.*
3. *That the chairman erred in law and facts for failure to include in his judgment adequate reasons for his decision and issues /point of determination that could facilitate justice in the decision*
4. *That the Chairman erred in law and facts for failure to consider the relevance of visiting the locus in quo*
5. *That the honourable chairman grossly erred in law and in facts for failure to understand the historical perspective of the disputed piece of land that led to injustice on the part of the appellants*
6. *That the honourable chairman erred in law and facts to deliver the judgement in favour of the respondent without showing adequately on how the members of the tribunal opined as far as the judgment is concerned.*
7. *That the honourable chairman erred both in law and facts by basing its findings and judgement solely on the false and unreliable testimony of the respondent without drawing adverse inference on the part of the respondent*

During the hearing of the appeal, both the appellants and respondent were unrepresented, thus fended for themselves.

On their part, the appellants briefly submitted that their joint grounds of appeal be adopted by the court and consider them as submissions for their appeal. On that basis, they prayed that the decision of the District Land and Housing Tribunal be reversed and that the appeal be allowed with costs.

On the other hand, the respondent resisted the appeal submitting that the disputed land belongs to him and in essence, this appeal is frivolous. He submitted that, he got that land by purchasing it from one Habia Mtaki in the presence of Mjungu Misana, his father (deceased), Matanga Jirabi, Sylvester Mifungo and another by name of Ndalo. He clarified that, out of these witnesses two of them are now dead. These are Mzee Matanga Jirabi (his father) and the seller Habia Mtakio and none of the surviving witnesses came to testify as for reasons of sickness and old age. However, he submitted that there is proof of purchase transaction of the said land. On that submission, he prayed that this appeal be dismissed for want of merits.

The trial tribunal records establish prior to the institution of the case which is subject of this appeal, there was litigation before the

District Land and Housing Tribunal for Mara at Musoma in land application No 108 of 2011, **MISHAEL BULILO AND SENGEREMA MANJI** Vs **MAJUNGU MISANA, NYEGORO MUJUNGU AND CHRISTINA MISANA** in which the applicants (appellants) won. However, in this case, the respondent was not a party.

In a subsequent proceeding (Misc application no 453 /2019), the appellants amongst others sued the respondent **STEVEN MATANGA** as trespasser and the honourable trial tribunal declared all the respondents trespassers and were supposed to vacate on that disputed land. The respondent was aggrieved with that tribunal order and successfully appealed against that decision at High Court via Land Appeal No. 17 of 2019 in which quashed the decisions of the trial tribunal in both proceedings: Misc. Land application No. 108 of 2011 and 453 of 2019 on ground of right to be heard by the respondent.

Following the High Court order in Land Appeal No. 17 of 2019, the appellants then unsuccessfully filed the subsequent Land Application No. 1 of 2020 whose decision is now the subject of this appeal.

Having gone through the grounds for and against the Appeal raised and the entire records of this case, as well as having considered the rival submissions of both parties, it is clear that all grounds of appeal

are mainly centred on the weight of evidence adduced at the trial Tribunals. As the first appellate court, I have the duty to scrutinise and reevaluate the evidence adduced before the trial court for the interest of justice (See **DOTTO IKONGO vs R criminal Appeal no 6 (2006) Court of Appeal at Dodoma, Dinkerrai Ramkrishn pandya vs R (1957 EA by Court of Appeal for Eastern Africa).**

According to the trial tribunal record, the evidence by the appellants' case can be summarised this way that the said land originally belonged to Manji Mbiji. The first appellant got a portion of it from his uncle in 1972 measuring one acre. The second appellant equally claims ownership of it as given to him in 1980 by his beloved father (the late Manji Mbiji) who gave him a total of $3^3/_4$ acres. The first appellant says that his land was first invaded by trespassers in 1996 where he successfully sued them in 2000. That the respondent invaded the said land in 2011 and various suits were preferred and eventually the one giving rise to the current appeal.

The main issue for consideration before the trial tribunal was one: who was the rightful owner of the disputed land between the parties (appellants and the respondent).

In my considered view, the scrutiny and analysis done by the trial tribunal holds water. In comparison between the evidence by the appellants and that of the respondent, the latter's evidence is weightier and more relevant. The respondent's evidence is weightier in the sense that he established evidence to the effect that he bought the suit land in 2006 from one Habia Mtaki (DE1 Exhibit). Though neither the vendor nor the witnesses came to the trial tribunal for their testimonies as per reasons of death and old age of the remaining two witnesses, there has been no challenge of the authenticity of the sale agreement admitted as exhibit DE1. Thus, comparing with the appellants' assertions, the respondent's story is more convincing. Since it is not controverted that the respondent's land is 1 ¼ acre size as bought from Habia, the first appellant claims invasion of his land given by his uncle measuring one acre whereas that of the 2nd respondent measures 3 ¾ acres. This makes total of their claimed land measuring 4 ¾ acres which is excess by 3 ½ acres from the portion owned by the respondent. There is no explanation given in evidence to contradict the real portion invaded by the respondent whether part or whole of it. In any sense, as the respondent's parcel of land is smaller than that of the total land claimed by the appellants, I don't get a good logic.

By the way, there is also no evidence if the said land given to the appellants by the deceased Manji Mbiji bordered each other for them to claim jointly against the respondent.

The legal cardinal principle is this, he who alleges must prove. The standard of proof in civil cases is on balance of probability. It is the settled view that, both parties to a suit cannot tie, but the person whose evidence is heavier than the other is the one who must win (see **HEMED SAIDI VS MOHAMED MBILU (1984) TLR 113 HC).** Between the two rivals herein, there the probability that the respondent's ownership of is weightier that land than that of the appellants. Considering further the legal principle that where the decision of a court is wholly based on the credibility of the witnesses, then it is the trial court which is better placed to assess their credibility than an appellate court which merely reads the transcripts of the record (See **ALI ABDALLAH RAJAB V. SAADA ABDALLAH RAJ ABU AND OTHER (1994) TLR132)** the appellants' story is staturous and stammering. It is hard to believe and incredible.

The appellants on the other hand failed to challenge the materiality of the respondent's evidence on how he acquired the said land. In law, failing to challenge, suggests truth of the said evidence.

See **Hatari Masharubu @ Babu ayubu vs The Republic,** Court of Appeal at Mwanza, Criminal Appeal No 590 of 2017 and **Anna Moises Chisano vs The Republic,** Court of Appeal of Tanzania at Dar es Salaam, Criminal Appeal No 273 of 2019 to mention but a few.

That said, this court is satisfied by the analysis and evaluation done by the trial tribunal. Accordingly, the appeal is hereby dismissed as the decision of the District Land and Hosing Tribunal was righteous and just, thus it is hereby upheld and confirmed. Each party shall bear its own costs.

It is so ordered.

DATED at MUSOMA this 26th day of July, 2022.

F.H. Mahimbali

JUDGE

Court: Judgement delivered this 26th day of July, 2022 in the presence of the both parties and Mr. Gidion Mugoa, RMA.

Right of appeal explained.

F. H. Mahimbali

Judge

26/07/2022