

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MUSOMA DISTRICT REGISTRY**

AT MUSOMA

LAND APPEAL NO. 115 OF 2021

*(Arising from the Decision of the District Land and Housing Tribunal for Tarime at
Tarime in Land Application No. 114 of 2018)*

BETWEEN

ORWA OWIT..... APPELLANT

VERSUS

UROMI KISARE..... RESPONDENT

JUDGMENT

04th April & 18th August, 2022

A. A. MBAGWA, J.:

This is an appeal against judgment and decree of Tarime District Land and Housing Tribunal in Land Application No.114 of 2018.

The respondent Uromi Kisare sued the appellant Orwa Owit for trespassing into his piece of land measuring 312 paces width and 213 paces length located at Nyamagongo village in Tai Ward within Rory a district in Mara region.

In the trial Tribunal, the respondent brought about three witnesses along with seven (7) documentary exhibits whereas the appellant paraded two witnesses and tendered five (5) documentary exhibits.

The evidence adduced in the trial Tribunal may be summarized as follows;

In 2011, the respondent, Uromi Kisire applied to Nyamagongo village council for allocation of the land in dispute. Upon receipt of the application, the village assembly convened on 8th June, 2011 and resolved to allocate the land to the respondent as exhibited through exhibit P5, the minutes of the village general assembly. Consequently, on 10th June, 2011, the Village Land Committee surveyed the land in dispute and formally allocated the same to the respondent, Uromi Kisire (exhibit P3). Thereafter, the respondent became a lawful owner of the suit premises and started using it.

According to the evidence exhibit P5, during the village general assembly, the appellant, Orwa Owit raised objection claiming that the suit land was his property. However, the members of the village general assembly denied the claims and proceeded to allocate the land to the respondent.

When the allocation process had been done, the appellant Orwa Owit instituted a Land Case No. 56 of 2011 in the District Land and Housing Tribunal of Tarime but the same was struck out for want of competency as

evidenced through a Tribunal ruling (exhibit P6). After the striking out of the matter the appellant did not take any other action. Nonetheless on 11th October, 2018 surprisingly trespassed into the land and started cultivation and construction of a house. As such, the respondent instituted the suit from which this appeal emanates.

PW2 Samson Otoro Mwikani and PW3 Philimon Auka Mande who were the village chairman and village land committee chairman respectively testified in favour of the respondent Uromi Kisire. They confirmed that the disputed land was allocated to the respondent by the village general assembly of Nyamagongo since 2011. They further stated that the suit land was, at the material time, a village land and belonged to the village after the previous owner one Oduma Nyanguna shifted to Kyariko village.

In defence, the appellant Orwa Owit claimed ownership of the disputed premises. He contended that he occupied the land in dispute since in 1982 without stating more as to how he acquired it. The appellant also called Tanu Mathis Magesa (DW2) to testify in his favour. However, DW2's evidence testimony had no bearing on the ownership of the disputed land. DW2's was about the way he served the summons from the Village Executive Officer of Nyamagongo to the respondent.

The respondent tendered five (5) documentary evidence but none of the specifically makes reference to the land in dispute. For example, exhibits D2 and D3 talk about trees farm whereas the land in dispute had no trees.

After assessing the evidence of both parties, the Tribunal Chairman was satisfied that the land in dispute belongs to the respondent, Uromi Kisire.

The appellant was aggrieved by the findings of the trial Tribunal hence he preferred this appeal. In his petition of appeal, the appellant raised three grounds;

1. That the trial Tribunal erred in law for failure to record properly the evidence of the appellant, an act which occasioned miscarriage of justice.
2. That the trial Tribunal erred in law for failure to evaluate properly the evidence adduced by the appellant.
3. That the respondent did not prove the case on the required standard.

When the appeal was called on for hearing both parties appeared in person and did not have legal representation.

The appellant had little to submit. He simply adopted his grounds of appeal as contained in the petition of appeal and prayed the court to allow his appeal. He expounded that he inherited the disputed land in 1982.

In contrast, the respondent resisted the appeal. He said that the decision of the trial Tribunal was correct as it was arrived at after the Tribunal was satisfied with the evidence adduced by the respondent.

I have keenly gone through the Tribunal record as well as the grounds of appeal.

To begin with the first ground that the trial Tribunal erred in law for failure to record properly the evidence of the appellant, an act which occasioned miscarriage of justice, the appellant did not elaborate how the Tribunal failed to record the evidence. I took trouble to read the record of proceedings of the trial Tribunal but I could not discover any anomaly in recording evidence. The coram is well constituted and the record clearly indicates that the evidence was duly authenticated by the Chairman's signature. In the circumstances, I find the first ground of appeal with no merits and consequently dismiss.

In the second ground of appeal the appellant is complaining that the trial Tribunal erred in law for failure to evaluate properly the evidence adduced by the appellant. Being the first appellant court, it is entitled to re evaluate evidence and arrive at its own conclusion. See Khalife Mohamed (As Surviving Administrator of the Estate of the late **Said Khalife vs Aziz**

Khalife and another, Civil Appeal No. 97 of 2018, CAT at Tanga. I therefore invoked the powers to re evaluate the evidence and yet arrived at the similar conclusion as of the trial Tribunal. The respondent managed to establish that he was allocated the land in dispute by the village of Nyamagongo in 2011. His evidence was further corroborated by PW2 and PW3 as well as exhibits P1 to P7. Exhibit P5 (Minutes of Village General Assembly) in particular speaks strong in favour of the respondent.

The appellant contented that he is the lawful owner of the of the suit premises but did not adduce any evidence to establish how he acquired it. Moreso, the respondent gave contradictory versions as to when he started owning it. In his Written Statement of Defence at paragraph 4, the respondent stated that he is in the ownership of the suit land since 2001. However, in his testimony, he claimed that he is in occupation of the suit land since 1982. It is a common principle of law that parties are bound by their own pleading. See **Pravin Girdhar Charda vs Yasmin Nardin Yusufali**, Civil Appeal No. 165 of 2019, CAT at Dar es salaam. In view thereof, I found this to be a material contradiction on the appellant's evidence which greatly dents his credibility.

In short, having re assessed the evidence, I am at one with the Tribunal Chairman that the respondent established on balance of probabilities that he is the lawful owner of the suit premises.

With regard to the third ground that the respondent did not prove the case on the required standard, this, to a great extent, has been canvassed in the second ground. Indeed, the evidence of the respondent (PW1), Nyamagongo Village Chairman (PW2) and Village Land Committee Chairman (PW3) along with seven documentary exhibits established, on a balance of probabilities, that the disputed land belongs to the respondent Uromi Kisire.

That said and done, I find no reason to fault the decision of the trial Tribunal. As such, I dismiss the appeal with costs.

It is so ordered.

The right of appeal is explained.




A. A. Mbagwa

JUDGE

18/08/2022