

**IN THE HIGH COURT OF TANZANIA**  
**DISTRICT REGISTRY OF SHINYANGA**  
**AT SHINYANGA**

**LAND APPEAL NO. 09 OF 2018**

*(Arising from the Judgement of Shinyanga District Land Housing Tribunal in Land Appeal No.51 of 2014 dated the 20<sup>th</sup> May 2014)*

**TEMANYA LUNG'UDA..... APPELLANT**

*VERSUS*

**MBOWO MASANJA .....RESPONDENT**  
**(As the estate of the late Chalya Masanja)**

**JUDGMENT**

*30<sup>th</sup> Sept & 7<sup>th</sup> October, 2022*

**NONGWA, J.**

Temanya Lung'uda, having been aggrieved with the judgement of Shinyanga District Land and Housing Tribunal in Land Appeal No. 51 of 2014 dated the 20<sup>th</sup> May 2014 and having been granted the leave to appeal out of time and amend the grounds of appeal, has filed an appeal against Land appeal No. 51 of 2014 that was decided before District Housing and Land Tribunal on 20<sup>th</sup> May 2015. The grounds are;

- 1. 'That, the learned chairman erred in law and facts when he delivered the judgement which was out of the grounds of appeal raised in the Memorandum of Appeal follows;*
- 2. That, the learned chairman erred in law and facts when he failed realize that the contract of the sale of the disputed*

*property which was tendered by the respondent was legally not a contract.*

- 3. That, the learned chairman erred in law and facts he failed to realize that the witness for the respondent were not reliable.*
- 4. That, the learned chairman erred in law and facts when he failed to realize that the respondent didn't prove his case on the balance of probability.*
- 5. That, the leaned chairman erred in law and facts when he failed to realize that the evidence of the respondent in the ward tribunal were contradicting.*
- 6. That, the learned chairman erred in law and facts when he failed to realize that the appellant had used the dispute property for more than 12 years without interference.*
- 7. That, the learned chairman erred in law and facts when he failed to realize that the ward tribunal as well as the District Land and Housing Tribunal lacked jurisdiction to entertain the said land dispute which didn't have boundaries. ,*

At the hearing the learned counsel for the appellant Mr. Frank Samweli, submitted on the first ground, that the Chairman erred by deciding out of the grounds of appeal that were before him. That it was on the adverse possession by the appellant, and contradictory evidence and also that the Respondent had not proved the case on balance of probability. These grounds were not considered or analyzed at all.

The learned counsel went on submitting that the Judgment only dealt with the constitution of the tribunal in that it was not well constituted, pecuniary jurisdiction and said it had no that jurisdiction. He



also said those who were witnesses were pagans and they took oath instead of affirming, all the grounds determined on that appeal none of them were presented on appeal were determined.

Arguing further, the counsel for the appellant stated that in the Judgment 1<sup>st</sup> page, the advocate for the appellant prayed to summaries the grounds of the appeal, the advocate himself submitted on grounds out of the presented grounds of appeal by the appellant. That the chairman, ought to have dealt with grounds of appeal that were filed instead of considering the submission only.

Submitting on the second ground of appeal, on the contract of sale. The counsel submitted that the said contract did not show or identify the land that he the Respondent claims to have bought. It was not showing the boundaries of the land and was not witnessed even by the neighbors. The contract was entered at Kalangale village, Kalangale is in Igunga Tabora while the land is at Ibililiu Ngosira Ward Kishapu District in Shinyanga. That the contract that was witnessed outside jurisdiction cannot be used to a plot which is on another jurisdiction. That the contract had all the defects, if at all the chairman would have considered all that he could not have decided in favour of the Respondent.

In respect of the 3<sup>rd</sup> ground, is on witnesses who appeared for Respondent, the counsel argued that all witness were from Tabora Region, unlike appellants who were neighbors to the disputed land, if the chairman could have considered that, he could not have given victory to the Respondent.

On the 4<sup>th</sup> ground, the counsel argued that the case was not proved on balance of probabilities. That on the proceeding it is written on the 3<sup>rd</sup> paper from last, "Shauri upande wa Utetezi linafunguliwa" but there is no

further evidence of the Respondent, what is written there is nothing of value; it only shows cross examination and some short sentences with only responses of which had no connection, you cannot say by only those short sentences then the Respondent has proved that the Land belongs to him.

The learned counsel also submitted on the time the appellant has used that land. The appellant stated to have used that land for more than 12 years. That even if he could have been evaded the land where was the Respondent after all that time. On the last ground on jurisdiction, he submitted that the two tribunal were not supposed to deal with the disputed land. The issue is on the unsurveyed land, and therefore before hearing the two tribunal ought to have ensured themselves that the boundaries have been shown (demarcations).

That failure to identify boundaries of the disputed land, even the one who won could not have managed to execute because the land was uncertain, its boundaries, place where it situated and size.

The counsel prayed that the decision of the District Land Housing Tribunal in the land Appel No.51/2014 be set aside and the court declare that the Land belongs to the appellant, or the appeal be heard afresh.

In reply to the submission of the appellant's counsel, the learned advocate Mr. Godfrey Tuli for Respondent argued that the appeal has no merit, it be dismissed with costs. That on the 1<sup>st</sup> ground, that the District Land and Housing Tribunal did not consider the grounds of appeal, on 1<sup>st</sup> page it shows that the appellant was represented by advocate Mr. Ng'wigulila. He prayed to summarize the grounds of appeal and not additional. The summary was presented of which is not the duty of the Chairman to direct. The court is only or umpire. So, from the submission



of that advocate that is what was his summary and the chair relied upon. Mr. Tuli insisted that the judgment is right, it considered the submission of the Appellant. The ground is not meritorious.

Submitting on the 2<sup>nd</sup>, 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> grounds all together, Mr. Tuli said that all these grounds are after thought, it is the position of law that issues that were not discussed at the appellate court or trial court, you cannot bring them on appeal. That is the position of law. The issue that the appellant has occupied the land for more than 12 years is an afterthought. Even the issue of boundaries is an afterthought. That the position of law is that in the case of **Hotel Travetine Limited and others vs National Bank of Commerce Limited, TLR 2006 PAGE 133**, the court of appeal stated that the court of appeal cannot take matters not raised at courts below to be discussed at the court of appeal. So was in **Elisa Moses Msaki vs Yesaya Ngateu Matei TLR 1990 page 90**.

Mr. Tuli pointed out the high court decision on similar position in the case of **Martine Muipagi Kahumbeta vs Elias Nkinda and another Land Appeal No. 106 of 2016** Shinyanga High Court before Makani J (unreported) page 7 of that case, stated that matters that were not raised at trial will not be taken on appeal. All these are after through thought which were not discussed at the low courts. That, Mr. Samwel for the appellant has not named any law that requires the boundaries for the tribunal to sit on a dispute. On adverse possession, nowhere showing that he used the land for more than 12 years, so it is a new issue. The court should not take into account of these grounds of appeal, the Respondent proved the case on balance of probabilities on the Ward Tribunal decision, the Respondent knew the disputed plot very well, explained how he got

one and that his testimony corroborated by other witnesses. Hence the appeal be dismissed with costs.

Having heard the two sides submissions, I have indevoured to go the through the records from the very memorandum of appeal from the decision of Ngofila Ward Tribunal, the appellant filed only three grounds of appeal; I quote;

1. *'That, the appellant have owned the land dispute and cleared the virgin forest and used to cultivating there without any interference.*
2. *That the honourable ward tribunal erred in law in entering judgment favour of respondent on contradictory evidence.*
3. *That the respondent did not prove his case on balance of probability.'*

Looking at the judgment of the tribunal the first appellate and the proceedings, clearly show that the District Land and Housing Tribunal decided out of the grounds filed. However, the chairman decided the matter following and based on what was submitted by the counsel for the appellant, going by the name of Mr. Ng'wigulila Advocate.

As submitted by Mr. Tuli, Learned Counsel for the Respondent, the appellant was represented by advocate Mr. Ng'wigulila. He prayed to summarize the grounds of appeal and not additional. The summary was presented of which was not the duty of the Chairman to direct. The court is only or umpire. So, from the submission of that advocate that is what was his summary and the chair relied upon. Clearly the judgment is right, it considered the submission of the Appellant.

From what transpired at the first appellate tribunal, is as good as the ground of appeal filed by the appellant were not prosecuted, hence makes



no different for the tribunal to decide the matter in favour of the respondent. The chairman, allowed the counsel for the appellant the prayer to summer up the grounds when submitting, he was allowed, the chairman ruled out of what was submitted, and he went on submitting outside the grounds of appeal filed, the same he had no evidence, then the appeal failed. It has been held several times that parties are bound by their own pleadings. Upon request he was allowed to summarize, and that is what he did, and the court acted upon leniently and found them being baseless. As I have stated above, it makes no different because it is as good as the filed ground were not prosecuted, hence the dismissal of the appeal was inevitable.

Again, in this appeal at hand, the appellant seems to raise issues that were not determined in the first appellate tribunal. As pointed out in the high court decision on similar position in the case of **Martine Mwipagi Kalumbeta vs Elias Nkinda and another Land Appeal No. 106 of 2016**, Shinyanga High Court before Makani J (unreported) page 7 of that case, stated that matters that were not raised at trial will not be taken on appeal.

All along the hearing of this appeal and from the records, I find that the appellant has no tangible grounds that will attract this court into interfering with the decision of the first appellate tribunal.

Trial tribunal judgment and decree upheld; the appeal has no merit consequently; it is hereby dismissed with costs.

It is so ordered.

Dated and delivered at Shinyanga this 7<sup>th</sup> October, 2022



**V.M. NONGWA**

**Judge**

**7/10/2022**