

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

**MUSOMA DISTRICT REGISTRY**

**AT MUSOMA**

**LAND APPEAL NO. 1 OF 2022**

***(Arising from the Decision of the District Land and Housing Tribunal for Mara  
at Musoma in Land Application No. 239 of 2018)***

**BETWEEN**

**JOSEPH MBEGETE..... APPELLANT**

***VERSUS***

**MWITA KEMONDE ..... 1<sup>ST</sup> RESPONDENT**

**KIBINDA MRIMI.....2<sup>ND</sup> RESPONDENT**

**PAULO RYوبا.....3<sup>RD</sup> RESPONDENT**

**MZEE KIMUNE.....4<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**A. A. MBAGWA, J.:**

This is an appeal from the decision of the District Land and Housing Tribunal (DLHT) for Mara at Musoma in Land Application No. 239 of 2018.

The appellant, Joseph Mbegete instituted a land suit against the respondents over the suit premises located at Nyanungu Village, Kiambahi Ward within Serengeti District. According to the appellant's pleadings, the size of the suit land is approximately twenty (22) acres valued at Tanzanian shillings twenty

two million (22,000,000/=). The appellant claimed that he lawfully acquired the land in dispute by sale from one Kurate Saiya at the consideration of four herds of cattle via sale agreement dated 15<sup>th</sup> day of February, 2002. He therefore prayed the court to declare him a lawful owner of the suit land and issue an eviction order against the respondents.

To prove his claims, the appellant called four witnesses namely, Joseph Mbegete (PW1), Ernest Saiya (PW2), Kurate Saiya (PW3) and Stephen Joseph Mbegete (PW4). Further, the appellant produced one exhibit to wit, the sale agreement dated 15<sup>th</sup> February, 2002 which was admitted and marked exhibit PE1.

The appellant's evidence was that he purchased the suit land from Kurate Saiya (PW2) in 2002 but later on i.e., 2004, the said land was encroached by the respondents who forcibly evicted him. He said that the said agreement (exhibit PE1) was prepared in the village office. The appellant's version was supported by PW2, PW3 and PW4. PW2 Ernest Saiya testified that the land was sold to the appellant in 2002. However, contrary to the appellant, PW2 said that the respondents invaded the suit land in 2010. PW4 Kurate Saiya who claims that he is the one who sold the land in dispute to the appellant

said that the sale agreement (PE1) was prepared by the Village Executive Officer. PW3 stated that he acquired the land by clearance. PW3 further stated that he did not know the exact size of the land in dispute but it was a big portion of land. PW4 Stephen Mbegete told the trial Tribunal that his father, the appellant is the lawful owner of the disputed land but the respondents evicted the appellant in 2004.

In defence, all the respondents disputed the claims by the appellant. Their version was that they were allocated the suit land by the village council. DW1 Mwitwa Ryoba Kemonde testified that he applied for allocation of land to Nyichoku village Council and was allocated the same in 1999. He expounded that his land measures thirty seven (37) acres that is 956 x 890 paces. During cross examination, DW1, said that the appellant moved to Nyichoku village in 2002. DW1 intended to tender the documents evidencing allocation process but the same were rejected on the ground that they were photocopies

Similarly, Kibinda Mrimi (DW2) told the trial Tribunal that he shifted from Bunda district to Serengeti in 1997 and in the same year he applied for land

and was allocated the same in 1997. He said that he was allocated land measuring 200 x 800 paces.

Albam Kimune (DW3), on his part, told the trial court that he did not have interest in the disputed land.

Further, Paulo Ryoba (DW4) had similar contention. He said that he was allocated land measuring 100 x 800 paces by Nyichoka Village Council in 1997. He said that at that time, the village chairman was Nyangaka (DW5). In addition, the respondents called Emmanuel Nyangaka (DW5), Paulo Katongo Japhet (DW6) and Bryton Makuru Manchere who were village leaders and members of the village council. Their testimonies were to the effect that the respondents applied for and were allocated the suit premises at the time when they were in power.

Apart from the evidence adduced by the parties, the trial Tribunal visited the locus in quo.

Upon appraisal of the evidence, the trial Tribunal was of the findings that the appellant's claims were baseless. It thus proceeded to declare the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents the lawful owner of the respective suit premises.

The appellant, Joseph Mbegete was not satisfied with the findings of the trial Tribunal. He thus decided to exercise his constitutional right of appeal. The appellant filed a petition of appeal containing several grounds but which can be reduced into one meaningful ground namely;

That the trial Tribunal erred in law and fact for its failure to properly analyse the evidence thereby wrongly declaring the respondent's lawful owners of the suit land.

At the hearing of this appeal, the appellant appeared in person to prosecute his appeal whereas the respondents had representation of Daud Mahemba, learned advocate.

At the outset, the appellant prayed and was allowed to drop the appeal against the 4<sup>th</sup> respondent Mzee Kimune. The appellant briefly submitted that he is the lawful owner of the suit premises. He thus prayed the court to allow his appeal, quash the judgment and set aside the decree of the (DLHT).

In rebuttal, Mr. Mahemba, learned counsel, vehemently submitted that the appeal was without merits. He said that the appellant failed to prove that he is the lawful owner of the suit land. On the contrary, Mr. Mahemba submitted that the respondents testified that they were allocated land by the village

council and they brought witnesses who were members of the village council at the material time. He added that the trial Tribunal visited the locus in quo and found the respondents' residential houses which appeared to have been there for a long time. In fine, Mahemba concluded that the trial Tribunal's decision was correct and therefore prayed for dismissal of the appeal with costs.

Having considered the submissions, grounds of appeal and the record, the issue for determination is whether the trial Tribunal was right to declare the respondent's lawful owners of the suit premises.

This being the first appellate court, I took time to navigate through and re-evaluate the evidence adduced. The appellant's claim is that he bought the suit land from one Kurate Saiya (PW3). He said that the sale agreement (PE1) was prepared and witnessed by the village authority. I had an occasion to scan the said exhibit PE1. In fact, the said exhibit purports that the agreement was made before the village leaders namely, chairman, secretary and one member but there are no names of those leaders nor does the exhibit bear their signatures of the alleged village leaders. To cap it all, the document does not have the official stamp of the village council. In addition,

the appellant did not call any witness who witnessed the alleged sale agreement. Kurate Saiya (PW3) simply stated that he acquired the suit land by clearance in 1986 but there was no other witness such as a villager to fathom his averment.

On the contrary, the respondents brought the members of the village council namely, Emmanuel Nyangaku (DW5), Paul Katongo Japhet (DW6) and Bryton Makuru Manchere (DW7). Their evidence was in consonance with the respondents' version that they were allocated the suit premises by the village council. Indeed, their evidence was not controverted.

It is common principle of law that in civil cases, a party whose evidence weighs heavier than the other must win. See **Hemed Said vs Mohamed Mbilu**, [1984] TLR 113. Upon dispassionate appraisal of the record as indicated above, I am opined that the respondents' evidence is heavier than that of the appellant.

In the premises, I am at one with the trial Tribunal that the respondents proved on balance of probabilities that they are the lawful owners of the suit premises.

In view of the above deliberations, I find this appeal without merits. Consequently, I dismiss it with costs. The decision of the trial Tribunal is upheld.

It is so ordered

Right of appeal is expressed



  
**A.A. Mbagwa**

**JUDGE**

**20/09/2022**

**Court:** the judgment has been delivered in the presence of the appellant and 1<sup>st</sup> respondent and in absence of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents this 20<sup>th</sup> day of September, 2022.

  
**A.A. Mbagwa**

**JUDGE**

**20/09/2022**