IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

LAND APPEAL NO 34 OF 2022

(Originating from land Application No 47 of 2019 of the District Land and Housing Tribunal for Mara at Musoma)

KERENGE PHINIAN MKWEBA ..... APPELLANT

VERSUS

BOARD OF TRUSTEES OF ROMAN CATHOLIC

BUNDA DIOCESE ..... RESPONDENT

JUDGMENT

04th August & 04th October, 2022

F. H. Mahimbali, J.

In the contest between the appellant and respondent on ownership over land in dispute, the trial tribunal (DLHT) ruled in favour of the respondent. As to why the trial court ruled in favour of the respondent, it had two valid reasons.

First, that the appellant failed to establish his claims on balance of convenience that he is the owner of the said disputed land.

Second, that the appellant's evidence at the trial tribunal is self-contradictory. Whereas he says that they had bought it from one Nyabange Yangwe in 1990 but later the appellant himself testified that he inherited the same from his father.

Dissatisfied, he filed this appeal challenging the said decision on two reasons.

1. That the learned trial chairperson erred in law and fact to give judgment in favour of the respondent by relying on the opinion of one assessor only contrary to the law.
2. That the learned trial chairperson erred in law and in fact by basing his judgment only on the evidence adduced before Tribunal without visiting the locus in quo as it was agreed by both parties because the circumstances so demand.

A to why the trial chairperson used the opinion of only one assessor instead of two assessors the trial chairperson stated in his judgment that as one member (Mr. Swaganya) had retired before the completion of the case, he could not take his opinion. That is the right position of the law when one member retires or is unable to proceed with the case before the completion of the case, the trial chairperson

shall proceed with the remaining assessors if any (see section 23 (3) of the Land Dispute Courts Act, Cap 126, R. E. 2022.

On the weight of evidence in record as between the appellants case and that of the respondent, it is clear that the appellants case is weightier. On how the appellant got the said land, it is perplexing. Is it by inheritance or purchase? In both ways there is no evidence for that assertion.

That said, this is fit case in which the visit to the locus in quo was not needed. Its omission did not occasion any injustice. I say so because there was no any controversy on issues of the size of the land. The actual location or boundary. The appellant having failed to establish any ambiguity or controversy, he being not neighbour to the disputed land, there was no any justification of visiting to the locus in quo (see the case of **Avit Thadeus Massawe vs Isidory Assenga**, Civil Appeal No 6 of 2017, Court of Appeal at Arusha).

As on merit basis, the appellant's claims are knocked down for what then visiting to the locus in quo? There was nothing to see at site as per circumstances of this case.

I am of the firm view that the appellant failed to establish any of his claim regarding possession and ownership of the disputed land.

That said the appeal fails and is hereby dismissed with costs.

DATED at MUSOMA this 7th day of October, 2022.

F. H. Mahimbali

Judge

Court: Judgment delivered this 04th day of October, 2022 in the presence of both parties.

Right of appeal is explained.

F. H. Mahimbali

Judge