

**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
**AT MTWARA**

**LAND APPEAL NO.35 OF 2021**

*(Originating from the District Land and Housing Tribunal for Mtwara at  
Mtwara in Land Application No.48 of 2020)*

**FATU PALEHU..... 1<sup>ST</sup> APPELLANT**

**MOHAMEDI MPUNGULA.....2<sup>ND</sup> APPELLANT**

***VERSUS***

**AGNESS MROPE.....RESPONDENT**

**JUDGEMENT**

*29/9/2022 & 27/10/2022*

**LALTAIKA, J:**

The appellants herein are dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara in Land Application No.48 of 2020. Consequently, they have lodged this appeal to this court premised on seven grounds. Before expounding on submission for and against the grounds of appeal which are the main issue used to determine the merits of this appeal, I consider it necessary to provide a brief factual backdrop leading to this appeal as can be gleaned from the Tribunal's records.

It is alleged that the respondent and her husband Faustini Isaya Mmalunda purchased the suit land from one Maulid Mtipu in 1996 although the sale agreement was concluded in 1999. It is alleged further that sometimes in July 2018 the first appellant claimed that the suit land

belonged to her family. She took her claims to the village chairman whose efforts to resolve the dispute were unsuccessful. As a result, the first appellant allegedly trespassed into the suit land and started cultivation. The second appellant who is a neighbour of the respondent on one side of the suit land also, allegedly, around the same time as the first appellant, made an extension of his activities into the suit land and claimed that it was sold to him by one Abdallah Pelehu (the first appellant's relative).

The respondent (then plaintiff) knocked the doors of Kitere Ward Tribunal which decided in favour of the appellants (then respondents). The respondent appealed to the DLHT for Mtwara. The tribunal ordered the matter to be tried *de novo* by the Kitere Ward Tribunal. However, the Ward Tribunal could not proceed due to frequent inability to enter appearance by the second appellant Mr. Mpungula who, according to the respondent, was involved in political campaigns.

The respondent Ms. Mrope was then advised to institute the case at the DLHT, and she did. Her claims in the DLHT were, among other things, that she is declared the rightful owner of the suit land. After a full trial, the Tribunal decided in favour of the respondent declaring the appellants as trespassers of the suit land. Moreover, it permanently restrained the appellants or their families or agents from using the suit land. Finally, it ordered the appellants to pay costs of the suit to the respondent.

As alluded to above, the appellants have lodged seven grounds of appeal. For ease of reference and clarity, I am inclined to reproduce them as I hereby do:

- (i) *That the Honourable trial Chairman of the District Land and Housing Tribunal erred both in law and in fact for failure to consider, analyze and weight the appellants' evidence.*
- (ii) *That the trial tribunal grossly erred in law and in fact by judging against the person who was not a party to the suit and hence denied, we have the right to be heard.*
- (iii) *That the Honourable trial Chairman of the District tribunal erred both in law and fact that the first appellant is the rightful owner of the suit land bought by her husband in 1998 from SAID SELEMAN and the second appellant bought part of the suit land from MWANAMKULU PELEHU in 1997.*
- (iv) *That the honourable trial chairman of the District Tribunal erred both in law and in fact acting contrary with the rule of natural justice the 2nd appellant was condemned unheard and that was not accorded the right to summon his witnesses.*
- (v) *That the District Tribunal seriously erred in law and facts for holding in favour of the respondent despite the respondent's failure to produce any strong evidence to prove ownership of the suit land.*
- (vi) *That, the District Tribunal seriously erred in law and in fact by not relying on the first appellant witness and pronounced the judgment which relied on hearsay evidence by the respondent.*
- (vii) *That, Honourable trial Chairman of the District tribunal erred both in law and in fact why 2nd appellant did not tender document to buy the suit land from the MWANAMKULU PELEHU.*

When the appeal was called on for hearing for the first time on 21/4/2022 something rather strange happened. The first appellant claimed she had nothing to do with the case and that her one husband Saidi Mekaniki should be contacted for any information related to the suit land. She claimed further that the second appellant is her brother and that he could not enter appearance because his uncle had passed away.

When prompted by this court to explain why she appealed against a matter she barely knew about, she claimed that her interest was to find out why the Tribunal had ordered a piece of land she is tilting for many years now to be given to the respondent. This court adjourned the matter for hearing while ordering the husband to the first appellant and the second appellant to appear in court without fail.

On the 9<sup>th</sup> of June 2022 the matter was called on for hearing once again. As ordered, both the first and second appellant appeared along with Mr. Saidi Makaniki husband to the first appellant. Like the first appellant in the previous session, the second appellant also tried to apply denialism. He claimed that he had nothing to do with the case because his role was trying to resolve the conflicts between the first appellant and the respondent. He emphasized that it was unfair for the Tribunal to order a part of his land to be handed over to the respondent while he was a good Samaritan trying to negotiate peace among his neighbours.

This court was not convinced that the appellants were not the right party to the case. There were signs, however, that theirs was either a delaying tactic or lack of interest in pursuing the appeal even though they were the appellants. The matter was adjourned for oral submissions on the grounds of appeal as listed above.

Since the grounds of appeal hitherto filed were in English presumably drafted by an individual learned in law, this court had to be innovative to ensure that both parties understood the grounds and responded accordingly albeit as lay people and in Kiswahili.

Submitting in support of the first ground of appeal the first appellant averred that she had told the court that the farm was bought by her

husband. She claimed that she indicated that her name was not in the sale agreement. Nevertheless, the first appellant averred, the Tribunal insisted that she was the one who grabbed land from the respondent.

On the second ground, the first appellant averred such issues were the concern of her husband because he is the head of the family. Although the husband had found the land in her family, reasoned the first appellant, she could not bar other members of her family from selling their land to him.

On the third ground, the first appellant averred that originally the suit land belonged to the whole family. When their parents died, the first appellant continued, some children started selling the parts given to them. She insisted that her husband bought the suit land from ZUHURA NDOFILE a daughter to her aunt ASHA ABDALLAH PELEHU.

On the fourth ground, the first appellant indicated that if Zuhura Ndofile had been summoned, she would have told the court that she was the one who sold the land to her husband Mr. Saidi Selemani Mekaniki. She insisted that although her husband was like an uncle to Zuhura, it is normal for relatives to sell land to each other.

On the fifth ground, the first appellant insisted that no witnesses were summoned to the DLHT and that her witnesses only testified at the Ward Tribunal. She submitted further that the tribunal did not concern itself with her own witnesses. It considered the evidence of only witnesses of the respondent. The sixth and seventh grounds of appeal were found to be too technical to be addressed by lay persons.

The second appellant who had arrived several minutes later with an apology that his relative was admitted in hospital, said he agreed with

what the first appellant had submitted. He insisted that the disputed land does not cover his area land and that there wasn't any relationship between his land and that of the respondent FATU PALEHU because his area is on the other side.

It is the second appellant's submission further that he bought the land from one ABDALLAH HASSAN PELEHU. He added that the tribunal did not want to hear his witnesses as they would have been credible witnesses. He complained that when he was testifying, the tribunal told him that he was not supposed to bring any witness.

Responding to the first ground, the respondent averred that she could not sue the husband of the first appellant because he just came [to the first appellant's place] to get married. She insisted that the land belonged to the clan of the first appellant even before she got married and that, the land was sold to a person called MAULIDI ABDLALLAH MTIPU way back in 1994.

It is the respondent's submission further that MAULIDI ABDLALLAH MTIPU used that farm with the first appellant Fatu Pelehu until he decided to sell it. The respondent submitted further that it was the first appellant who drew her attention to the fact that the farm was on sale.

On the second ground, the respondent insisted that the husband to the first appellant was totally a stranger to this matter. She averred that she knows them [the couple] very well because she shares the boundary with them, which boundary the tribunal had visited.

On the third ground, the respondent averred that the land that the first appellant had bought is not the same as the disputed land insisting that the appellants had crossed the road to her place. It is the

respondent's submission that there was no conflict among them from 1996 to 2018. She added that the appellants waited for death of the seller before they could grab her land as they thought there would be no witness. Although the younger brother of the deceased agreed to become her witness, the respondent averred, he died a day before going to testify at the Tribunal. Nevertheless, the respondent averred further, he did not lose hope because one Mzee MAULIDI Abdallah MTIPU was still there, and he was her witness throughout the trial at the tribunal.

On the fourth ground, the respondent averred that courts allow parties to list down their witnesses and that when the first appellant was asked to name her witnesses, she only mentioned her husband. She wondered why the first appellant did not mention Zuhura in the first place.

On the fifth ground, the respondent averred that the Tribunal got enough evidence from the seller who pointed out the boundaries. The sixth and seventh grounds were equally too technical to the respondent as they were to the appellants.

Having dispassionately considered submissions by both parties, the records of the Tribunal and grounds of appeal, I am now in the position to determine the merits or demerits of the appeal. The appellants' main complaint is that the Tribunal had failed to consider, analyse, and weigh their evidence.

It is trite law in our jurisdiction that he who alleges has the burden of proof **as per section 110 of the Evidence Act [Cap. 6 R.E. 2022]**. Going by this principle, the respondent's evidence was the one which was required first to prove that the suit land trespassed by the appellants belonged to her. Nevertheless, the Tribunal considered and analysed

evidence of both parties. **The appellants and one witness (DW2) gave their testimonies as recorded on page 10-18** of the typed proceedings of the tribunal. Furthermore, the second appellant did not tell the tribunal if he would tender any document relating to the suit or call the witnesses, but he prayed to close his defence case as evidenced at page 18 of the typed proceeding.

For the above reason, I find no merit to this appeal and the same must fail. Nevertheless, before I pen of, it is important to point out that the appellants have only half-heartedly pursued this appeal. When they finally agreed to submit on the grounds of appeal they filed in this court supposedly through assistance of a legal drafter, they tried to shift the blame to someone else.

Without prejudice to the appellant's right to appeal to the Court of Appeal of Tanzania, as repeatedly alluded to by the second appellant who claims to be a self-appointed mediator, a stern warning must be given at this juncture against abuse of the court process including unjustifiable delay in execution of court orders.

In the upshot, this appeal is hereby dismissed for lack of merit. Each party should bear its own costs.

It is so ordered.



**E.I. LALTAIKA**

  
**JUDGE**  
**27.10.2022**



**COURT**

This ruling is delivered under my hand and the seal of this Court on this 27<sup>th</sup> day of October 2022 in the presence of both parties who have appeared in person unrepresented.



**E. I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over the printed name.

**JUDGE  
27.10.2022**

**COURT**

The right to appeal to the Court of Appeal of Tanzania is duly explained.



**E. I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E. I. Laltaika", written over the printed name.

**JUDGE  
27.10.2022**