

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 42 OF 2022

(Arising from the Decision of the District Land and Housing Tribunal of Mara District at Musoma, in land Appeal no 248 of 2020 and Original Ward Tribunal of Ifurifu Ward in Application No 5 of 2020)

EMMANUEL SORWAAPPELLANT

VERSUS

CHAUSIKU KANYIGE RESPONDENT

JUDGMENT

6th October & 04th November 2022

F. H. Mahimbali, J.

This is the second appeal after the same appellant had lost his first appeal at the DLHT. He was earlier successfully sued at the trial Ward Tribunal for land trespass.

Now still not amused by the verdict and findings of the two lower Tribunals, the appellant has sought for this appeal. He has preferred two grounds of appeal, namely:

- 1. That, the honourable District Land and Housing Tribunal of Mara at Musoma erred in law and fact by failure to evaluate the strong testimony/evidence as adduced by the appellant at Ifulifu Ward Tribunal as a result arrived into a wrong decision.*
- 2. That, the honourable District and Land Tribunal erred in law and fact for not considering exhibits that enabled the appellant to acquire the land and tendered by the appellants at Ifulifu Ward Tribunal.*

During the hearing of the appeal, parties appeared in person. The appellant on his part had nothing more to add, but just prayed that this court to adopt his grounds of appeal and be the basis for allowing the appeal as he believes that he has strong evidence than the respondent.

On her part, the respondent still maintained that her father acquired the said land lawfully in 1974 by clearing verging land (bush), and from thereon he has been using it until his demise in 2011. She challenged the appellant's evidence at the trial court as being valueless and weaker to entitle his ownership of the same. She prayed that, let the appeal be dismissed with costs.

The main reasons as to why the appellant challenges the decision of the DLHT is mainly centred on points of fact that there was failure of analysis of the evidence at the trial court and at the first appellate

tribunal. Thus, he invites this court to re-evaluate the same and overturn the findings to be in favour of him (the appellant).

This being the second appeal, normally ought to be confined mainly on a points of law. The law is, the higher court (second appeal), should hardly interfere with the concurrent findings of the two lower courts on point of fact (evidence) unless there is a serious omission or apprehension of facts as per evidence in record.

In my careful scan of the evidence in record, I am satisfied that the two lower tribunals reached a proper finding as per law on a careful study of the evidence in record. I say so because at the trial tribunal, the respondent and her three witnesses clearly demonstrated at the trial tribunal how the respondent's father acquired that land in 1974 and that from thereon, he has been in active control and use from then until his demise in 2011. That SM1, SM2 and SM3 not only recognized the respondent's father as owner of it, but also had been periodically applying for hire of the said land for gardening, farming and bricks making. Therefore, this established how the respondent's father was the real owner of the said land.

The appellant's evidence on the ownership of the same land is traced from 2009 when he applied for ownership of land from the village authority. He has tendered documents trying to establish how he applied before the Village Authority on 25/01/2009, granted it on 23/02/2009 by the Planning and Finance Committee of the said Village Council and paid for it on 11/11/2009.

The challenge with these documents/exhibits have been on their genuineness of the same. First, since the final authority for their applying for village land ownership is vested to the Village Assembly, the evidence by the appellant via his documentary exhibit purports to be allocated the said land by the Finance and Planning Committee of the Kabegi village. The worse of it, it is not dully stamped. In any way as there is strong evidence that the said land was under the ownership of the respondent's father, it could hardly pass title to others without first being dully acquired as per law. As there is no that evidence, the land could not pass title as purportedly done.

As if this is not enough, the appellant's evidence suggests that the respondent's father was amongst the six applicants for the allocation of land for residence. It is then not clear whether the said land applied for and purportedly granted is the same land the respondent's father was in

occupation. In anyway, logic in it asides with the respondent and departs from the appellant. I say so basing testimony of SM2-Emmanuel Kigeso whose testimony on cross-examination by the appellant goes this way:

1. *Je, wewe ni nani?*

- *Emmanuel Kigeso.*

2. *Je, ulihamia kutoka wapi?*

- *Mahameni mwaka 1974.*

3. *Je ulikuwa na umri gani:*

- *10 years*

4. *Je, ulikuwa unaishi jirani na baba wa mdai?*

- *Kijiji kimoja*

5. *Je, eneo la mgogoro ni ekari ngapi?*

- *Nne*

7. *Je, Unakumbuka wewe na mimi tuliomba eneo la kiwanja katika serikali ya kijiji tukapewa?*

- ***Ulipewa eneo tofauti na eneo la mgogoro***

8. *Je, viwanja tulivyopewa ni kitongoji gani?*

- ***Erangara***

9. *Je ni kweli*

- *Ndiyo, chako kiko Erangara.*

10. *Je ni mwaka gani tulipewa?*

- *2000*

11. *Je baba wa mdai alilipata vipi eneo hilo?*

- *lilikuwa pori na akalifyeka*

12. Je ni kweli hakupewa na serikali ya kijiji?

- *Ndiyo*

13. Je, eneo la Mgogoro ni shamba?

- *Ndio*

14. Je kiwana tulichopewa ikiwa ni pamoja na wewe, tulipewa na nani?

- *Serikali ya kijiji*

15. Je tulipewa wangapi?

- *Watano.*

A careful study of this evidence, envisages that the appellant might be talking of two different lands.

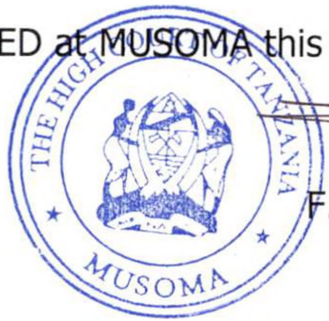
The, law is who alleges must prove. The onus is therefore on whom he wants the judgment of the court (section 110 -112 of TEA). This being a civil claim, the standard of proof is on balance of probability (section 3 (2) b of TEA). Now, in a careful analysis and scanning of the evidence at the trial tribunal as far as ownership of the disputed land is concerned, I am satisfied that the respondent's case carried more weight than that of the appellant and was therefore rightly declared to be the rightful owner as against the appellant (see **Hemedi Said vs Mohamed Mbilu** (1984) TLR 113, only a party with stronger evidence is the one who must win the claim).

That said, this now being the second appeal, I have not seen any factual issue which can fault the lower tribunals' concurrent findings. On this, the grounds of appeal raised are bankrupt of merit. They are thus dismissed.

In the end result, the appeal is dismissed in its entirety with costs for want of evidence establishing ownership of the appellant against the respondent.

It is so ordered.

DATED at MUSOMA this 04th day of November, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered 04th day of November, 2022 in the presence of both parties and Mr. Gidion Mugo, RMA.

Right of appeal is explained.

F. H. Mahimbali

Judge