

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO 102 OF 2021

(Arising from Land Application No 264 OF 2021 in the District Land and Housing Tribunal and original from Land Application No 04 of 2020 at Kukirango Ward Tribunal)

MAGESA MAZENGO APPELLANT

VERSUS

ZIRA JOHN KAITIRA RESPONDENT

JUDGMENT

29th September & 31st October 2022

F. H. Mahimbali, J.

The respondent in this case, had unsuccessfully sued the appellant at the trial tribunal. Dissatisfied, she successfully appealed before the District Land and Housing Tribunal of Musoma which in essence overturned the trial tribunal's decision. This has aggrieved the appellant, thus the current appeal based on the following grounds of appeal; namely:

- 1) That, the decision of the District Land and Housing Tribunal is otherwise faulted and wrong in law as appellant has been in occupation of dispute land since 1988 uninterrupted.*
- 2) That 1st appellate tribunal erred in law and fact by declaring the respondent the legal owner of disputed land as decision was basing on forged document contrary to the law.*

- 3) That, the 1st appellate tribunal erred in law and fact as the decision was based on new evidence un-procedural tendered at the appellate stage.*
- 4) That the first appellate tribunal misdirected itself by setting aside decision of ward tribunal and declared respondent as legal owner of disputed land without visiting locus quo and notice that respondent was the one who encroached on the appellant land without justification.*
- 5) That, the first appellate tribunal erred in law and fact for delivering judgment based on a letter dated 24/11/2015 which was based on false information with no proof.*
- 6) That, the 1st appellate tribunal erred in law for delivering judgment in favour of respondent while the evidence of the appellant was stronger and heavier than that of the respondent.*

During the hearing of the appeal, the appellant was represented by Mr. Godwilly Mweya whereas the respondent was dully represented by Mr. Adamu Murusuli, both learned advocates.

In arguing the appeal, Mr. Godwilly Mweya submitted for the first ground of appeal that the appellant has been in long occupation of the said land for over 12 years (from 1988). According to the Law of Limitation Act, this being a land matter, the respondent cannot claim ownership over the plot in which it has been under the active use by the respondent since 1988. He is of the considered view that as per

evidence in record, it is clear that the appellant has more evidence in ownership of the said land than the respondent.

As per letters in record trying to persuade the DLHT ought to have not accorded any weight as it was improperly admitted after the closure of the case's evidence. and it was accorded weight by the first appellate tribunal.

With the third ground of appeal, the DLHT erred in considering new evidence of 3/6/1993. In the case of **Godfrey Wilson vs Republic**, Criminal Appeal no 168 of 2018, at page 5.

On the fourth ground of appeal, he submitted that the DLHT (appellate tribunal) misdirected itself by setting aside decision of Ward tribunal and declaring the respondent lawful owner without visiting to the locus in quo. As the Ward Tribunal did, what was overturned by the by DLHT didn't consider the evidence in record.

On the 6th ground of appeal, he submitted that the DLHT erred in placing reliance to exhibit that was not granted its admission during trial.

Lastly, he insisted that at the Ward trial Tribunal, the appellant's evidence is stronger than that of the respondent. Thus, the appeal be allowed.

On this submission, he prayed that the appeal be allowed with costs. The appellant be declared the rightful owner, and that this Court to grant other reliefs as it may deem just and proper to grant.

In responding to the appeal, Mr. Adam Murusuli learned advocate first prayed that his grounds of appeal be adopted by the Court to form part of his appeal submission.

With the first ground of appeal, while relying on Exhibit APPE1, he submitted that it is clear that the respondent is the lawful owner of the disputed plot, thus it suffices ownership to the respondent. Apart from this, the appellant's invitation to the suit land didn't make him owner. By the letter dated 24/11/2015 is clear that the appellant acknowledges return of the said land to the original owner. The law is, an invitee cannot own the land he is invited to use. In the case of **Mr. Magoiga Nyakorongo Mrili vs Chacha Mosoro Saile**, Civil Appeal No 464 of 2020, CAT at Musoma at age 11. With this submission, he argued that the first ground of appeal is baseless.

On the second ground of appeal, it is vehemently contested as it is the respondent who was legally owning it. As per exhibit APPE1 exhibit, it is a genuine document that its form is contested. Relying in the case of **Constansia Chaira vs Everist Maende**, Civil Application No

227/17/2021 CAT at Dar es Salaam, it was held that court of law is not an expert witness, but the parties. He prayed that this ground of appeal too be dismissed as well.

In the third ground of appeal, he vehemently disputed that the DLHT reached improper finding. As per section 34 (1) b of the LDCA, Cap 216, the said evidence was properly received as additional evidence. He differed with Mr. Mweya in the cited case of **Godfrey Wilson vs Republic**, Criminal Appeal no 168 of 2018, at page 5 case as it is misplaced. He clarified that a new ground of appeal is different from new evidence.

On the fourth ground of appeal, he considered it as misplaced since in hearing of appeal, the DLHT is not bound by law that before giving its decision it must visit the locus in quo.

On the 5th ground of appeal, he insisted that the DLHT properly reached a proper finding.

Lastly, on the 6th ground, he also considered it as misplaced. The case was decided in favour of the respondent on the basis of the available evidence in record.

On this submission, he prayed that the appeal be dismissed with costs. The decision of the DLHT be confirmed by this Court.

In determining this appeal, I will consider whether the appeal has merit as argued and submitted. In reaching that determination, the point of consideration shall be the available evidence in record if it supports the findings of the DLHT.

In my assessment to the evidence in the trial court record via the testimony of the respondent, SM1, SM2, SM3 and SM4 and that of the appellant and his SU1, it is undoubted that the respondent's evidence is weightier than that of the appellant. I say so, relying on the documentary exhibits provided by the respondent and evidence of the local leaders who all recognised the respondent's father as owner of the disputed land. Furthermore, there is evidence in record that the respondent hired the said land for use from the respondent. With all this, I node head with the findings of the first appellate tribunal that with the available evidence in record, the appellant was wrongly declared as rightful owner of the suit land. There was no basis for declaring him as rightful owner of the suit land.

It be noted that it is not the duty of the courts of law or say land tribunals to grant parties with the right of ownership but only declares

as who between the disputants as per available evidence is the rightful owner. From what can be gathered from the evidence in this at the trial court, I find no basis as to why the appellant was declared the rightful owner of the disputed land. It appears the trial tribunal assumed the power of granting parties with rights of ownership instead of resolving disputes as between the two who has more relevant evidence than the other?

I agree with Mr. Adamu Murusuli that, an invitee however long he stays in the invited land, he cannot qualify or graduate to be owner of that land for his lifetime. He will only remain an invitee (See the case of **Mr. Magoiga Nyakorongo Mrili vs Chacha Mosoro Saile**, Civil Appeal No 464 of 2020, CAT at Musoma at age 11).

As far as the issue of admissibility of additional evidence at the DLHT (during appeal), section 34 (1) of the LDCA is relevant. It says:

34.-(1) The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors, and shall-

- a) consider the records relevant to the decision;*
- b) receive such additional evidence if any; and***
- c) make such inquiries, as it may deem necessary.*

As regards to the visit to the locus in quo, it is not an automatic process that in every land dispute, there must be visit to the locus in quo (see **Avit Thadeus Massawe vs Isdory Assenga**, Civil Appeal No 6 of 2017, CAT at Arusha). That there shall be visit to the locus, where circumstances so compel for tribunal or court's satisfaction.

All this said and done, appeal is devoid of any merit. The same is hereby dismissed with costs. The findings of the first appellate tribunal are hereby upheld and confirmed.

It is so ordered.

DATED at MUSOMA this 31st day of October, 2022.



F. H. Mahimbali

Judge

Court: Judgment delivered this 31st day of October, 2022 in the presence of the Appellant, Mr. Adamu Murusuli, advocate the respondent and Mr. Gidion Mugo, RMA.

F. H. Mahimbali

Judge