

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 40 OF 2022**

(Originating from Land Applications No. 6/2018 in the District Land and  
Housing Tribunal for Ngorongoro)

**BALTAZAR LEGISSA NANGULALE.....APPELANT**

**VERSUS**

**SINDIE NKOLILI .....1<sup>ST</sup> RESPONDENT**

**JOHN NDINEYA.....2<sup>ND</sup> RESPONDENT**

**EX-PARTE JUDGMENT**

13/10/2022 & 24/11/2022

**MWASEBA, J.**

The appellant, **Baltazar Legissa Nangulale**, has brought this appeal to challenge the decision of the District Land and Housing Tribunal (DLHT) which was delivered on 19/04/2022 dismissing the application for failure of the appellant to prove the claim on the balance of probabilities.

Aggrieved by the ruling of the tribunal, the appellant is now before this court having the following grounds of appeal:



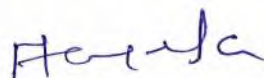
1. *That, the Tribunal erred in law and fact whereby somewhere it recorded that the piece of land in dispute covered only  $\frac{1}{4}$  of the area of dispute but again the same Tribunal through one assessor recorded that piece of land in dispute covered  $\frac{3}{4}$  of the area in dispute, so the piece of land in dispute was not clear in the eyes of the Tribunal.*
2. *That, the Tribunal erred in law and fact whereby it could not give fair and free chance of the Appellant to explain himself. The same Tribunal did not consider the documents tendered as evidence although they were accepted in the file of the case.*
3. *That, the Tribunal erred in law and fact when it considered that the Appellant has failed to prove the case on balance of probabilities. Witness SM2, namely Roman Ngondi witnessed the transaction of selling the piece of land in dispute and his eyewitness was not challenged before the tribunal but yet it could not rule in favour of the Appellant.*
4. *That, the Tribunal erred in law and fact whereby it granted costs of the case whereas the Respondent had not asked for them.*
5. *That, the tribunal erred in law ad fact by entertaining evidence of one witness Felix Elibahati in favour of the 1<sup>st</sup> respondent. The said witness was employed sometimes in the year 2018 and the*

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*transaction of selling the piece of land in dispute took place in the year 2009.*

Briefly, the appellant sued the respondents at the District Land and Housing Tribunal for Ngorogoro, claiming for a piece of land measured at ¼ located at Digidigo area within the District of Ngorongoro, which he alleged to have been trespassed by the respondents herein. He alleged that, it was the first respondent and her late husband who sold the disputed land to him and later on he discovered that the same property was sold to the 2<sup>nd</sup> respondent. The efforts to solve the matter amicably proved futile which led him to file an application at the DLHT for Ngorongoro. At the DLHT it was decided that the appellant failed to prove his claim at the standard required in Civil Cases which is on the balance of probabilities. The decision aggrieved the appellant who is now before this court challenging the said decision based on the grounds adduced above.

In this appeal the appellant appeared in person while the respondents never entered appearance despite being served with summonses. Thus, the matter proceeded in their absentia. The appeal was disposed of by way of written submission.



Supporting the appeal on the first ground of appeal, the appellant submitted that there was no certainty regarding the disputed piece of land as the records of the Tribunal show the disputed land is measured at  $\frac{1}{4}$  acres while the one of the assessors said it was  $\frac{3}{4}$  acres. Therefore, the Tribunal contravened **Section 3 (2) (b) of the Land Dispute Court (The District Land and Housing Tribunal) Regulation, 2002.**

On the second and third grounds of appeal, he submitted briefly that the DLHT failed to honour the evidence and documents tendered by the appellant.

Coming to the fourth ground of appeal, he averred that it was wrong for the Tribunal to grant costs which were not asked for and to support his argument he cited the case of **Shinyanga Regional Trading Company Limited & Another vs National Bank of Commerce**, Civil Appeal No. 24 of 1996 (Unreported).

On the fifth ground of appeal, he complained that it was wrong for the Tribunal to entertain the evidence of Felix Elibahati who was employed in 2018 while the dispute between the parties arose in 2009. In the end he prayed for the appeal to be allowed and the decision of the Tribunal be dismissed.



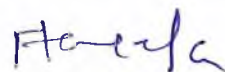
After having the submission from the appellant and going through the record, the main issue for determination is whether the appeal has merit.

I wish to start with the first ground of appeal, where the appellant is challenging the certainty of the measurement of the disputed land. Upon revisiting the records of the Tribunal particularly the application form filed by the appellant on 7/1/2020, paragraph 6 (a) (i) states that:

*"That the applicant claiming against the respondents for the act of trespassing to the farm measured ¼ acre located at Digidigo within Ngorongoro District."*

Further to that, the decree and judgment of the Tribunal clearly determined the land dispute measured at ¼ acres. Thus, the allegation that the disputed property was not certain in the eyes of Tribunal is not true since the appellant claimed before the Tribunal over a piece of land measured at ¼ acres. The ¾ acres alleged to have been submitted by one of the assessors cannot be confused with the clear measurement submitted by the appellant himself.

Coming to the second and third grounds of appeal, the appellant complained that the DLHT failed to honour the evidence and documents



tendered by the appellant. **Section 11 (1) (a) of GN. 173** of 2003 provides that:

*"1. On the day the application is fixed for hearing the Tribunal shall-*

*a) Where the parties to the application are present proceed to hear the evidence on both sides and determine the application."*

In our present appeal, the records reveal that during the hearing at the Tribunal, both parties were accorded the right to be heard and presented their evidence. However, during the delivery of the impugned judgment the Tribunal was of the view that the appellant failed to prove his claim on the balance of probabilities. More to that, during the hearing SM1 and SM2 did not tender any document which were admitted to be used as exhibit before the Tribunal. Thus, the allegation that his exhibits were not considered is just an afterthought which carries no weight.

In the fourth ground, the appellant is challenging the issue of costs awarded to the respondents while they never asked for the costs. The issue of granting costs or not is well covered under **Regulation 21 (1)**



**of the Land Dispute Courts (District Land and Housing Tribunal Regulations, 2003** which read as follows:

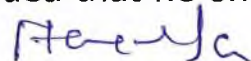
*"The Tribunal may make such orders as to costs in respect of the case as it deems just."*

The same was decided in the case of **Registered Trustee of the Roman Catholic Archdiocese of Dar es Salaam vs Sophia Kamani**, Civil Appeal No. 158 of 2015 CAT at Dare es Salaam (unreported) that:

*"Finally, the order of costs. **It is well known principle that a winner is entitled to costs unless there are exceptional circumstances which were shown to exist.**"* (Emphasis is mine).

In our present matter, the Hon. Chairman was correct to award costs to the respondents since they incurred some costs during the adjudication of the application at the Tribunal and since the same is awarded on the discretion of the court/Tribunal there is no reason why a winner should not be awarded costs. Thus, there is no merit on this ground.

Responding to the fifth ground, the decision of the Tribunal did not focus solely on the evidence of SU2 (Felix Elibahati) but on the whole evidence of both parties. More to that, SU2 only stated what he knew about the dispute between the parties and added that he once dealt with



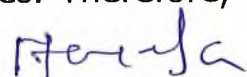


the dispute of the parties herein after the death of the 1<sup>st</sup> respondent's husband. The record is clear that the appellant failed to prove his case to the required standard as he told the trial Tribunal that he bought the said land from the late 1<sup>st</sup> respondent's husband but there is no proof of that as he did not have any document. Even his evidence is full of contradictions. He said he bought the said land in 2011 while his witness testified that he witnessed him buying the said land from the late 1<sup>st</sup> respondent's husband in 1993. This fact has been strongly disputed by the 1<sup>st</sup> respondent. In the case of **Abdul Karim Haji v Raymond Nchimbi Alois and Another**, Civil Appeal No. 99 of 2014 (unreported) it was settled that:

*"...It is an elementary principle that he who alleges is the one responsible to prove his allegation."*

Being guided by the above authority, I find that the appellant failed to exercise his duty to prove his allegation that he bought the said land. He has no documentary evidence and the evidence of his witness contradicts as to when specifically the said land was bought. Therefore, this ground lacks merit too.

In the upshot, I concur with the trial Tribunal that the appellant failed to prove the case on the balance of probabilities. Therefore, this appeal is

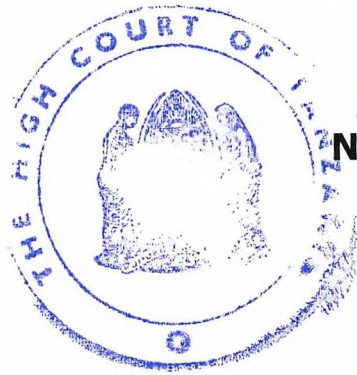




dismissed for being non meritorious. The decision of the trial Tribunal is left undisturbed.

It is so ordered.

**DATED** at **ARUSHA** this 24<sup>th</sup> day of November, 2022.



*N.R. Mwaseba*

**N.R. MWASEBA**

**JUDGE**

**24/11/2022**