IN THE HIGH COURT OF TANZANIA

MTWARA DISTRICT REGISTRY

AT MTWARA

MISC. LAND APPEAL NO 8 OF 2021

(Originating from Land Appeal No. 146/2020 in the District Land and Housing Tribunal for Mtwara and Originating from Land Dispute No 10 of 2020 of Nanyamba Ward Tribunal)

SALUM MOHAMED MTAMBA ..... 1ST APPELLANT

VERSUS

ALLY HAMISI MNANDINGE..... RESPONDENT

JUDGEMENT

29/9/2022 & 15/12/2022

LALTAIKA, J.

The Appellant herein **SALUM MOHAMED MTAMBA** is dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara (DLHT). The appellant has lodged seven grounds of appeal. Although not all these grounds have been argued, I take the liberty to reproduce them here as the keywords used will be useful in my deliberations and analysis later in this judgement.

1. *That the appellate tribunal erred in law and in fact by entering judgement in favour of the Respondent without considering and evaluating well evidence given by the parties and their witness during trial.*

2. *That the appellate tribunal erred in law and fact by entering judgment in favour of the respondent without considering documentary evidence that were tendered by the appellant during trial.*
3. *That the appellate tribunal erred in law and fact by failure to consider that the seller of the disputed land was not joined as a part of the dispute*
4. *That the appellate tribunal erred in law and fact by entering judgement in favour of the respondent without ascertaining or knowing the disputed land.*
5. *That the appellate tribunal erred in law and facts by entering judgement in favour of the respondent basing on hearsay evidence given by the respondent's witnesses that is Issa Nasoro Mwinguku, Musa Mkaikeala, Zainabu Hamisi Mnandinge, and Mzee Makame who are (sic!) not present on the sales agreement tendered by the Respondent.*
6. *That the appellate tribunal erred in law and facts by acting bias in evaluating evidence hence entering into bias decision in favour of the respondent.*
7. *That the appellate tribunal erred in law and facts by wrongly applying the principle of the law of limitation (item no 6 in the schedule of the Customary Law of Limitation of Proceeding Rules GN No. 331 of 1964) hence entering bias(sic!) decision in favour of the respondent.*

When the appeal was called on for hearing on 29/9/2022 both parties appeared in person, unrepresented. As a result, this court took the initiative to read out loud the grounds of appeal and invite parties to address it on the same. The next paragraphs provide, albeit in a summarized form, the version of the story from either party followed by my analysis and the resultant verdict.

Submitting on the first ground, the appellant asserted that he was surprised that the tribunal decided the way it did since he had made his case

and the DLHT promised to go through the ward tribunal's case file in which the tribunal had decided in his favour. The DLHT, asserted the appellant further, had mixed up two different pieces of land as his area had no trees. He added that the area that the respondent had described as recorded on page 6 of the judgment of the tribunal was not the correct description of the suit land. As if dictating or following a script, the appellant argued that the appellate tribunal did not bother to analyze the issue like it was done at the ward tribunal. He argued further (or rather he recalled) that the tribunal did not distinguish between a piece of land bought by the respondent in 1997 from the area he bought in 1998 (12/6/1998) and another one he bought on 13/8/2014.

The respondent on his part, while appearing calm argued that the DLHT was justified in arriving to the decision as it did. He asserted that the appellant was trying to grab his land because he was not good at speaking and had never been in a court of law since he was born in 1941 till now when he had just turned 81 years old. The respondent averred that he had all the necessary documents to prove ownership of his land and he trusted the DLHT had scrutinized the evidence that is why it decided in his favour. The respondent added further that the appellant was ordered to vacate the land within 14 days, but he disobeyed, appealed to this court and decided to build a house on the disputed land.

Addressing the second ground, the appellant complained bitterly that the DLHT had refused to consider his documents. Had the Chairman looked closely at the three documents, asserted the appellant, his decision would

have matched with that of the Ward Tribunal. Again, appearing rather coached or instructed to follow a script, the appellant argued that the ward tribunal had visited the locus in quo while the DLHT did not. To add salt into injury, the appellant lamented, none of his witness was summoned in the DLHT. He asserted further that the Honourable Chairman just decided on his own without considering the opinion of the members (referring to assessors). He also did not consider the decision of the ward tribunal, argued the appellant.

The respondent, on his part, looking perplexed not knowing where to start from, insisted that the appellant was a troublesome person. The respondent argued that the appellant appears to have forgotten that even the Ward Tribunal had initially decided in his (the respondent's) favour but the respondent took the same case back to the ward tribunal.

On the third ground, the appellant submitted that when the DLHT decided to go against the decision of the Ward Tribunal it was not clear where it got the evidence from. The appellant asserted that it was important to enjoin the seller of the area as an important witness as he knew the area. Had the witnesses and members of the village council been involved, asserted the appellant further, the decision of the DLHT would have been different.

Responding, the respondent asserted that the appellant never submitted sale agreements even though he summoned the witnesses who had allegedly sold the land to him. The first of these witnesses, recalled the

respondent, was one **Sharifa Mbaya** who testified that she sold him a place with two cashew trees admitting that she never involved her neighbors.

Submitting on the fourth ground, the appellant asserted that the Honourable Chairman of the DLHT did not know the area. He asserted further that the Ward Tribunal knew the area and made a correct decision which the DLHT disregarded. He made a disclaimer that the seller had since passed away so had the then Village Executive Officer (VEO) who had witnessed the agreement adding that the only existing witness (by the time of hearing of this appeal) was **Makame Jafo Chilindima.** He asserted further that the said Chilindima had received members of the [ward] tribunal and showed them around.

The respondent on his part, was very brief on this ground. He stated emphatically that he had bought the suit land in general (as a whole) as opposed to the appellant who purportedly bought piece by piece. The respondent dared the appellant to bring any member of the Mnandinge family to testify if he ever bought that land which they had full knowledge of. The rest of the grounds appeared too technical for either party.

I have dispassionately considered the grounds of appeal, rival submissions, **and records of the DLHT**. The issue for my determination boils down to proof of ownership of the disputed land. In essence, the appellant is complaining that he had done all that he could to prove ownership of the suit land, but, and in spite of the Ward Tribunal deciding in his favour, the DLHT disregarded or accorded little weight to his evidence deciding in favour of the respondent.

The key word underlying the appellant's grounds of appeal No 1, 2, 3, 5, and 6 are **evaluation of evidence.** I must admit that this was quite intriguing. I decided to go through the entire records including proceedings to find out whether indeed the learned Chairman failed to evaluate the evidence placed before him.

It has been argued that evaluation of evidence is one of the most important areas of administration of justice. It is also by far the most challenging because courts/tribunals and litigants rarely if ever happen to read on the same page. A piece of evidence that is highly revered by a litigant may not necessarily receive the same weight in a tribunal/court of law. The language of evidence in court is also qualitative rather than quantitative. One piece of evidence may carry more weight than ten other pieces depending on how it is capable of proving a matter in issue.

When judges and magistrates (including in this case the Learned Chairman) reject or admit a piece of evidence, they are not supposed do so haphazardly or replace the available evidence with their own imaginary opinion. On the contrary they are engaged in a conscious reasoning exercise. See the persuasive Nigerian Case of **Atlas Networks Ltd &Another vs Abawa Nig. Ltd and Another** (CA/A/200/2012) NGCA 57 (19 April 2016) (CA/A/200/2012 (2016) NGCA 57 (18 April 2016).

The art and craft of evaluating evidence, which is not peculiar to courts involves evaluating, among other things:

(i) The source of the evidence (where it comes from, who took over from who and who has tendered it in court)

(ii) The nature of the evidence (whether primary or secondary)

(iii) How the evidence compares with the rest of evidence in the same transaction/matter (whether there is corroboration)

(iv) How current is the evidence (whether it is still valid, or another evidence makes it redundant),

(v) The scope of the evidence (whether it proves a specific or a general item, direct versus circumstantial aspects)

(vi) What the evidence suggests (inference)

(vii) Whether the evidence is a part of common knowledge or new scientific/technological findings.

(See generally Damaska, Mirjan ***Evaluation of Evidence: Pre-Modern and Modern Approaches*** (Cambridge: Cambridge University Press 2019).

I do not entertain any doubt that the **Learned Chairman Hon. H.I. Lukeha** has carefully evaluated the evidence and even indicated in his judgement why he rejected or accepted a given piece of evidence as the case may be. The 1, 2, 3, 5, and 6 grounds of appeal are hereby dismissed for lack of merit.

The fourth ground is faulting the appellate tribunal for deciding the matter without ascertaining or knowing the disputed land. The appellant had stated that the seller had since passed away so had the then Village Executive Officer (VEO) who had witnessed the agreement adding that the only existing witness (by the time of hearing of this appeal) was **Makame Jafo Chilindima.** This witness, the appellant averred, had received members of the [ward] tribunal and showed them around. This means the

Ward Tribunal had visited the *locus in quo* as required by law. The ground of appeal would have been considered meritorious if both the trial and appellate tribunals did not visit the locus in quo. (See **Amos Rikado Namahala v. Mbaraka Alfan & Another [2020] TLR 21**. The ground of appeal is therefore dismissed for lack of merit. It should be noted that the last 3 grounds appeared too technical to lay persons appearing unrepresented even though the appellant seems to have been coached.

The records of the lower tribunal, carefully examined, have been able to "speak" on behalf of the respondent who had asserted that the appellant was trying to grab his land because he was not good at public speaking and had never been in a court of law since he was born in 1941 till now when he had just turned 81 years old.

All said and done, this appeal is dismissed in its entirety for lack of merit. The decision of the District Land and Housing Tribunal for Mtwara is upheld. I make no order as to costs.

It is so ordered.

THE HIGH COURT OF TANZANIA

E.I. LALTAIKA

JUDGE
15.12.2022

Court

This judgement is delivered today under my hand and the seal of this court in the presence of the respondent who has appeared unrepresented.

E.I. LALTAIKA

JUDGE
15.12.2022

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.

E.I. LALTAIKA

JUDGE
15.12.2022