

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO. 28 OF 2021

*(Arising from Land Application No 58 of 2019 before the District Land and Housing Tribunal for Mtwara in the Decision Delivered on 22nd July 2021
Hon. H.I. Lukeha)*

MOHAMED SALUMU NANYITILA.....APPELLANT

VERSUS

SAIDI MOHAMED CHITOWA.....1st RESPONDENT

SALUM MOHAMED CHITOWA.....2nd RESPONDENT

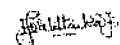
SAIDI ISSA MTUTUMA.....3rd RESPONDENT

JUDGEMENT

25/10/2022 & 15/12/2022

LALTAIKA, J.

The appellant herein **MOHAMEDI SALUM NANYITIKILA**, a resident of Mtaa wa FFU Nandope downtown Mtwara is dissatisfied with the decision of the District Land and Housing Tribunal (the DLHT) for Mtwara delivered on 22nd July 2021. Rivalry over ownership of a piece of land located at Mduwi Village in Mbawala Ward, Mtwara District "the suit land" is the crux of this appeal. Apparently, the DLHT adjudged in favour of the respondents.



The appellant has preferred six grounds of appeal as reproduced below.

- 1. That the Learned Chairman erred in law and fact to decide the matter in favour of the 3^d respondent despite the fact that there was no any evidence adduced against the appellant.*
- 2. That the Learned Chairman erred in law and in fact for holding in favour of the 3^d respondent despite the 1st and 2nd respondents failure to produce any strong evidence to prove ownership of the suit land.*
- 3. That the Learned Chairman erred in law and fact for failure to determine the issue of locus stand that the 1st and 2nd respondent lacked to sell the suit land to the 3^d respondent.*
- 4. That the Learned Chairman erred in law and in fact for failure to consider that the suit land belongs to the appellant (sic!) was given sometime 2016 (sic!) by his two mothers Fatuma Bakari Namwewe.*
- 5. That the Learned Chairman erred in law and in fact for failed (sic!) to analyze the heavy testimonies tendered by the appellant and his witnesses.*
- 6. That the Learned Chairman seriously erred in law and in fact by pronouncing judgement without indicating the opinions opined by the tribunal's assessors.*

When the appeal was called on for hearing on 25/10/2022 both parties appeared in person without representation by Counsel. The Court read out loud the grounds of appeal and the parties, in turn, shared their version of the story.

Submitting in support of the first ground, the appellant asserted that he was convinced the DLHT erred in law and fact for adjudging in favour of the respondents while the first respondent **Saidi Issa Mtutuma**'s evidence had no weight to prove his ownership of the suit land as his evidence was contradictory. Responding on behalf of both the respondents, the second respondent asserted that he thought the appellant was trying to discredit the Tribunal. He went further and argued that the DLHT had all exhibits at

its disposal including the sale agreement adding that both the sellers and the buyer testified orally enabling the Tribunal to arrive to its decision.

On the second ground of appeal, the appellant emphasized that the evidence tendered by the respondent in the Tribunal was not sufficient to prove ownership of the farm. He is convinced that the sellers had no legality to sell the farm to the 3rd respondent. The respondent, on the other hand replied that the appellant had sued both the buyer and the seller making it easy for the tribunal to obtain information on the legality of the sale agreement before arriving to its decision.

Submitting on the third ground albeit with some considerable difficulties, the appellant asserted that the first and second respondents had sold the land that belonged to a person called **Somoe Mwenda Mayunga** while they were never appointed as her heirs. The respondents, on their part asserted that the appellant had misdirected himself for thinking there was an issue of probate.

Dismissing such claims, the respondents maintained that the rightful seller had clearly explained how the land came to his possession and how the same was sold out. Indeed, the land belonged to SOMOE MWENDA MAYUNGA who was his aunt (mama mkubwa), argued the second respondent but, since she never had any children, she gave the land to her brother Musa Mohamed Mayunga before she passed away around 2007.

Moving on to the fourth ground, the appellant asserted that he was given the suit land by his mothers in 2016. He mentioned the mothers as Fatuma Bakari Namwewe and Fatuma Bakari Namwewe siblings who shared the

same name as it used to be common among the Makonde. The appellant went on to explain that by that time, his mothers were living in different places; one in **Chawi Village in Nanyamba** and another was in **Kiromba Juu also in Nanyamba**. The respondent wondering how siblings could share an exact name maintained that he knew nothing about such women and that the appellant was a stranger in their village, never seen there before.

On the fifth ground, the appellant was rather brief he maintained that the DLHT did not consider his evidence. The respondents strongly disagree. The agreement of the family the appellant produced at the DLHT, the respondent stated emphatically, was written by a **Hamlet Chairman (Mwenyekiti wa Kitongoji)** whom, the respondent thought had no government stamp. The respondent added that he thought the agreement was fake because it was not tendered at the Ward Tribunal but only brought to the DLHT in the second turn.

Submitting on the sixth ground, the appellant asserted that the Honourable Chairman of the DLHT deliberately went against the advice of the assessors who thought it wise to find out whether the sellers of the land were lawfully appointed administrators of the estate of the late purported owner of the suit land. Responding to this ground the respondents asserted that the assessors were misled as they thought it was an issue of probate while it was not. Nevertheless, reasoned the respondents, the chairman [of the DLHT] had explained that those opinions of the assessors were not binding to the Tribunal.

I have dispassionately considered rival submissions by both parties in the light of the grounds of appeal. The theme underlying the six grounds of appeal can conveniently be reduce to one namely analysis of evidence. The 1st, 2nd, 4th, and 5th grounds are all on failure by the Learned Chairman to analyze evidence. The appellant was also the plaintiff at the trial tribunal. He was the one who alleged ownership of the suit land. It is a settled position of the law that whoever alleges existence of certain facts has the burden to prove them. See the case of **East African Road Services Ltd v J. Davis & Co. Ltd [1965] EA 676 at 677**, where it was stated that:

"He who makes an allegation must prove it. It is for the plaintiff to make out a prima facie case against the defendant."

In the instant matter the appellant had alleged that he was given the disputed land by "his mothers" who share the same name **Fatuma Bakari Namwewe**. I am alive to the fact that in the law of evidence, it is about quality more than quantity. In the case of **Hemed Said V. Mohamed Mbilu [1964] TLR 113** it was held:

"In measuring the weight of evidence in such cases as the present one it is not, however, the number of witnesses whom a party calls on his side which matters. It is the quality of the said evidence. In this connection the evidence of a single witness may be a tot heavier than that of many witnesses."

Having one mother or two mothers does very little to improve evidence. I have no doubt that the learned Chairman evaluated the evidence and found the same inadequate to this end, the 1st, 2nd, 4th, and 5th grounds of appeal are hereby dismissed for lack of merit. On the 6th ground, I have read the

judgement of the Hon. Learned Chairman and indeed, there is no disclosure of the opinions of the assessors. Nevertheless, I find it immaterial here because their opinion was not binding in the first place.

This brings me to the 3rd ground of appeal. I am interested in exploring the "technicality" invoked by the appellant. He claimed that there was no proof that the sellers of the disputed land had been appointed administrators of estate of the purported owner namely **Somoe Mwenda Mayunga**. As a result, the appellant claimed, they had no *lucus standi* to sell the disputed land.

Although the respondents convincingly explained how the land came to their possession, I wish to state categorically albeit in passing that such use of technicalities just for the sake of making arguments in courts should be avoided. It is helpful to neither party.

Premised on the above, this appeal is hereby dismissed for lack of merit. Each party to bear its own costs.

It is so ordered.



E.I. LALTAIKA

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**JUDGE
15.12.2022**

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Court

This judgement is delivered under my hand and the seal of this court on this 15th day of December 2022 in the presence of both parties who have appeared in person, unrepresented.



E.I. LALTAIKA

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**JUDGE
15.12.2022**

Court

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



E.I. LALTAIKA

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**JUDGE
15.12.2022**

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