

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO.34 OF 2021

(Originating from the District Land and Housing Tribunal for Mtwara at Mtwara in Land Application No.78 of 2018)

MASHAURI MAIKA MOLLEL.....APPELLANT

VERSUS

JOSEPH E. MROPE.....RESPONDENT

EXPARTE JUDGMENT

11/10/2022 & 6/12/2022

LALTAIKA, J:

This appeal originates from the District Land and Housing tribunal for Mtwara at Mtwara in Land Application No.78 of 2018. In that application the respondent, **JOSEPH E. MROPE** sued the appellant, **MASHAURI MAIKA MOLLEL** and **GABRIEL MEYAS** not a party to this appeal and claimed ownership over the suit land. The suit land is Plot Number 56 located at Tuungane Village, Mwena Ward within Masasi District Mtwara Region. It was estimated by the respondent that the suit land has a value of Tshs.10,000,000/=. After a full trial, the tribunal was satisfied that the respondent had proved his claim on the balance of probability hence, it proceeded to declare the respondent the rightful owner of the suit land.

Dissatisfied, the appellant has lodged this appeal on the following grounds of appeal: -

- (i) That the Honourable Chairman erred in fact and law for deciding that the land in dispute belong to the respondent on fact that the allocation done by the village council to the Respondent was valid, while in fact the land d was belongs to the appellant before the same allocation. by entertaining the matter without joining the seller of the land to the respondent.*
- (ii) That the honourable tribunal erred in fact and law by accepting that the village council had allocated the disputed piece of land to the respondent when the same was neither evidenced by any written application for the same, nor any written from the village council recent such alleged allocation to the respondent or even production of the record of proceedings of the village council relating to such alleged allocation.*
- (iii) That the Honourable Chairman erred in fact and law in holding that the disputed land belonged to the respondent by failure to evaluate the evidence produced by the appellant to prove the same.*

When the appeal was called on for hearing only the appellant appeared. Several attempts were made to serve the respondent with summons but the same were outrightly refused. At one point, the appellant was directed to deliver the summonses in the respondent's workplace. Upon inquiring the source of arrogance on the side of the respondent to refuse court summons, the appellant was told that the respondent was a Roman Catholic Priest whose Code of Conduct does not allow private ownership of property including land. It was assumed, therefore, that he might have abandoned his earlier plans and the case altogether.

It is unfortunate that **The Right Reverend Father JOSEPH E. MROPE** has not appeared in this court either personally or through his counsel. His appearance would have cleared any doubt over allegations

for land grabbing heaped upon him in total contradiction to the sacred responsibility of magnifying that holy priesthood calling. This court would have learnt many useful lessons.

Submitting in support of the first ground, the appellant argued that the Village Council had pleaded with him not to take the complaint to court and instead they would give him an alternative land. The appellant stressed that he decided to leave the land that had already been constructed to the village. He argued that he took eight out of 15 plots of land, and they gave him a written document which is available in the court file. The appellant insisted that one of the eight plots is the land in dispute which is plot No.56. The appellant contended that the respondent never took the case to the Ward Tribunal and instead he went straight to the District Land and Housing Tribunal.

Submitting on the second ground, the appellant contended that the Village Council had given the respondent land for a short time during which he had to build a house. The appellant stressed that the time given had lapsed and the land went back to the owner namely the Village Council. The appellant submitted that the respondent was given 36 months to build a house and he did not do so. The appellant contended that when the Village Council called on those who had not used the land to come forth the respondent did not. That is why the Village Council returned the land to him. The appellant argued that **at the DHLT he had witnesses from the Village Council while the respondent had only his nephew.** Furthermore, the appellant submitted that the respondent did not agree with him thus he took him to DHLT.

The appellant went on and submitted on the third ground of appeal. He contended that the DHLT was unable to appreciate the matter. The

appellant stressed that the assessor had suggested that the respondent had to go back to the village to take his grievances. However, the Chairman disagreed with her and insisted that he would deliver the judgement that he thought was right..

At the outset it is imperative to settle this issue of whether the tribunal properly decided that the respondent is the rightful owner of the suit land. As far as the evidence on ownership is concern, I think it is important at this juncture to ask if the tribunal was satisfied that the Tuungane Village properly acquired the DW1's farm before it went further to divide the same to the respondent and other persons.

The evidence of DW1, DW2 and DW3 and exhibit D1 proved that DW1 (the appellant) had purchased the farm which some of its part is the suit land from Fungdi Issa Kiwalala at the purchase price of TZS 300,000/=. According to the evidence of DW2, he witnessed the sale as the Village Chairman and, he admitted that they made a mistake to acquire the farm of the appellant and divide it into plots and sold to the respondent and other persons without involving the appellant. Furthermore, even the evidence of DW3 is clear that the appellant is the owner of the farm and the suit land which he bought and used for mining before he went to Mozambique. DW3 testified that Tuungane Village grabbed the land of the appellant and divided it into plots and gave it to various persons.

Based on the evidence on record, it is clear that Tuungane Village violated the law of acquiring land from the appellant since he was not involved, and no fair and adequate compensation was affected to him on the presumption that he was dead. Indeed, that was wrong because no evidence was tendered that the appellant was dead and if it was real that

the appellant was dead still his assets could have been administered by his heirs vide the Probate and Administration of estates and not like what the Tuungane Village Council had done.

The evidence also shows that the Tuungane Village Council admitted having made a mistake and that is why they decided to return eight plots to the appellant including the one which it sold to respondent. In this regard, the Tuungane Village Council had no good title to pass to the respondent since it acquired from the appellant illegally. To this end, I am convinced with the position which was taken by Bi. Angela Nannauka (Tribunal's Assessor) that the respondent was allocated a plot of land by mistake because the real owner is the appellant. The reasoning advanced by the learned Chairman does not hold water because the issue was not the objection of the allocation of the suit land by the Tuungane Village Council to the respondent as envisaged by exhibit P1.

Furthermore, it was not proper for him to decide that Tuungane Village Council made a mistake to return the allocated plots to the appellant without involving the respondent. The issue advanced by the learned Chairman that the appellant or his witnesses or co-respondent failed to prove on the advert that failure to develop the allocated plots of land would cause the same to be given back to the appellant. More so, the argument that the respondent was not given the right to be heard by the Tuungane Village Council on its decision to take the allocated land and give it back to the appellant was baseless. In fact, what the tribunal was required to decide, if the Tuungane Village Council had a good title over the farm of the appellant. Two, who is the rightful owner of the suit land

To this end, I am convinced that the appellant had proved his allegation that he is the real and legal owner the suit land and other plots which are not in dispute as per requirement of section 110 and 111 of the Law of Evidence Act [Cap.6 R.E. 2022] which provides that:-

"110. Whoever desires any court to give judgment as to any legal right or liability dependent on existence of facts which he asserts must prove that those facts exist.

111. The burden of proof in suits lies on that person who would fail if no evidence at all were given on either side."

All said and done, I find the appeal has merit thus, I proceed to quash and set aside the judgment and orders of the Tribunal and instead I declare that the appellant is the rightful owner of the suit land, PLOT NUMBER 56 located at TUUNGANE VILLAGE, MWENA WARD WITHIN MASASI DISTRICT MTWARA REGION. Each party shall bear his own costs.

It is so ordered.



E.I. LALTAIKA

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**JUDGE
6.12.2022**

Court: This Judgment is delivered under my hand and the seal of this Court on this 6th day of December, 2022 in the presence of the appellant who has appeared unrepresented.



E.I. LALTAIKA

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**JUDGE
6.12.2022**

Court

The right of Appeal to the Court of Appeal is fully explained.



E.I. LALTAIKA

A handwritten signature in blue ink, appearing to read "E.I. Laltaika", is written over the printed name.

**JUDGE
6.12.2022**