IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA
LAND APPEAL No. 47 OF 2021

(Appeal from the Judgment and decree of the District Land and Housing Tribunal in Land Application No. 361 of 2018 dated 09th day of July 2021 – DLHT Mwanza)

PHARES PETRO ..... APPELLANT

VERSUS

MASANJA MADUHU SONGA @
WILSON MASANJA ..... 1ST RESPONDENT

BONANIA EDWARD MASANJA ..... 2ND RESPONDENT

JUDGMENT

09th February & 24th March, 2022

TIGANGA, J

Before the District Land and Housing Tribunal for Mwanza, the Respondents filed Land Application No. 361 of 2018 suing the appellant for trespassing the land measuring 21 acres located at Nyashishi Misungwi valued at Tshs. 10,000,000/= (Ten Million).

From the application filed before the trial Tribunal, the respondents purchased the suit land on 07th May 2012 from Sahani Lumanija, Milembe Lumanija, Ngaiwa Lumanija, Yohana Lumanija, Hoja Lumanija and Ng'wikanwa Lumanija, who were the rightful owners of the suit property. After purchasing the land, he applied for survey of the land which was

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conducted and the survey resulted into plot No. 254 Block "A" Nyashishi which covered the whole land which the respondent purchased.

The dispute at hand ensued in June 2018, when the respondents found that the appellant unlawfully and without any legal justification, trespassed into part of their land forming Plot No. 254 Block "A" Nyashishi and built there on a wall extending further into the land of the respondents. Following that state of affairs, the respondent sued the appellant for trespass to that land.

According to the respondents, before suing they have been demanding through the village authorities and the Ward Tribunal for the appellant to give vacant possession but the appellant had remained mute. Failure of the appellant to heed to the request and demand by the respondents, the respondents sued the appellant before the trial Tribunal and prayed for the following reliefs:

a) That the respondent be declared the lawful owner of the suit land.

b) An order for vacant possession.

c) An order for demolition of the erected building therein.

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d) General Damages to the tune of Tshs. 10,000,000/= for trespass and the damages already caused to the land.

e) Costs of the suit be provided and.

f) Any other relief the honourable Tribunal may deem fit to grant.

Before the trial tribunal the following issues were framed for determination;

i. Whether the applicants (now the respondents) are the lawful owners of the suit land?

ii. Whether the respondent (now the appellant) trespassed the suit land?

iii. To what reliefs are the parties entitled?

After full trial which involved hearing of the parties and their respective witnesses, the trial tribunal ruled that on the balance of probabilities the respondent through the evidence of PW1, PW2, PW3, PW4 and PW5 as well as exhibit PE1 which is the sale agreement as well as PE2 which is the title deed of the land in dispute proves that the disputed land is part of the land contained in exhibit PE2, as opposed to the evidence of the applicant which show that he on 28/06/2008 purchased the land

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measuring 79 x 28 meters from PW2 the contract which was witnessed by DW2 who said although he witnessed such sale of the land, he never went back to the said land therefore he can not locate the land.

Weighing the evidence, the trial tribunal held that, the land in question belongs to the respondents, as even PW2 who sold the land to the applicant proved in evidence that the appellant trespassed into the land of the respondents by extending the border of the land sold to him by removing the sisal plants which were boundaries thereby trespassing into the land belonging to the respondents. Since in the first issue, it was proved that, the applicant's presence on the suit land is not justified by law, then he is a trespasser.

On the last issue of to what reliefs are the parties entitled? It was held that the respondents who were the applicants before the trial tribunal managed to prove at the required standard that, the land contained in plot No. 254 Block "A" Nyashishi belongs to them; therefore the appellant who was the respondent before the trial tribunal is a trespasser. The appellant who was the respondent before the trial tribunal was ordered to demolish a wall and any other development effected there at which has occupied 14.7

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meters length and 11 meters width, and give vacant possession on the land in question. The application was therefore granted with costs.

Dissatisfied by the decision the appellant filed a total of nine ground of appeal as follows:

i. That, that trial Tribunal erred in law and facts for deciding in favour of the respondents without regard that they failed to prove their case on the required standard of proof that is to say on the balance of probabilities.

ii. That, the trial Tribunal erred in law and facts for declaring the appellant as a trespasser which the respondent failed to ascertain the exact size of the disputed land and the extent in which appellant trespassed in the disputed land.

iii. That, the trial Tribunal erred in law and facts for declaring that the appellant is a trespasser without regarding that the appellant was a prior owner of the land before respondents.

iv. That, the trial Tribunal erred in law and facts for discrediting appellants exhibit while respondents did not dispute its relevancy during trial.

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v. That, the trial Tribunal erred in law and facts for deciding in favour of the respondents without laboring to ascertain the reasons as to why the appellant had not been involved in participatory land survey conducted by land authority in disputed land, and why the map excluded showing the plot of the appellant.

vi. That, the trial Tribunal erred in law and facts for deciding in favour of the respondents without considering and stating the observations and the actual findings obtained in the locus in quo visitation.

vii. That, the trial Tribunal erred in law and fact for Mis – interpretation of the evidence tendered by DW3 in deciding application in favour of the respondents.

viii. That, the trial Tribunal erred in law and facts for deciding in favour of the respondents in relying on contradictory exhibits adduced by respondents.

ix. That the trial Tribunal erred in law and in fact for delivering judgment in favour of the respondents without justifiable reasons.

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He in the end asked the appeal to be allowed, the judgment and decree of the trial tribunal be quashed and set aside, costs of the appeal be borne by the respondents and any other relief as the court may deem fit and just to grant.

The respondents filed a joint reply in which they replied as follows: Regarding to the first ground the respondents replied that the trial tribunal decided the dispute after being satisfied that the respondent had proved the claim on the balance of probabilities. On the 2nd, 3rd 4th, 5th, and 6th grounds of appeal they replied that, the actual size of the disputed property was ascertained by the respondent during trial and the tribunal itself after visiting the *locus in quo* by following the procedures to establish boundaries. After so ascertaining then the tribunal was right when it declared the appellant a trespasser, and rejected the exhibit.

Regarding the 7th ground of appeal, they said that, the evidence of DW3 was very clear and was the one which found base of the decision of the Tribunal. Regarding the 8th ground of appeal, they said there is no any contradiction at all, while regarding the 9th ground of appeal they said, the tribunal decided justly basing on the evidence adduced.

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With leave of the court and consent of the parties the appeal was argued by way of written submissions whereby parties filed their respective submissions as ordered and scheduled by the court. In the submission in chief filed by the appellant, he craved for the leave to combine and argue the 1st, 2nd, 3rd, 5th, 6th and 8th jointly and 4th, 7th and 9th as well were also combined and argued jointly and together.

In support of the 1st, 2nd, 3rd, 5th, 6th and 8th grounds the counsel for the appellant submitted that, the respondents who were the applicants before the trial Tribunal failed to give evidence to meet the required standard of the balance of probabilities for lacking certainty as to the extent of trespass by the appellant in the disputed land.

For purposes of brevity and avoidance of un necessary repetition, not making this judgment unnecessarily long. I will not present a summary of the submissions made by the parties, but will go direct to discuss the argument as I will be determining a particular issue. However, looking at the records of the trial Tribunal, the grounds of appeal, the reply thereto and the submissions filed in support and against the appeal, at least the following facts are not in disputed. It is not in dispute that, both the appellant and respondents acquired their respective land part of which they

claim to be in dispute by way of purchase. While the appellant purchased the said land measuring 79 meters length and 28 meters width from one Yohana Lumanija, who testified as PW2 before the trial Tribunal, the respondent purchased the land which was estimated to be 21 acres from the family of PW2 and his relatives, PW2 inclusive. There is also no dispute that the two lands share a common border. It is also evident that after purchasing the land the respondents applied to the land surveying and allocating authority of Misungwi District Council to have their land surveyed. It is also evident that Misungwi District Council via PW5 who is the surveyor, conducted the survey as requested and after the survey, the land allocating authorities which include the Commissioner for Lands allocated the said land to the respondents by issuing the certificate of title that is exhibit PE2.

Yohana Lumanija being one of the vendors of the land which the respondents purchased and the sole vendor of the land purchased by the appellant testified as PW2. In his testimony he told the tribunal that he knows the plots, the one purchased by the appellant and the other one purchased by the respondents. He knew the borders between them and the size of the land which he sold to the appellant, He said in his testimony

that when he sold the land to the appellant, they planted sisals as the marks of the border between the land of the appellant and respondents, but those marks were removed by the appellant and after so removing the sisal plants he extended the border thereby trespassing in the land which belongs to the respondents. Therefore in his conclusion the appellant trespassed into the land belonging to the respondent.

From the submission filed by the appellant arguing the 1st, 2nd, 3rd, 5th, 6th, and 8th, grounds of appeal which were argued together present the following major complaint that, the evidence before the Tribunal failed to prove the case at the required standard of the balance of probabilities. The points of weakness pointed out are indicated hereunder which I will tackle one after the other as follows.

Starting with the first complaint which is lack of certainty as to the extent of trespass by the appellant into the disputed land, while the counsel submitted that, neither the respondents nor PW2 who sold the appellant the land in dispute told the Tribunal the exact size of the land which was trespassed. Furthermore, the evidence given by PW5, the land surveyor did not ascertain the size of the land which was trespassed into. The counsel for respondents submitted that, the respondents clearly

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proved via their testimonies and other witnesses they called as well as documentary evidence regarding the size of the land which was trespassed into. He cited the evidence of PW5 Almas Francis Thomas the respondents' witness who was the land surveyor conversant with the dispute between the parties and who acted on behalf of Misungwi District Council, who stated the area in dispute to be 14. 7 meters long and 11 meters wide, the evidence which was used by the trial Tribunal in its judgment and decree, therefore in his view such grounds hold no water and deserve to be dismissed. Looking at the arguments as supported by the records, there is no dispute that the evidence of PW5 at page 70 of the proceedings is clear that the portion of land trespassed into is 14.7 meters long and 11 meters wide. This is the evidence given by the surveyor of the land from the land allocating authority. The witness is undoubtedly an expert on surveying the land, the evidence also is in support as the person who surveyed the land belonging to the respondent, the fact which makes him familiar to the area concerned. He went as far as elaborating that, the land is part of the land in plot No. 254 Block "A" Nyashishi, Misungwi, Mwanza which plot belongs to the respondents. This therefore renders the ground of complaint baseless and unrealistic. It is thus dismissed.

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The second complaint is the contradiction in the evidence of the respondents regarding the size of the land purchased by the respondent in relation to the evidence given by PW5, the land surveyor, on the size of the respondents' land after being surveyed with the size stated in the sale agreement, exhibit PE1. While in the sale agreement, exhibit PE1, the respondents' land which they purchased measured 21 acres; PW5 contradicted the validity of the sale agreement by testifying that the disputed land measured 14.5 acres equivalent to 6.18 hectares after being surveyed. The counsel for the respondents conceded such contradiction, but said the alleged contradiction has been elaborated at page 3 of the judgment the trial Tribunal which relied on the evidence of Wilson Masanja, while at page 5 he referred the evidence of Yohana Lumanija, that at the time of the purchase the land was estimated to be 21 acres which is reflected on the contract for sale, but when the surveyor was invited to conduct the survey, the actual size of the land was found to be 14.5 acres or 6.18 hectare which is reflected in the title deed. Therefore, there is no any contradiction between the sale agreement and the testimony of PW5 as stated by the appellant. I have passed through exhibit PE1 it is true that at page 2 of the sale agreement, the land sold to the appellant is estimated

to be 21 acres, to quote the words used in the exhibit PE1, the agreement is clear that; *"Wauzaji ni familia moja ambao kwa pamoja wanamiliki kihalali eneo la shamba linalokadiriwa kuwa ekari 21 lililopo katika Mtaa wa Nyashishi, kijiji cha Nyanmhomango – wilaya ya Misungwi...."*

Further to that, even in the evidence of PW1 at page 19 he said the size of the land was estimated to be 21 acres. From these two sources it can be said with certainty that when the sale was done, parties were not certain on the size of the land involved. They based on the estimated size which was estimated to be 21 acres. I find on the other hand, the size of the land surveyed to be different from the one estimated in the sale agreement. In the title deed the size of the surveyed land is 14.5 acres which is equivalent to 6.18 hectares. From these two sets of evidence there is no dispute that the size of the land differs in the exhibit PE1 and in the evidence of PW5. However, the reasons for that variance is clearly in the evidence of PW1 and the exhibit PE1 in that the size in the exhibit PE1 was just an estimate not the actual size. The word estimated as used in the exhibit PE1 and the evidence of PW1 the same can be termed a rough calculation or judgment of value, number, quantity extent or size. It means it is not an exact but a rough approximate. While a lay person may be

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expected to estimate or approximate, the expert is not so expected, he should go to the exact value or size. From the foregoing, I find the variance to have explanation from these two sources. It should also be noted that, not every contradiction in evidence affects the evidence of the case. It is only those going to the root of the matter. See **Anselimo Kapeta versus The Republic,** Criminal Appeal No. 365 of 2015 - CAT. In this case the contradictions cited are minor and have not gone to the root of the dispute at hand there is also enough explanation in evidence. *The ground is also dismissed for lack of merit.*

Three, the variance of the name of the 1st respondent as it appears in the sale agreement, exhibit PE1, which names him as Wilson Masanja as opposed to Masanja Maduhu Songa, whose name appears as the 1st respondent without deed poll or affidavit as to the change of name. In his view, these inconsistencies ought to have been resolved in the favour of the appellant. On this contradiction regarding the names used by the 1st respondent, it has been submitted by the counsel for the respondent that, the respondent stated in the application that, he is named Masanja Maduhu Songa in other documents he said that in his testimony and was not contradicted by the appellant during the tendering of the document

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including a title deed and the contract, that is exhibits PE2 and PE1 respectively. He asked the court to find the ground to be an after thought, which deserves to be ignored. In the rejoinder the counsel for the appellant disputed to fail to contradict him, he said he asked the question during cross examination and the respondent said he had a deed poll but had not come with it. I have in respect of this complaint passed trough the record. I find it correct that, exhibit PE1 was actually between Wilson Masanja and those who sold the plot, the exhibit PE2 bears the name, of Masanja Maduhu Songa, and Bonania Edward Masanja and the case was filed by Masanja Maduhu Songa @ Wilson Masanja.

It is also in evidence of PW1 at page 18 of the proceedings that, his name is Masanja Maduhu Songa @ Wilson Masanja. It is common knowledge that in any case it is the parties in the pleading who introduce their names, and once a party has introduced his name the court has no right to question unless there are reasonable grounds to do so. In this case the 1st respondent introduced himself in the pleading that his names are Masanja Maduhu Songa @ Wilson Masanja. It should also be noted that the dispute before the court as correctly submitted by the appellant is not the ownership of the land but trespass. Ownership comes in as a matter of

procedure that, for a person to successfully claim his land to be trespassed into the first premise must be for him to establish the land he claims to be trespassed into is his. It should also be noted that once the Right of occupancy has been issued any other documents previously present signifying the ownership of the dispute ceases to hold such a status as the title deed takes precedence. Therefore, since the right of occupancy, exhibits PE2, bears one of the names in the motion document moving this court, it can be safely concluded that, the bearer of the titles deed are the owner of the land on Plot No. 254 Block "A" which according of the evidence of PW1, PW2 and PW5 has been trespassed into. This finding has been based on the principle in section 2 of the Land Registration Act [Cap 334 R.E 2019] that, the "owner" means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered. For that reasons the said discrepancy in the names have no effect in as far as the trespass is concerned, it would have been material had the appellant been challenging the registration of the Land in the name of the respondents, which suit would have involved the land allocation authority which is not the case at hand. The ground lacks merit, and it is dismissed.

The next complaint is for failure to involve the appellant as a neighbor during the survey of the land allegedly belonging to the respondents despite the fact that there was a border dispute between the parties which even prevented the land allocating authority to conduct the survey of the land of the appellant as evidenced by the testimony of PW5. On that complaint the counsel submitted that, it is not true that during the survey process the appellant was not involved. He reminded the court that PW5 said that all neighbours were involved including Yohana Lumanija (PW2) who sold the land to both, the appellant and the respondents and who clearly was acquainted with the boundaries of the two plots of land. He also submitted that, the appellant in his testimony tendered exhibit DE3 (TP. Drawing No. 14/MSG/146/08/2019) in which his area of land is nowhere to be seen and via his testimony, he stated that Misungwi District Council said he has no any plot whatsoever in that area.

I have deeply examined the strength and relevance as well as the tenability of the ground. I find the complaint to be misplaced, this findings is based on the fact that, it challenges the legality of the survey conducted on the land of the respondents. The complaint cannot be directed to the respondents but to the surveying authority which is the Director of

Mapping and survey as well as the Commissioner for Lands. Therefore, although it has not been established that he was not involved, but even if it is established then the blame cannot go to the respondent. The ground is also untenable and irrelevant, thus deserves a dismissal.

Five, is the failure of the chairperson to indicate in the proceedings the visitation of the locus in quo, which would have included the assessment of the extent of trespass claimed by the respondent. He informed the court that, these uncertainties render the respondent to have failed to prove the case on the required standard.

Four on the issue of visitation of the *locus in quo*, he submitted that, the appellant is misleading the court, by submitting that, the visit on the *locus in quo* was not recorded. He submits that this is a blatantly lie, since upon perusal of the original record it is clear that, the proceedings on visitation of locus in quo which was done on 19th April 2021 was recorded and the proceedings thereof including the size of the land and assessment are also reflected. These findings were also restated at page 46 of the judgment of the trial Tribunal. Therefore, this ground lacks legal basis whatsoever. While parties are not disputing the fact that the tribunal visited the locus in quo in the presence of the parties and do not dispute to

have participated in those proceedings, what is complained of is the omission of the chairman to include in the proceedings the proceedings which he recorded thereat. On this point the issue is one, whether the trial chairman recorded the proceedings relating to the visitation of the locus in quo? I have passed through the typed version of court proceedings, I find there is an omission as the proceedings of the visitation of locus in quo are not reflected. However, on my perusal of the original version of court proceedings as reflected in the case file, I found the same to be recorded on 19th April 2021.

It is trite that, where there is a variation between the original copy of the court proceedings and the certified typed copy of the same, then the court should rely on the original copy. This means by the original copy, the visitation of the proceedings was recorded and made part of the proceedings. Since there is evidence on record that the visitation proceedings were included in the proceedings, then the authority in the case of **Akosile vs Adeye (2011) 17 NWLR** as cited in the Court of Appeal decision, in the case of **Avit Thadeus Massawe vs Isdory Assenga**, Civil Appeal No. 06 of 2017 (unreported) and **Kimoniditri Mantheakis vs Ally Azim Dewji & 7 others**, Civil Appeal No. 4 of 2018

DSM (unreported) CAT, are distinguishable in this case. This ground also lacks merits; it is thus dismissed for the reasons given.

Regarding the 4th, 7th, and 9th grounds of appeal, the counsel for the appellant informed the court that the chairperson erred in law and facts by moving himself *suo moto* in discrediting his exhibit PE2 (but in my opinion it is DE2 as opposed to PE2, which is the exhibit tendered by the respondent). His arguments based on the fact that, the document in question which was tendered without objection from the respondents and PW2 Yohana Lumanija who sold the land to the appellant, proved to have sold the land for a consideration of Tshs. 400,000/= in the presence of the witnesses. For that reason the findings in the decision of the Tribunal that the sale agreement was procedurally irregular is wrong since no party was called to address the Tribunal on the fact which the Chairman himself marked clear.

Also that the respondent did not object the sale agreement at its admission, therefore the Tribunal ought not to have discredited it. He cited the case of **Ombeni Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal**, Civil Appeal No. 33 of 2017 (unreported) where it was held *inter alia* that;

"It was a testimony of PW2 that her husband the late Dismas Mwakitoki passed away in 1997, but the sale agreement which was relied upon by the appellant to allege that land was sold to him show that the late Mwakitoki witnessed it in the year 2001. PW2 having not been cross examined on that point, leaving a dent on the authenticity of the sale agreement with regard to those who witnessed it"

He on that note stated that, the evidence adduced by DW3 was misinterpreted by the trial Chairperson in his conclusion that, the appellant trespassed the disputed land simply because the sisals were uprooted. According to him, after the appellant had bought the land the Chairman measured the plot and planted sisals to mark the boundaries, which were shown to the respondent who agreed, therefore the facts of removing the sisals and replacing them with concrete wall can never be termed as trespass because a wall was built in replacement of the sisal boundary.

In his view, the respondents herein had a duty to prove trespass and the extent of the trespass. Since neither the respondent nor PW2 who sold the land to the appellant stated exactly the size of the trespassed land, it was therefore improper for the Chairperson to decide in the favour of the

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respondents. He prayed the appeal to be allowed and judgment and decree of the DLHT be set aside.

On the issue of the Tribunal discrediting the appellant's evidence including exhibit DE2 which was argued jointly in grounds 4th, 7th and 9th of appeal, the counsel for the respondents submitted that [illegible]DE2 is a certificate of title tendered by the 1st respondents. He submitted that [illegible]tted that the sale agreement made or entered into between the appellant and Yohana Lumanija, PW2, was admitted as exhibit DE2. However, even if we assume that the appellant meant exhibit DE2, the Tribunal was right not to rely on such evidence since there was apparent contradictions between the appellant's written statement of defence and the said sale agreement, the WSD clearly said that the land is measuring 70 meters by 28 meters, while the said sale agreement (Exhibit DE2) stated the land to be measured 79 meters by 28 meters. Such uncertainty was enough to discredit the evidence.

Moreover, the said evidence was rightly denied by the Tribunal which stated the reasons on pages 34, 35, 36 and 37 of the Judgment which reasons are very clear.

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It was further submitted that, to buttress the respondents' ownership of the disputed premises the respondent testified and tendered the certificate of title No. 58597 on Plot No. 254 Block "A" Nyashishi as exhibit PE2 which shows and proves that the area in dispute belongs to respondents as opposed to the appellants.

He cited the case of **Peter Ndatele Tegemea vs Dr. Philip Alan Lema**, Civil Case No. 51 of 2016 (page 7 and 8) where it was stated that, *inter alia* that; a certificate of title is a proof of ownership on a registered land and the sale agreement alone is not a proof such ownership.

He submitted that, the respondents were issued with the certificate of title by the government after following all the procedures and therefore any allegation by the appellant over the disputed land has no any legal basis whatsoever.

By way of conclusion, the counsel for the respondents submitted that; the respondent discharged his duty under section 110 of the Evidence Act, [Cap. 06 of 2019] of proving the claim and did so at the required standard of the balance of probabilities that, the land in dispute belongs to the respondents. They did so by giving oral evidence, and exhibits that the

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disputed land belongs to them. According to the counsel, the appellant's evidence and his witness was tainted with lies, contradiction and doubtfulness.

The counsel gave some instances showing the contradiction, that DW1 lied that there was no sisals which demarcated the boundaries between the appellant and respondent's land contrary to the evidence of his own witness DW3 Mashaka Sostenes who stated that the appellant instructed him to remove the sisals which were there to demarcate the boundaries.

Last that PW2 who sold land to both the appellant and the respondents testified that the area in dispute belongs to the respondents and not the appellant since he was the one who sold the land to both of them. To that effect the counsel asked the Court to find that, the respondents proved their case on the balance of probabilities. The counsel prayed for the dismissal of the appeal with costs.

On that point, I entirely agree with the principle stated in the case of **Ombeni Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal**, (supra) that once the evidence is admitted without being

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objected by the other party and the same other party fails to cross examine on that evidence be it a document or an oral testimony, then, that other party is estopped to question that evidence on appeal. In this case, according to the proceedings at page 87, the tendering of the exhibit DE2 was once objected, but the counsel for the respondent who at first objected its admission, later withdrew that objection. Therefore the exhibit was tendered un objected.

Secondly, I entirely agree with the principle that the court is not allowed to raise an issue which was not part of the arguments and consider and decide it *suo moto* without calling upon the parties to address the court on that issue. In this case it is alleged that the issue of the validity of the exhibit PE2 especially on the issue of how much the land in question was sold to the appellant. Looking at the evidence of the appellant, and especially that given during cross examination as reflected at page 119 of the typed proceedings. The issue of what exact price was the land purchased featured, and the appellant had opportunity to clarify in re examination as reflected at page 124 of the proceedings. That being the case, the trial Tribunal was justified to consider the issue, there was therefore no need to call the parties to address the court on that issue

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before the court was entitled to address and decide on it. Moreover, even if we assume for the sake of argument, that the Tribunal was not entitled to deliberate on the issue, yet the decision on the issue did not affect the findings on the substantive issue of trespass. This is because the issue was whether the appellant trespassed into the land of the respondent or not? It should be noted that the land in question is the one contained or forming part of the title deed No. 58597 of Plot No. 254 Block "A" Nyashishi in Misungwi District Council. Therefore, as we have already established that part of that land which in the a foregoing ground was proved to be part of the title deed owned by the respondents, it is definitely that, the sale agreement concerned the land which he bought from PW2 which is not part of this dispute and does not form part of the alleged title deed.

From the above exposition, I entirely agree that by the evidence of PW1, PW2 and PW5 as well as the exhibit PE2 considered in line with section 2 of the Land Registration Act (supra) and the authority in the case of **Peter Ndatele Tegemea vs Dr. Philip Alan Lema**, High Court Land Division, where my Senior Brother Kente, J (as he then was) which decision persuaded to borrow leaf, that, a certificate of title is a proof of ownership on a registered land and the sale agreement alone is not a proof such

ownership. In this case the land in dispute has been proved to be part of the land which the Commissioner for Lands via a title deed allocated to the respondents. For that reasons, the trial Tribunal was justified to find that, the case was proved on the balance of probabilities as required by the authority in the case of **Paulina Samson Ndawavya vs Theresia Thomas Madaha,** CAT- Civil Appeal No. 45 of 2017 (unreported). On that base, the appeal fails and it is dismissed in its entirety.

It is accordingly ordered

DATED at **MWANZA** this 24th day of March, 2022

J. C. TIGANGA

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