

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(MOROGORO DISTRICT REGISTRY)**

**AT MOROGORO**

**LAND APPEAL NO. 69 OF 2022**

*(Arising from District Land and Housing Tribunal for Morogoro*

*in Land Case No. 06 of 2018)*

**ABASI ABDUL.....APPELLANT**

**VERSUS**

**REHEMA ISSA..... RESPONDENT**

**JUDGEMENT**

*Hearing date on: 08/11/2022*

*Judgement date on: 18/01/2023*

**NGWEMBE, J:**

This is the first appeal from the District Land Tribunal whose judgement was delivered on 25/05/2022 in favour of the respondent. The dispute between the disputants involves ownership of an acre and a half (1 ½) of land. The land is located at Tawa Village within the District and region of Morogoro. Briefly the respondent claimed the suit land to be hers and the appellant trespassed over it on 10/10/2016. At the tribunal, the respondent prayed for a declaratory order that she is the true owner of the farm land; vacant possession; and costs.

Upon trial, the tribunal concluded that indeed the respondent proved ownership as opposed to the appellant. Thus, declared her as rightful owner of the suit land. Hence proceeded to order vacant possession and permanent injunction against the appellant and awarding costs to the respondent.

The appellant was dismayed by such decision, therefore, timeously presented his appeal in this house of justice clothed with three grounds that; **one** – the trial tribunal erred in law and fact to hear and decide the matter contrary to law; **two** – the trial chairman misdirected himself in law and in fact when he failed to analyze and settle the relevant issues of dispute between the appellant and respondent; and **three** – the tribunal erred in law and in fact for failing to consider the weight of the appellant's case as against the respondent in reaching its decision.

This appeal was heard orally on 08/11/2022. Unfortunate, the appellant failed to procure legal assistance from practicing advocates, while the respondent was represented by learned advocate Ignas Punge.

The appellant being unrepresented and may be misguided, argued his appeal without following the sequence of his grounds of appeal. He failed to say anything in respect to his grounds of appeal, instead he came up with a different ground altogether, that he does not know anything related to the suit land. Proceeded to submit just briefly by challenging the tribunal for deciding on a case against him, while the suit land was not known to him. Meaning he knows nothing on the land in dispute. In other words, he seems to be saying, he is a stranger to the suit land.

Such argument and submission puzzled not only this court, but more so, advocate Punge who replied that, the land in dispute was expressly

stated in the application as well as the appellant's response at the tribunal. Pointed out that, the land in dispute constitutes 1½ acres at Tawa Village Morogoro district and the tribunal heard all the evidence in that respect.

Further, argued that, the appellant's submission is a new phenomenon which was neither raised at trial nor form part of the grounds of appeal. Supported his submission with a case of **Elisa Moses Msaki Vs. Yesaya Ngateu Matee [1990] T.L.R 90**, thus prayed this court not to consider such argument which was neither raised at trial nor was it determined by the tribunal. Rested by a prayer to dismiss the appeal with costs.

To the best, the central issue of this appeal is whether it has merits or otherwise. As a matter of settled principle, this court being the first appellate court, has a duty to reevaluate the evidence laid before the trial tribunal. It has been held and followed in the case of **Registered Trustees of Joy in the Harvest Vs. Hamza K. Sungura, Civil Appeal 149 of 2017, (CAT – Tabora)** where the Court of Appeal observed *inter alia* that: -

*"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision."*

There are so many other precedents loudly reiterated on the same principle, including the case of **Tanzania Sewing Machine Co. Ltd Vs. Njake Enterprises Ltd, Civil Appeal 15 of 2016, (CAT – Arusha)**, and **Attorney General & 3 Others Vs. Nobert Yamsebo [2013]**

**T.L.R. 501.** Unfortunate may be, this principle to some extent is impeded and thus will not apply in full for reasons to be apparent in the course.

Rightly as Mr. Punge observed, the appellant in the course of his argument, went into a different and strange matter which is not before this court. The issue raised at the hearing of this appeal, was neither in his memorandum of appeal, nor was it an issue at trial tribunal. The issues raised in his memorandum of appeal intended to challenge procedural issues adopted by the chairman of the tribunal. Also, in his grounds of appeal, intended to challenge the tribunal for failure to analyze the evidences adduced during trial. By challenging the analysis of evidence, the appellant would invite this court to revisit the evidence adduced before the tribunal and apply a fresh analysis with the view of reaching to an independent finding. Unfortunate, the appellant abandoned all grounds in the memorandum of appeal and went into a different matter altogether. For that reason, this court will not have reasonable path into reassessing the evidence adduced during trial.

Above all, since the appellant's argument being a new matter outside the issues determined by the trial tribunal and since there is no evidence to that effect, therefore, this court may not have a ground to stand and determine it conclusively.

Rightly, the learned advocate cited the case of **Elisa Moses Msaki Vs. Yesaya Ngateu Matee (Supra)**, is among the cases where the Court of Appeal reiterated the principle that an appellate court cannot deal with a matter which was not raised in the lower court. The exact wordings of the Court are quoted hereunder: -

*"The question as to who was the owner of the plot on which the houses stood neither featured in the Court of first instance nor in the High Court. This Court will only look into matters which came up in the lower Court and decided; not on which were not raised nor decided by neither the trial Court nor the High Court on appeal."*

Following the above, the appellant's arguments would deserve no consideration. Even if this court would pay regard to the appellant's argument, same are not grounded as the tribunal's record is clear. The Written Statement of Defence (WSD) filed by the appellant and his own testimony establishes that the appellant was well aware on the nature of dispute and the land in dispute. In paragraph 3 and 5 of his WSD, the appellant had the averments hereunder: -

*"3. That the contents of paragraph 4 of the application are strongly disputed and the applicant shall be put under the strictest proof hereof. It is stated that the value of the disputed land is below Shillings 1,000,000/=...*

*5. That the contents of paragraph 6 (a) of the application are disputed. The land in dispute belongs to the respondent's family, thus the issue of invasion could not arise"*

Likewise, testifying as DW1, the appellant partly stated: -

*"Eneo tulilo nalo na tunalitumia ni miliki ya babu anaitwa Salum Maumba, baadaye palipimwa viwanja baba aliishi katika kiwanja namba 40, kitongoji cha Kinyorokwe, Kijiji cha Mikiwilile kata ya Tawa tarafa ya Matombo"*

What the above paragraph convey in this court's language is that the land that the appellant was occupying and using is a property of his grandfather called Salum Maumba. Later on, the land was surveyed and allotted into plots, while his father resided in plot No. 40, at Kinyorokwe hamlet, Mkiwilile village, Tawa ward and Matombo division.

In all dimensions of reasoning, the above proved demonstration of appellant's knowledge over the suit land. Likewise, witnesses were paraded at the trial tribunal for the sake of supporting his defence, were so descriptive on the disputed land. Therefore, even assuming that this ground was fit for argument before this court, it would totally fail. I am of the view that this argument is unfounded and irrelevant.

Though this was a first appeal and by the principles referred above, this court would have a duty to reevaluate the evidence laid before the tribunal, in this case I will not go into serious evaluation of the evidence because the appellant had constructively dropped his grounds of appeal and this court has nothing to re-evaluate.

Even by a general glance of the tribunal's record and its judgment, this court is satisfied, the tribunal was correct in its decision. Procedure and evidence were well appreciated, this court would have reached to the same verdict under the circumstance of this appeal.

Having so observed and for the reasons so stated, I am satisfied that this appeal has no merit to justify interference to the decision rightly made by the trial tribunal. The judgement and decree of the trial tribunal is upheld. Consequently, this appeal is hereby dismissed entirely with costs.

**Order accordingly.**

**Dated at Morogoro this 18<sup>th</sup> day of January, 2023.**



A handwritten signature in blue ink, appearing to be "P. J. Ngwembe".

**P. J. NGWEMBE**

**JUDGE**

**18/01/2023**

**Court:** Judgment delivered at Morogoro in Chambers on this 18<sup>th</sup> day of January, 2023, **Before Hon. A.W. MMBANDO, DR** in the presence of the Appellant and Suzana Mafwele holding brief of Mr. Punge, Advocate for the Respondent.

**Right to appeal to the Court of Appeal explained.**

**SGD: HON. A.W. MMBANDO**

**DEPUTY REGISTRAR**

**18/01/2023**

I certify that this is a true and correct copy of the original	
Deputy Registrar	
Date	26/1/23 at Morogoro