THE UNITED REPUBLIC OF TANZANIA
JUDICIARY

IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MBEYA)
AT MBEYA

MISC. LAND APPEAL NO. 21 OF 2022
(From the Decision of the District Land and Housing Tribunal for Mbeya at Mbeya in Land Appeal No. 24 of 2019. Originating from Rujewa Ward Tribunal in Land Case No. 07 of 2019)

BENARD SEMBULA.....APPELLANT

VERSUS

TABIA MBEVETA.....RESPONDENT

JUDGEMENT

Date of Last Order: 01/12/2022
Date of Judgement: 23/02/2023

MONGELLA, J.

This matter emanates from Rujewa Ward Tribunal (WT, hereinafter) in Land Case No. 07 of 2019. The appellant instituted the case in the WT claiming that the respondent had invaded his land measuring 4 acres located at Mdodela Hamlet. He prayed to be declared the lawful owner of the suit land having obtained the same through inheritance from his late father and having used the land since 1947. The respondent as well claimed to be the rightful owner of the suit land having being gifted the same by his grandfather. In the end the WT ruled in favour of the respondent. The same verdict was entered by the District Land and Housing Tribunal for

Mbeya (the Tribunal, hereinafter) on appeal. Still unsatisfied, the appellant preferred this second appeal. The appeal has been preferred on seven (7) grounds as follows:

1. *That the appellate Tribunal grossly and seriously erred to rule out that the Respondent is the lawful owner of the suit land without considering the fact that the appellant possessed the suit land for more than 60 years.*

2. *That the appellate Tribunal grossly and seriously erred to deliver judgement in favour of the Respondent by relying to (sic) the contradictory and unreliable evidence adduced by the respondent's side.*

3. *That the appellate Tribunal grossly and seriously erred to uphold the decision of the Trial Court* (sic) *by stating that, the respondent is the lawful owner of the suit land by relying to* (sic) *the unauthenticated document (PHOTOCOPY) which shows that, the appellant signed to hand over the suit land to the respondent while it is known that the appellant is blind.*

4. *That the appellate Tribunal grossly and seriously erred to deliver judgment in favour of the respondent by relying to* (sic) *the exhibits which bears* (sic) *other people's names apart from the respondent's name.*

5. *That the appellate Tribunal grossly and seriously erred to state that the respondent is the lawful owner of the suit land for failure to*

evaluate and analyse (sic) the *evidence presented before him that's a reason he reached to* (sic) *unfair decision.*

6. *That the appellate Tribunal grossly and seriously erred to state that the respondent is the lawful owner of the suit land by disregarding tendered exhibit titled as "**Taarifa ya Tume ya Utatuzi wa Mgogoro wa Ardhi Kitongoji cha Mdodela Mtaa wa Mabanda-Rujewa**" which shows that, the appellant is the lawful owner of the suit land.*

7. *That the Appellate Tribunal grossly and seriously erred to deliver judgement in favour of the respondent without considering the fact that she fails (sic) to prove her case on the balance of probability.*

The appeal was argued by written submissions. Both parties obtained legal assistance from learned counsels who drafted the submissions *ex gratis*. The appellant's submissions were drafted by Ms. Mary Paul Gatuna and the respondent's submissions were drafted *ex gratis* by Ms. Jenifer Biko.

Addressing the 1st ground, the appellant faulted the lower tribunals for failure to consider the long usage of the land in dispute by the appellant. He contended that he inherited the suit land from his late father many years back and has been cultivating it without interference up to the year 2019 when the respondent invaded. Referring to page 73 of the WT record, he said that he started using the land in dispute in 1947. In the premises, he faulted the lower tribunals for failure to invoke the principle that "*he who is the first in time has the strongest claims*" in Latin "*quip rior*

est tempore potir est jure." He further argued that, the record, as seen at page 73 of the WT proceedings, indicates that the appellant is the one who sold other lands to his neighbours to the suit land.

The appellant further challenged the lower tribunals for ruling that the appellant failed to state where and when he got the suit land while the record clearly reveals that the appellant inherited the suit land since 1947. On the same question he found the respondent's evidence being weak. He had the stance on the grounds that: **One**, that the respondent was cross examined on how she obtained the suit land and she responded that she does not know how exactly her grandfather gave her the suit land. He said that it was at the first appellate stage where the respondent claimed to have been in use of the suit land from 1943 to 2019. In the circumstances, the appellant challenged the lower tribunals for relying on the respondent's untruthful testimony. **Two**, he contended that the record, at page 60, shows that the appellant had no idea of the time she started cultivating the suit land. He thus found the appellate Tribunal erred in upholding the WT decision under the circumstances.

The 2nd and 4th grounds were argued collectively. Under these grounds, the appellant challenged the respondent's oral evidence for being contradictory and also the exhibits tendered for bearing another person's names. He specifically referred to page 60 of the WT proceedings when the WT members questioned the respondent regarding the "deed of settlement." He contended that the respondent claimed first to be present at a meeting before the chairman. When told that the exhibits show that one "Sauda Juma" was present and whether she was the said

"Sauda Juma" she claimed to be "Sauda Juma" as well. However, when asked as to whether she signed the exhibit, she replied that she did not sign and there was nothing hindering her from signing. Further, he showed that the record reveals that the respondent denied being given any receipts regarding the land in dispute. However, the WT members observed that there was an exhibit, receipt to that effect, showing that 4 acres were allocated to the respondent. Nevertheless, despite the observation, the respondent denied being given any receipt. The appellant found these pieces of evidence contradictory. He had that stance on the following reasons:

One, that while the respondent claims to be the rightful owner of the suit premises, all the documents produced before the tribunal bore names of other people different from hers. He specifically referred to exhibit P1, P3, P4, and P5 which bore the names "Sauda Juma Mbeveta" and exhibit P2 which bore the names "Alufani Mwasingwa." He added that none of the record of the lower tribunals shows that the respondent has other names other than that of Tabia Mbeveta. That, no affidavit was sworn and tendered showing her other names.

He thus found the lower tribunals at fault for relying on such exhibits to rule in favour of the respondent. He further challenged the appellate Tribunal's reasoning to the effect that the appellant admitted the respondent's names as he never cross examined on that. He found the observation erroneous on the ground that the Tribunal ought to have analysed the evidence on record. In support of his stance he referred the case of ***Reni International Company Limited vs. Geita Gold Mining Limited***, Civil Appeal

No. 453 of 2020. Further, the appellant contended that the appellant is known to be a blind person, therefore, in the circumstances, the lower tribunals ought to have taken note that the appellant could not be able to see what was written in the documents presented.

Two, that the respondent presented a receipt, that is, "exhibit P2," however during cross examination by the WT members she negated the said document alleging that she never had such receipt.

Three, that during examination in chief, the respondent and her witness, DW2, admitted that in the year 2011 the respondent had a dispute with the appellant. However, he said, during cross examination, the respondent changed the story whereby she denied having any dispute other than the current one before the WT. In the circumstances, the appellant argued that the respondent lied before both lower tribunals. He thus called for exhibit P5 to be expunged from the record for being cooked/forged.

Four, the appellant contended that the respondent contradicted further when she testified that she had been in possession of the suit land since 1943 while at the same time she produced a receipt "exhibit P2" showing that the same land was allocated to one Alufani Mwasinga on 05.06.1990. In addition, she contended that, during cross examination the respondent changed the story whereby she denied being aware of the said receipt.

Five, that the appellate Tribunal relied on the evidence of "*Kitongoji*" chairman (DW2) whose evidence contradicted that of the respondent.

He argued so saying that the chairman insisted that the appellant had another farm near the suit land while the respondent testified that the appellant had never had any other farm near the suit land.

Six, that the respondent admitted not to have signed a deed of settlement dated 04.11.2011 while at the same time she tendered exhibit P5 bearing the signature of one Sauda Juma, the name she claimed to be hers as well. Referring to page 68 of the WT proceedings, the appellant added that the record reveals that the respondent signed the alleged deed of settlement. Under the circumstances, he contended that exhibit P5 is not genuine and deserves to be expunged from the record. He further argued that even if the lower tribunals were correct in observing that the respondent's other name is Sauda Juma, still the receipts produced, that is, exhibit P1, P3, and P4 do not establish ownership of the suit land by the respondent. On this point, he prayed for the Court to be guided by the case of ***The Registered Trustees of Joy in the Harvest vs. Hamza K. Sungura***, Civil Appeal No. 149 of 2017. He concluded by finding the lower tribunals at fault in relying on the receipts tendered to rule in favour of the respondent.

Concerning the 3rd ground, the appellant challenged the lower Tribunals for relying on a photocopy of a document dated 04.11.2011 "exhibit P5." He argued that the exhibit shows that the appellant signed the said document agreeing to hand over the suit land to the respondent while it is a known fact that the appellant is blind thus could not sign any document. Further, he argued that the respondent was ordered to furnish an original copy of the document as the photocopy was faint, but she

failed to supply the original copy. In the premises, the appellant had the stance that the appellant signed no any document to warrant the lower tribunals' finding that the appellant handed over the suit land to the respondent.

As to the 5th ground, he faulted the Tribunal for failure to analyse and evaluate the evidence on record thereby reaching unfair decision. Referring the decision in the case of ***Hassan Mzee vs. R*** [1981] TLR 167 he contended that the legal position is that a second appellate court has powers to evaluate all evidence adduced before the lower courts if the first appellate court failed to re-evaluate the evidence and consider the material issues involved.

Regarding the 6th ground, the appellant faulted the lower tribunals for failure to regard an exhibit titled "***Taarifa ya Tume ya Utatuzi wa Mgogoro wa Ardhi Kitongoji cha Mdodela Mtaa wa Mabanda-Rujewa***" which was tendered by the appellant showing that the appellant is the lawful owner of the suit land. He added that the exhibit revealed that the appellant had a total of 87.03 acres and had sold part of it to other people surrounding the suit land. He had the stance that considering the report it surprises how the appellant obtained land within the appellant's farms and why the respondent never appeared before the committee for inquiry meeting "*tume ya uchunguzi*" held on 12.08.2015 while all owners were called to identify their farms. He further challenged the respondent as she failed to challenge the report of "*tume ya uchunguzi*" which was tendered and admitted by the WT. He considered the report a heavy

piece of evidence and faulted the lower tribunals for disregarding it in reaching its decision.

On the 7th ground, he challenged the lower tribunals' decisions for being entered without considering that the respondent failed to prove her case on balance of probabilities. He contended that the appellant, basing on what he argued hereinabove, proved his case on balance of probability as required under the law. He considered the appellant's evidence heavier than that of the respondent as invited the Court to invoke the decision in the case of ***Hemed Said vs. Mohamed Mbilu*** [1983] TLR 113, which ruled that "*a person whose evidence is heavier than the other must win*" and allow the appeal with costs.

The respondent opposed the appeal. In reply to the 1st ground, the respondent found no error in the Tribunal decision declaring the respondent the rightful owner of the suit land. She argued that the appellant failed to prove that he owned the suit land for 60 years as he claimed and as required under **section 110 of the Law of Evidence Act, Cap 6 R.E. 2019**. She challenged the appellant's contention that he had sold pieces of land neighbouring the land in dispute arguing that the sold pieces of land have nothing to do with the case at hand. She as well countered the appellant's argument that the respondent is not the lawful owner as she could not even remember when exactly she was given the land in dispute and when she started cultivating the land. In her argument she contended that the fact that she tendered exhibit P1 to P5 and furnished witnesses including the "*kitongoji*" chairman, her case was proved. She added that failure to state the time cannot alone be a

reason for dispossession as the law does not compel a person to memorize the exact dates one started cultivation.

On the 2nd and 4th grounds, she replied that the issue of the respondent not signing the deed of settlement is immaterial as the WT considered a number of issues in determining the dispute and reached a just decision. She argued further that the deed of settlement was just a means to resolve the dispute regardless of whether it was executed rightly or not. She had the stance that discrepancies in the settlement deed cannot be used as proof of the appellant's ownership. She as well considered irrelevant the discrepancy in names contained in exhibit P1, P2, P3, P4 and P5 saying that the same were just receipts and each bore the name of the person who paid the rent. She had the stance that a payer can be different from the owner. She invited the Court to consider the WT proceeding at page 66 whereby the respondent appears to state that one of the receipts was paid by her uncle, which means that she used to send her relatives to make payments regarding the disputed land on her behalf.

Addressing the respondent's contention that the respondent failed to cross examine on the exhibits because he is a blind man (sic), she submitted that the point contains new evidence as the same does not feature in the proceedings. She considered the same as mere words from the Bar, as they were argued by Ms. Gatuna who drafted the appellant's submission *ex gratis*. Referring the case of ***TansAfrica Assurance Co. Ltd. vs. CIMBRIA (EA) Ltd.*** (2002) 2 EA, she urged the Court to disregard the point coming from the Bar. In the same line she contended that the case

of ***Reni International Co. Ltd***. (supra) cited by the appellant is distinguishable.

She further disputed having adduced contradictory evidence on trial. She argued that what she stated regarding exhibit P2 was that the same was for payment of the farm "*Malipo ya kupewa shamba*" issued by the Local Government and not her grandfather. She further disputed having contradicted herself regarding the conflicts she had on the suit land. She saw that the appellant misunderstood her statement when she said that she had never been involved in any dispute besides the one at hand. That what she meant was that she had never been involved in any dispute apart from the one with Benard Sembula, the appellant. She argued further that exhibit P2 has nothing to do with the respondent being given the land in 1943 and that the question that the respondent had other farms is irrelevant to the case at hand as what is at issue in the matter at hand is ownership of the disputed land and nothing else. She concluded by addressing the contention of the name "Sauda Juma" appearing in the deed of settlement whereby she insisted that the name is also hers.

Regarding the 3rd ground, she argued that there is no law prohibiting the WT from receiving photocopy documents. She further reiterated her position that the issue of the appellant's blindness is new as it does not feature anywhere in the proceedings.

On the 5th ground, she disputed the appellant's contention that the lower tribunals failed to analyse and evaluate the evidence presented before them. She argued that the WT is the host (sic) in the disputed land, familiar

with the land in dispute, heard every witness and properly analysed and evaluated the evidence before it. She added that the WT is not tied with technicalities like other courts of law. She found irrelevant the case of ***Hassan Mzee vs. R.*** (supra) cited by the appellant, arguing that the court cannot award reliefs not prayed by a party. She argued so saying that in the first appeal the appellant did not ask for re-evaluation of evidence. In the alternative she argued that even if this Court evaluates the evidence on record it will find that the respondent is the lawful owner.

Replying to the 6th ground, she contended that the WT was correct in disregarding the report titled "*Taarifa ya Tume ya Utatuzi wa mgogoro wa ardhi kitongoji cha Ndolela - mtaa wa Mabanda – Rujewa*" because the said report has nothing to do with the 4 acres making the land in dispute. That, the said report is on 87.03 acres.

On the last ground (mistakenly stated at the 4th ground), the respondent firmly contended that she managed to prove her case on balance of probability as she tendered exhibits; she used the land for long time; and she furnished witnesses to support her case. She had the view that the case of ***Hemed Said vs. Mohamed Mbilu*** is in her favour as her evidence is heavier than that of the appellant.

Lastly she remarked on the contradictions on her case pointed out by the appellant. She contended that the contradictions are slight and that since the litigants are human beings they are bound to make mistakes and sometimes forget some facts. She prayed for the Court to disregard the contradictions as they do not go to the root of the case. On her

position, she prayed for the Court to be guided by the decision in the case of ***Amani Rabi Kalinga vs. The Republic***, Criminal Appeal No. 474 of 2019 (CAT at Mbeya, unreported).

In rejoinder, the appellant almost reiterated his arguments in the submission in chief. On the 1st ground, he insisted that the respondent submitted documents bearing other people's names thus could not use the said documents to prove her ownership over the land. He further insisted that he owns 87.2 acres in the area and the suit land is within. Considering his point that the respondent failed to state the time in which she started to occupy the land in dispute, he challenged the respondent's contention that there is no law compelling a party to memorize the time he/she started to occupy the land. He contended that mentioning of the time signifies proof of one's claims over the land.

On the 2nd and 4th grounds, he argued that the appellant lied as to the deed of settlement and still wants to mislead this Court by alleging that the trial court (sic) did not consider the deed of settlement in reaching its decision. To the contrary he contended that the deed of settlement was in fact considered by the trial tribunal together with all other exhibits tendered by the respondent. Considering the question of contradiction of names, he argued that the respondent introduced a new fact contrary to the law when she contended that the new names were mentioned as payers and not owners. On the other hand, he countered the respondent's contention that the issue of blindness brought up by him was a new fact. He disputed the same being a new fact contending that the appellant has a disability (blindness) which is vivid and the trial tribunal

should have seen for itself. He prayed for the Court to disregard the case of ***Tansafrica Assurance Co. Ltd.*** (supra) cited by the respondent.

Further he discussed "exhibit P2" contending that the respondent misconstrued its contents reading "*kupewa shamba ekari nne*." He argued that if it is true that the respondent was apportioned the suit land by her grandfather then she was expected to admit the said receipt as the receipt carries the gist of the dispute and the lower tribunals relied on the same in declaring the respondent the lawful owner of the suit land. He thus faulted the lower tribunals for relying on the said receipt while the respondent had negated it. Further, he contended that the respondent misled this Court when alleged that the appellant misunderstood the respondent's evidence as seen at page 74 of the trial tribunal proceedings in the sense that she never had any dispute apart from the one at hand.

Rejoining on the 3rd ground concerning presentation of photocopy documents in evidence, he had the stance that it is the position of the law that documents produced in court must be genuine and that is the reason the WT ordered the respondent to furnish an original copy, something she never did.

Concerning the 4th and 5th grounds, he maintained what he submitted in his submission in chief. He added that the contradictions pointed out are not slight as contended by the respondent but go to the root of the matter, particularly the contradiction on names of the owner of the suit land stated by the respondent. He contended that the dispute is centred

on the question of ownership and in the circumstances the failure to clarify names of the respondent amounted to contradiction on the root of the case. He thus called for the Court to disregard the cited case of ***Aman Rabi Kalinga*** (supra), by the respondent. He prayed for the appeal to be allowed with costs to be borne by the respondent.

After considering the grounds of appeal, the rival submissions by the parties and gone through the lower tribunals record, I prefer to determine the grounds of appeal collectively. The main question to be addressed in this appeal is "who is the rightful owner of the suit land." In the course of my deliberation I shall address the issues raised in the grounds of appeal.

It should be recalled that it was the appellant who instituted the matter in the WT claiming to be declared the lawful owner of the suit land. He claimed to have inherited the land from his late father way back in 1947. In the premises, I wish to reiterate the position of the law to the effect that the one who alleges bears the burden of proving the alleged facts. It is also trite law that in civil cases, the onus of proof lies on the claimant. In that respect, the appellant had the burden of proving that he rightfully owned the land in dispute. See: ***The Attorney General vs. Eligi Edward Massawe***, Civil Appeal No. 86 of 2002; and ***Ikizu Secondary School vs. Sarawe Village Council***, Civil Appeal No. 163 of 2018 (both unreported). The law thus puts the obligation of proving facts to the one who positively alleges existence of certain facts, particularly the claimant in a case. This position is also fortified under **section 110 (1) and (2) of the Evidence Act, Cap 6 R.E. 2019** which provides:

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

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

The law as well prohibits shifting of the burden of proof to the adverse party until when the claiming party has discharged his/her duty in proving his/her assertions. To this juncture I find unmerited the appellant's contention that the respondent never proved her assertions on balance of probability and that her evidence was weak. The Court of Appeal in the case of ***The Registered Trustees of Joy in the Harvest vs. Hamza K. Sungura***, Civil Appeal No. 149 of 2017 (CAT at Tabora, unreported), while revisiting its previous decision in ***Paulina Samson Ndawavya vs. Theresia Thomasi Madaha***, Civil Appeal No. 45 of 2017 (unreported) held:

"It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his, and that the burden of proof is not diluted on account of weaknesses of the opposite party's case."

In explaining the point further, the Court quoted in approval an extract from the **book by M.C. Sarkar, S.C. Sarkar, and P,C. Sarkar titled "Sarkar's Law of Evidence" 18th Edition, published by Nexix Lexis, at page 1896**, whereby it was stated:

"... the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue and not upon the party who derives it; for negative is usually incapable of proof. It is ancient rule founded on

consideration of good sense and should not be departed from without strong reason ... until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such a conclusion, he cannot proceed on the basis of weakness of the other party ..."

The question to this point is therefore whether the appellant, as the claimant in the WT, discharged his duty in proving his claims. Like pointed out earlier, he contended that he inherited the suit land from his late father in 1947 and has been in long usage since then. The respondent further relied heavily on a report titled "***Taarifa ya Tume ya Utatuzi wa Mgogoro wa Ardhi Kitongoji cha Mdodela Mtaa wa Mabanda-Rujewa.***" This is a report by a land dispute resolution committee formed at local government level to resolve land dispute in the hamlet whereby the appellant was alleged to have sold part of the village land. In his submission, he contended that this report is a heavy piece of evidence showing that he owns a large chunk of land measuring 87.3 acres, the land in dispute being included therein. He in fact faulted both lower tribunals for not considering this report, which was tendered and admitted in evidence in the WT. In that respect, I had to take the trouble to keenly read the contents of the said report.

The report reveals that, when interrogated initially, the appellant stated that he owns 30 acres of the land he was in dispute with the village government (see page 13 & 14 handwritten/page 9 & 10 typed). However, upon measuring the land by the committee on the boundaries shown by the appellant, it measured 85.0 whereby 55 acres were in

excess (see page 19 & 20 handwritten/page 15 & 16 typed). However, in the end, the Committee found out that the real acres owned by the appellant were 30 acres and which were already sold to other people. This is because the appellant failed to establish how he came to own the 55 acres that exceed when he showed the committee the demarcations of his claimed land. This fact features at page 23 (handwritten)/ page 19 (typed) of the report, which for ease of reference reads:

> "... ***Kwa upande wa Mzee Sembula tume inaamini eneo lake halisi ndani ya eneo linalogombaniwa ni ekari 30 thelathini tu kwa sababu katika maelezo yake alikili kuwa eneo lake ni ekari 30*** *pia ingelikuwa kweli eneo lote la ekari 87 themanini na saba ni lake angethibitisha kwa vielelezo/nyaraka au majirani wanao pakana nae pia eneo lote lingekuwa limeendelezwa na watu wanao miliki eneo ndani ya eneo la mgogoro angeshawachukulia hatua. Kushindwa kuwasilisha vielelezo/nyaraka zinazithibitisha umiliki wa eneo hilo na eneo kubaki bila kuendelezwa,* ***tume imeridhika kuwa eneo halali la mzee Sembula ni ekari 30 kwa sababu zimeendelezwa na mauziano yamethibitishwa na serikali.***"

As pointed out earlier, the land in the dispute at hand, which measures 4 acres, is within the land in the dispute resolved by the Committee which came out with the above observation. Considering the report and the submission by the appellant, the appellant had sold parts of the land to other people believing he owned 87.03 acres. However, the report ruled out that he owned 30 acres, which he had already sold to other people. At page 20 (handwritten page numbers)/page 16 (typed page numbers), the appellant appears to have sold the land to one, St. Anny's - 5.8 acres; one, Mr. Mlemwa – 9.4 acres; one, Dr. Sote – 4.9 acres; one, Issa

Mwambela – 10.4 acres; and one, George Mwamwenda – 3.97 acres in the land disputed between him and the village authority which also harbours the 4 acres in dispute in the matter at hand. Calculating the total number of acres, it brings a total of 34.47 acres. Though the total acres exceeded the 30 acres ruled by the Committee as rightfully belonging to the appellant, the sales were blessed by the Committee in form of recommendation as it was found that the transactions were officiated before the village authority. This is evidenced at page 23 (handwritten page numbers)/page 19 (typed page numbers) whereby it is stated:

> *" Katika eneo la mgogoro lenye ukubwa wa ekari 87.03 ekari zilizouzwa na Mzee Sembula kwa ST. Anny's, Mr. Mlelwa, Dr. Sote, Mr. Mwambela, Mr. Mwamwenda litambuliwe kama ni eneo halali la Mzee Sembula na wamiliki wapya waachie maeneo hayo.*
>
> *Ekari zinazobakia na eneo lililo ongezeka kutoka kwenye maeneo yaliyonunuliwa na wanunuzi walio nunua kwa Mzee Sembula zirudi mikononi mwa Umma kwa mujibu wa kifungu cha 3(1)(a) cha sheria ya ardhi Na. 4 ya mwaka 1999 kama ilivyorekebishwa mwaka 2002 na ligawiwe kwa vijana ambao hawana ardhi."*

The above extract shows that the exceeding acres apart from the 30 acres declared lawfully owned by the appellant were to revert back to the village authority to be allocated to other villagers/youths that had no land. As stated already, the appellant's 30 acres had already been sold to other people. In the premises, I am of the considered view that the appellant, had remained with no land rightfully belonging to him, in the land he had a dispute with the village authority, which he as well claims to

include the 4 acres land, which he is in dispute with the respondent. In the circumstances, the evidence he relied on heavily in proving his ownership over the land in dispute with the respondent, that is, "***Taarifa ya Tume ya Utatuzi wa Mgogoro wa Ardhi Kitongoji cha Mdodela Mtaa wa Mabanda-Rujewa***" does not support his case. He in fact failed to discharge his burden in proving the case before the burden could shift to the respondent.

Considering my observation as above, I find all the arguments advanced by the appellant against the respondent's evidence being irrelevant in the case at hand. Whether the respondent proved her ownership or not of the land in dispute, which she currently possesses, has no bearing in the case at hand whereby the appellant being the claimant in the WT failed to prove his ownership on the disputed 4 acres. If the respondent is really illegally possessing the 4 acres in dispute, I find that a matter to be dealt with by the village authority to which the land, as per the "***Taarifa ya Tume ya Utatuzi wa Mgogoro wa Ardhi Kitongoji cha Mdodela Mtaa wa Mabanda-Rujewa***" reverted back.

In the premises, I find the appeal lacking merit and the same is hereby dismissed, with costs.

Dated at Mbeya on this 23rd day of February 2023.

L. M. MONGELLA

JUDGE

Court: Judgement delivered in Mbeya in Chambers on this 23rd day of February 2023 in the presence of Ms. Edna Mwamlima, for the appellant.

L. M. MONGELLA

JUDGE