

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(BUKOBA DISTRICT REGISTRY)
AT BUKOBA**

LAND APPEAL No. 73 OF 2022

*(Arising from Land Appeal No. 31 of 2021 in the District Land and Housing Tribunal for Muleba at Muleba,
Originating from Civil Case No. 02 of 2021 in Mushabago Ward Tribunal)*

EZEKIA CRONERY APPELLANT

VERSUS

ELIAS MUSHESHE RESPONDENT

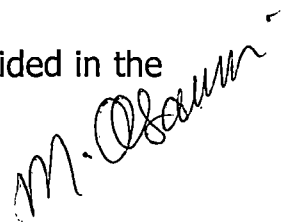
JUDGMENT

09th February & 10th March, 2023

OTARU, J.:

This is a second Appeal by **EZEKIA CRONERY**, the Appellant herein, challenging decisions of both District Land and Housing Tribunal (DLHT) for Muleba at Muleba in Land Appeal No. 31 of 2021 as well as in Land Case No. 02 of 2021 delivered by Mushabago Ward Tribunal on, which decided on issue of ownership of land in Rushwa Village in favor of **ELIAS MUSHESHE**, the Respondent.

The Respondent had instituted a land case for eviction of the Appellant from the suit land in 2005. The proceedings reached the High Court but were nullified for procedural reasons. Fresh proceedings were instituted via Civil Case No. 02 of 2021 at Mushabago Ward Tribunal which heard the case *de novo*. The Respondent and the Appellant are in-laws as the Respondent married the Appellant's sister. The Appellant's claim is that he and the Respondent purchased the suit land together in 1995 but the lower tribunals ignored his evidence and decided in the



Respondent's favour. At the trial tribunal, the Respondent testified that he purchased the suit land in 1995 *alone*, for fifty thousand (50,000/-) Shillings only from one Joseph Rwembambera. He also testified that he built a house in which the Appellant was staying. Joseph Rwembambera testified as PW2 and stated that indeed he sold the suit land to the Respondent. The relevant documentation was produced. The Appellant on the other hand called *fundi* Christopher Masinde who erected a structure on the suit land as his witness. He testified that apart from erecting a structure there, he also divided the land into two portions for the parties herein. All the members of the tribunal unanimously decided that the Respondent had successfully proved his case and gave him the victory. At the appellate tribunal the Appellant raised seven grounds but argued only two. The appellate tribunal based its decision on the two grounds that the Appellant had argued. The appellate tribunal did not see any reason to fault or reverse the decision of the trial tribunal, as such, the same was upheld, thus this Appeal.

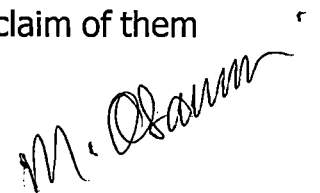
At the hearing of this Appeal, both parties appeared in person, unrepresented. The Appellant filed five grounds of appeal which are summarized as follows;- (1) that the appellate chairman erred in law and in fact to uphold the decision of the trial tribunal without considering that he owned the suit land since 1995 and many developments thereon. (2) Issue of limitation of time: that he owned the land since 1995. Further, the Appellant complained that (3) the

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appellate tribunal dealt with only two of the seven grounds he raised. (4) That his evidence was ignored, and finally (5) that the members of the tribunal were the same as in the original case that was nullified by the High Court.

At the hearing of the Appeal, the Appellant reiterated the filed grounds without much explanations and prayed for the court to look at the record and allow the appeal with costs. The Respondent on the other hand resisted the Appeal. He insisted that he is the lawful owner of the suit land since 1995 and the trial tribunal made the correct decision to declare him so. He submitted further that the appellate tribunal was correct in its analysis and re-evaluation of evidence. Therefore, it cannot be faulted. He stated that whenever he tries to execute his declared right, the Appellant files some appeal/application only to delay him justice. He finally prayed for the Application to be dismissed with costs.

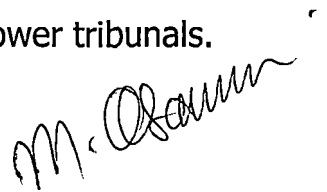
In determining whether the Appeal has merits or otherwise, I have gone through the rival submissions of the parties as well as the record in the case file, starting from the trial tribunal. Each of the parties claims to be lawful owner of the suit land since 1995. The Appellant, during examination in chief, claimed to have purchased the suit land together with the Respondent from one Joseph Rwembamera in 1995 and that he later bought the Respondent's half for Seventy Five Thousand Shillings (75,000/-). During questioning however, he stated that he only owned half of the land. The Respondent refuted the Appellant's claim of them



buying the land together and called the seller, one Joseph Rwembembera, who testified in support of his contention that the land was sold to the Respondent alone. The record indicates that the documentary evidence shows that there was only one purchaser, contrary to the Appellant's claim that the agreement shows two purchasers. The trial tribunal noted that the Appellant had said that the seller's wife, who is also the Appellant's sister and their son were witnesses to the sale but none of them were called to testify.

On the fourth ground on the evidence in general and the first ground that the appellate chairman erred in law and in fact to uphold the decision of the trial tribunal without considering that he owned the suit land since 1995 and many developments thereon, the Appellant's only evidence to that effect is witness *fundi* Christopher Masinde who testified that he was requested to divide the land into two parts. He did not say when did that happen or within what context. While the best evidence on record is that of the seller who testified that he sold the suit land to the Respondent and no one else. The appellate chairman re-evaluated the evidence on record and held that the Respondents evidence has heavier and more convincing than that of the Appellant. The fact that I am in agreement with. Even on appeal, that evidence remained unshaken. This ground therefore fails.

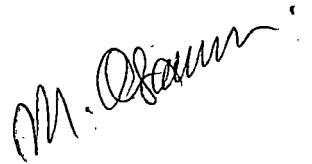
On the issue of limitation of time that the Appellant raised, nothing has been submitted on the same. Neither did he raise this issue in the lower tribunals.



I do not find the relevancy thereof at this stage. This point thus deserves to be left untouched.

On the third ground that the appellate tribunal dealt with only two of the seven grounds he raised. The record is clear why this happened. The appellate tribunal dealt with the grounds that the appellant had submitted on. As the Appellant himself chose to base his appeal on the two points, the appellate chairman could not have dealt with the issues that the Appellant himself chose to abandon. I do not think that this ground needs to detain this court. Like the previous grounds, this too has no merits.

Lastly, on the question that the members of the trial tribunal were the same as in the original case nullified by the High Court, the appellate tribunal has ruled on the same that the High Court Judgment did not direct that the composition of the tribunal was to change. I have also gone through the Judgment in question in the case between **Elias Musheshe v. Ezekia Cronery**, Misc. Land Case Appeal No. 36 of 2019 (HC at Bukoba) as observed by the appellate chairman, my honourable brother, Mtulya J. did order fresh and proper trial but it is not stated if the composition of the tribunal was to change. Trial *de novo* was therefore conducted in compliance with the order of the High Court. This ground too fails.



Consequently, I find the Appeal to lack merits and it is hereby dismissed in its entirety with costs. The Decision of the District Land and Housing Tribunal for Muleba at Muleba in Land Appeal No. 31 of 2021 is hereby upheld.

DATED at BUKOBA this 10th day of March, 2023.



M. Otaru
M.P. Otaru
Judge

Court: Judgment delivered in court in the presence of the Appellant and the Respondent, both in person.

The right of appeal is duly explained to the parties.



M. Otaru
M.P. Otaru
Judge
10/03/2023