IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY OF ARUSHA]

AT ARUSHA

LAND APPEAL NO. 63 OF 2022

(Arising from the Decision of District Land and Housing Tribunal of Kiteto at Kibaya Application No. 08/2018 by Honorable J. F. KANYERINYERI Chairman)

FRED MWALYAGILE.....APPELLANT

VERSUS

PANCRAS PERUZI..... RESPONDENT

DATE OF LAST ORDER: 06th February 2023
DATE OF JUDGMENT: 03 March 2023

JUDGMENT

BADE, J.

The Appellant herein above has been aggrieved with the decision of Honourable J. F. Kanyerinyeri Chairman in the named Land Application and thus appeals before this Honourable Court in the following grounds.

1. That, the Honourable Chairman erred in law for failing to interpret the Village Land Act Cap 114 RE 2019 and the Act 113 RE 2019.
2. That, the Honourable chairman erred in facts as he failed to analyze evidence which resulted into reaching wrong conclusion.

Facts of this case can be succinctly stated that in 2004, the Appellant had been allocated a parcel of land measuring 90 acres by the Kimana Village Council within the area known as Porikwapori namba moja. This allocation was witnessed through a letter by the Kimana Village Council to the

Appellant. Meanwhile, in 2007, on allegations of non-development of the land, part of the land parcel was re allocated to the Respondent. So in essence, both the Appellant and the Respondent claim ownership of the disputed land. We will have to look at the evidence at the trial Court to ascertain which one has a better title over the other, and thus which one is a rightful owner as per the law.

When the matter was called upon for hearing, the Respondent who was without legal counsel prayed to have the matter be disposed by way of written submissions. In the interest of justice, the Court granted the prayer despite the Appellant's resisting the same; and both parties adhered to the filing schedule.

The Appellant's counsel submitted in support of the appeal starting with the first ground, that the Court erred in law for failure to interpret the laws governing village land. He lay down the foundation of this ground that during the hearing the Appellant (Applicant in the trial Court) testified himself and one other person Mbambilee Olukurukur; who was the Kimana Village Chairman in 2004 when the Applicant was allegedly allocated the disputed land. Both witnesses testified that the Applicant together with his family members were allocated 90 acres of land by Kimana Village in the year 2004 at the area known as Porikwapori namba moja within Kimana village. Further the Applicant tendered a letter from the Kimana Village Council marked as Annexture (sic) PE1 evidencing and acknowledging that the Applicant was allocated land measuring 90 acres within Kimana village.

This case was returned to the trial tribunal by this Court so that the Respondent could tender his documents annexed to the written

Statement of Defence which were the purported ***sale agreement and Land allocation report.*** However when the Respondent was given a chance to tender the same the Respondent did not even try to mention the said ***sale agreement*** which is the basis of his claim that, he acquired the disputed land by purchasing it, unfortunately he chose to hide the sale agreement even though he was ably represented by the learned Advocate one Mathias Nkingwa.

The counsel further submitted that testimony of the Respondent's witnesses before the trial tribunal who are DW2 Mwanaidi Massawe and DW3 Msando Parlaisi who were the Kimana village executive officer and chairman respectively testified that they allocated the disputed land in 2007 to another person who is Masingisa Lengoyai because the Appellant did not develop it.

It is the Appellants counsel contention that based on the testimonies and evidence adduced in the trial court the Appellant was allocated the farm together with his family in 2004; a fact which has not been disputed by the Respondent, and that the said allocation is valid to date and has never been revoked to warrant a second allocation to another person if at all there was such allocation in 2007 to the said Masingisa Lengoyai which would have enabled him to have a good title to pass to the Respondent.

The Counsel contended further that the Village Land Act provides for the procedures to be followed by the village council when it wants to revoke customary right of occupancy which is the case herein. Section 38(6) (a) (b) (c) and the proviso thereto together with section 39 (1) (a) (b) (c) (2) of the Village Land Act [Cap 114 R.E 2019] are the relevant provisions, the said procedures were not followed when revoking the Appellant's

allocation of the disputed land hence it was unlawful for the village council to allocate the same to the Respondent.

In the case of **Mwajuma Mbegu vs Kitwana Amani (2004) TLR 410 and also in the case of Partman Garments Indutries Ltd vs Tanzania Manufacturers Ltd (1981) TLR 303** it was held that, *"the president could only revoke the offer of Right of Occupancy by giving to the Appellant notice in writing in terms of condition 8 neither* PW3 *nor PW4 tendered any notice of the revocation before the trial court."* The second allocation was ***void ab initio.***

The situation as stated in the case of ***Mwajuma Mbegu*** above is similar to the case at hand where neither DW2 one Mwanaidi Massawe nor DW3 one Msando Parlaisi tendered any document proving that the Appellant's allocation was revoked. It also goes without saying that the Appellant's allocation to that land was revoked hence any attempt to allocate it to the other person was null and void.

The Counsel further maintains that because the Respondent claims ownership by purchase, it is trite law in our country that, ownership of land is evidenced by documents, as provided under sections 64(1) (a) (b) Of the Land Act [Cap 113 RE 2019] read together with section 181 of the Land Act [Cap 113 RE 2019] which requires contracts for disposition of land be in writing. Furthermore, section 31(1) of the Village Land Act [Cap 114 RE 2002] provides for the Approval of the disposition of the village land. The purported purchase of the village land by the Respondent lacks all these legal requirements which makes the purported dispositions void ***ab initio.*** In the case at hand it is not disputed that the disputed land is the land allocated to the Applicant since the Kimana village council have

issued a letter to the Applicant evidencing and acknowledging that the disputed land was lawfully allocated to the Applicant and no evidence whatsoever was adduced from the Kimana village showing that the Kimana village council revoked the allocation to make it proper for the same village council to allocate the disputed land to another person.

Counsel for the Appellant urges further disposition of village land has to be approved by the village council under which the land is located. See the case of **Methuselah Paul Nyagaswa vs Ibote Nyirabu (1985) TLR 103** and that of **Peter Lazaro Bashite vs Nzera Village Council & Geita District Council, Land Appeal No. 69 of 2019** to demonstrate a sale of village land without the approval of the village council is ineffectual.

In arguing the second ground of appeal, the Appellant's counsel questions as to why the Respondent did not call one MASINGISA LENGOYAI as a witness while this person is alive as stated by DW3 in cross examination. On failure to bring material witnesses he referred the Court to the case of **Hemedi Saidi vs Mohamedi Mbilu (1984) TLR 113** where Sisya, J. held that *"where for undisclosed reasons a party fails to call a material witness on his side, the court is entitled to draw an inference that if the witness were called they would have evidence contrary to the party's interest",*

He further reasons the testimonies of both parties the Appellant and Respondent together with their witnesses suggests that the same land which was allocated to the Appellant is the one in dispute now after it was reallocated to another person who is said to be MASINGISA LENGOYAI LETITYA as per p 9-10 of the typed proceedings.

He insists that the reliance of the Honourable Chairman on the Criminal case of ***Abbas Kondo Gede vs R, Criminal Appeal No. 472 of 2017*** *(Unreported)* in the judgment that an oral account can prove some facts is contrary to section **64 (1) (a) (b)** of the Land Act [Cap 113 RE 2019] which requires contracts for the disposition of land to be in writing, and attempted to distinguish the case of **Abbas Kondo** as being relevant in Criminal cases only where oral accounts are the main means of proving facts.

He further discounted the assertion by the honourable Trial Chairman that the Appellant too should have brought the village assembly meeting minutes as being unfounded in law since the Appellant and his witness stated that the Appellant was allocated land by the Kimana Village Council in 2004, while the Respondent's witnesses DW2 and DW3 confirmed that the Appellant was allocated land in 2004 and because the Appelant left the land idle they reallocated it to Masingisa Lengoyai in 2007. This he argues is contrary to *requirement of section 45 (1) (a) of the Village Land Act Cap 114 RE 2019* that land has to be left idle for not less than five years before it can be revoked, and if one counts from 2004 to 2007 there were only three years, and that the procedures for revocations have not been followed.

Furthermore, the Village Assembly Meeting minutes is not a document which is given to the villagers or persons who are allocated village land. Basically, these are official documents which are kept in the office of the District Executive Director after the meeting is complete and that is why the Appellant when was demanded a document \ for proof was given a letter which was marked as Exhibit Pl which demonstrated that, there

were uncertainties on the status of the disputed land. Initially it was declared a reserve land and later on the Appellant and other villagers were allowed to reoccupy the fact which delayed the process of getting certificate of customary right of occupancy.

Having shown that, He maintains that the Honourable trial chairman failed to analyze evidence; and considering that this is the first Appellate Court they made a prayer that this Court reevaluate evidence and reach its own conclusion.

On the reevaluation of evidence the Appellant Counsel invited the Court to read the case of ***Makubi Dogani Versus Ngodongo Maganga Civil Appeal NO. 78 Of 2019*** (unreported) which has cited with approval the case of **Jamal A. Tamim Vs. Felix Francis Mkosamali & the Attorney General, Civil Appeal No. 110 of 2012** (unreported); and concludes by reiterating the prayers that this Court order that the disputed land located at Porikwapori namba moja within Kimana Village in Kiteto district is the lawful property of the Appellant; and that the Respondent is a trespasser who should be evicted there-from.

In response, The Respondent retorted in concession that Village Land is governed by the Village Land Act Cap 114 RE 2019, but was quick to denounce the application of the Land Act Cap 113 RE which he is adamant that it governs land other than the village land, and that this appeal is on a land dispute falling under the village land; which he insist is regulated by the Village Land Act Cap 114 R.E 2019 only, in exclusion of the Land Act Cap 113 RE 2019.

The Respondent thus maintains that honorable District Land and Housing

Tribunal Chairman interpreted well the Village Land Act Cap 114 R.E 2019 at page 8 of the typed Judgment of the Trial Tribunal by elaborating that since the Village Land Act Cap 114 came into force in the year 1999 and since the Applicant now the appellant herein claimed before the trial tribunal to have been allocated land measuring 90 acres of land (which in fact it's against the requirement of the Village Land Act which allow the Village council through the Village Assembly to allocate only 50 acres of land to a successful applicant) under section 8 of the village land Act which give the responsibility of management of village land to the village council but under Section 8 (5) bar the village council from allocating village land without a prior approval of the village assembly. This position he insists, being the requirement of the law, was also emphasized by the High Court of Tanzania in the case of **The Kiruruma Village Council vs Dotto Philipo Mchelemchele and 2 others, Land Appeal No. 79 of 2019 HC.** In the respondent's opinion, this case reflects the situation at hand following the fact that the appellant states that he was allocated land by the village council, but without the approval of the village assembly, and also without producing any minutes from the village council meeting. From the foregoing he thinks that there is no point where the presiding Chairman of the trial tribunal failed to interpret the Village Land Act Cap. 114 RE 2019.

In further submission, he explains that the Respondent himself narrated before the trial tribunal that he purchased the disputed land from one Masingisa Lengoiya Letitya, a narration which was corroborated by the respondent's witness testifying that the respondent is a bonafide purchaser who bought the disputed land from the said Masingisa Lengoiya Letitya. He conceded however that there was no sale agreement that was

tendered by the respondent, other than the oral evidence testified by the respondent's witness.

The respondent joined issue with the Appellant on this aspect of the testimony, he responds in his defence that it is a rule of thumb that oral evidence is one of the method of receiving evidence in a court of law; and that this is what the trial tribunal did, i.e. receiving oral evidence as testified by the respondent's witnesses. He urges that it is elaborated in the case of **Kioo Limited Vs Marco Frank Mahinya, Labour Revision No. 36 Of 2020 High Court of Tanzania at Dar Es Salaam** where it was held that "where a fact may be proved by oral evidence it is not necessary that documentary evidence must supplement that evidence as this is other method of a fact".

He concedes that the case was returned to the trial court as was ordered by the High Court to take additional evidence relating to documents annexed to the pleadings (but he clarifies that these pleadings were from both the appellant and the respondent), and that the tribunal should recompose a fresh judgment basing on the freshly taken evidence. He was quick to assert though that the High Court did not specify the kind or particular document that the tribunal should take as additional evidence from both the respondent or the appellant. So he insist that the Counsel for the appellant claiming in his submission that the documents were specifically said to be the sale agreement; and the land allocation report is a false claim without any basis.

He charged further that as an officer of the Court Counsel for Appellant was supposed to help the Honorable Court reach its decision and do away from misleading this court by producing false information as held in the

case of **Yara Tanzania Ltd vs Db Shapriya & Co. Ltd, Civil Appeal No. 265 of 2018** where it was held by the Court of Appeal that

> "One of the important characteristics of an Advocate is openness in different ways to share to the Court the relevant information or message which comes to his attention."

The Respondent urged the Court to ignore the allegation of the Appellant's Counsel as misleading and not be considered by this Court as it is not what the Court ordered the tribunal.

In further submission, the Respondent relies on Section 8 (1), (2), (3), (4) and (5) of the Village Land Act Cap 114 R.E 2019 which in his views, puts clear directions of management and allocation of village land including management of village land in Tanzania and not otherwise. This is in response that the Appellant alleges that the Kimana Village authority revoked his allocation unlawfully. He chimes in that this is not true since in his opinion, revocation can only stand where allocation of land was properly done and not otherwise, while he conceded of there being a second allocation, he thinks the same is not void ab initio or at all, as claimed by Appellant's Advocate.

His reasoning is that the Appellant was allocated land by the village council but could not produce the minutes of the village council meeting that did the alleged allocation, and that contravenes the requirement of the Village Land Act Cap. 114 RE 2019 especially Section 8 (5) which puts a mandatory requirement that no Village Council should allocate village land without the approval of the village assembly.

In his opinion, the respondent holds himself to be a bonafide purchaser, who purchased the disputed land locally by entering into an agreement of

buying the disputed land, even though he conceded to not have any sale agreement. He insists that his witness testified orally that he bought the disputed land from Masingisa Lengoiya.

He thinks that the assertion by the Honorable Chairman of the trial tribunal that the appellant was to bring village assembly meeting minutes is not unfounded in law as counsel for the appellant claims (this, in his opinion is a terrible assertion by Appellant's counsel) following the fact that Village Land Act Cap.114 RE 2019 came into force in 1999 and the Appellant claim to have been allocated the disputed land in 2004 which is implied by the wording of Section 8 (5) of the Village Land Act Cap. 114 RE 2019

> "A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly".

On the other hand he views Section 45 (1) (a) of the village Land Act Cap. 114 RE 2019 as providing for land considered to have been left idle for not less than five years, but this would only apply to village land which was properly allocated under section 8 of the Act and not in the situation of the premature allocation of the Appellant.

Lastly, he responds on the issue of the Appellant not being able to produce the village assembly minutes and conceded to the fact true that they are kept in the office of the District Executive Director, but thinks that since it's a public office the Appellant could have obtained a certified copy of the village assembly meeting minutes. He theorizes that he had the alternative through the office of the District Executive Director to select a custodian officer on his behalf to present the said minutes before the Court. In conclusion, he thinks that the Appellant failed to present the

said minutes because there were no village assembly or council minutes which allocated the disputed land to the Appellant, He thus urges the Court to dismiss the Appeal and let him be declared a lawful owner of the disputed land which he has used and developed.

Rejoining, the Appellant's counsel felt compelled to notify the Court that the Respondent has not responded to the second ground of Appeal which means he has conceded to the second ground of Appeal, and urges the court to view this failure to respond as conceding to the said ground of Appeal.

He contends that the Respondent has misdirected himself for stating in his submission that, the Land Act Cap. 113 RE 2019 is not applicable to the village land which is the law governing the subject matter and this misconception was due to the Respondent's failure to harmonize the Land Acts especially sections 64 (1) (a) (b) of the Land Act Cap 113 RE 2019 read together with section 181 of the Land Act Cap 113 RE 2019 which requires contracts for disposition of land to be in writing as per section 31(1) of the Village land Act Cap 114 RE 2019.

For the ease of Reference section 181 of the Land Act Cap 113 RE 2019 Reads:

> *"On and after the commencement of this Act, notwithstanding any other Written law to the contrary, this Act shall apply to all land in Mainland Tanzania and any provisions of any other written law applicable to land which conflict, or are inconsistent with any of the provisions of this Act shall to the extent of that conflict or that inconsistency cease to be applicable to land or any matter connected with land in Mainland Tanzania."*

In that regard, he insists that the Land Act Cap 113 does apply to Village Land and therefore the requirement for written contract for the sale of Land and Approval by the village council are mandatory requirements that the Respondent didn't comply with.

He also insists firmly that the respondent is misconceived in thinking that the oral account/evidence is enough for a land disposition, and he distinguishes the precedents which are used to support his argument as not concerning land. He argues that the two cases, one cited by the honorable Trial Chairman - the Criminal case of ***Abbas Kondo Gede vs R, Criminal Appeal No. 472 of 2017 (Unreported)*** and the other one cited by the Respondent a labour case - ***Kioo Limited vs Marco Frank Mahinya, Labour Revision No. 36 of 2020;*** the Counsel is of the firm view that both these authorities are distinguishable and misplaced because the law is very clear that in Land matters, sale must be evidenced by writing. Similarly, holding that an oral account can prove a fact in a sale of land for the side of the Respondent, both the honorable Trial Chairman and the Respondent are misconceived because while they make insistence that the Appellant should produce a document - the village Assembly meeting minutes of 2004 to prove his allocation instead of the letter that he produced during trial, and admitted as P1. He also produced a witness who was the Village Chairman at that time who testified on the fact that the Appellant was allocated the disputed land. It is ill conceived and there are no reasons as to why this oral account supported by document was not believed by the Trial Chairman, while the other oral account which is against the law is so believed.

The Counsel further asserts that nowhere in the Land Act Cap 114 the account of the Respondent is supported that the allocation of more than

50 acres is contrary to the Village Land Act. In any case, the counsel puts it out that the Appellant was given 90 acres together with his family members meaning if the land is divided to two persons who are the appellant and his wife, each one will have 45 acres hence the issue of 50 acres if at all exist ends there.

In conclusion, the counsel urged the Court to declare the Appellant as lawful owner of the disputed land located at Porikwapori namba moja within Kimana Village in Kiteto district.

Having read the submissions from both parties, as well as having heard the concern by the Appellant's counsel on the personal attack mounted by the Respondent during the day when the matter came for scheduling of the judgment, I find it appropriate to address this issue of concern before I proceed to determine the Appeal on merits.

Court decorum requires that the parties would address each other with civility and politeness, as well as keep focused on the issues raised rather mounting personal attacks and character assassination. This holds true for the parties as well as the Court. Vexatiousness, frivolousness and harassment are both unethical and frown upon with disgust. Parties before a Court of Law are expected to avoid disruptive, undignified, discourteous, and abusive behavior. Therefore, the Court is strict, and this Court is no less strict, in prohibition against conduct intended to disrupt a proper decorum. That does not serve a legitimate goal of advocacy, of proof, or a requirement of a procedural rule; and includes angry outbursts, insults, slurs, personal attacks, and unfounded personal accusations as well as threats, bullying, and other attempts to intimidate or humiliate the

adjudicators, advocates, opposing counsel, litigants, witnesses, or court personnel. Zealous advocacy does not rely upon such tactics and is never a justification for such conduct. This Court discredits such conducts on strongest terms and frowns upon the contemptuous attitude adopted by the Respondent including the use of intemperate language and impertinence towards the counsel for the appellant throughout their encounter and his own written submissions. And in consequence, it shall desist to consider submissions that are made in that way in support of the Respondent's case.

Now amongst the issues that I think are the center of contention between the parties is the ownership of the disputed land. Both grounds of appeal hinges on this issue as they fault the hon Chairperson of the trial tribunal for failing to interpret correctly the Village Land Act Cap 114 RE 2019 and the Land Act Cap 113 RE 2019; as well as failing to analyze evidence that resulted to wrong conclusion. My proposition is to deal with both grounds of appeal in unison.

I am well aware this matter is before this Court for a third time, preceded by appeals that were before my sister Judge Maghimbi; and later on before my brother Judge Masara. Both the previous times, the appeal were disallowed for technical reasons of conducting the trial, where the Court had to invoke its revisional powers to redirect the course of evidence taking where documents annexed in pleadings were not tendered in evidence but relied upon in determining the outcome of the trial by the tribunal (Land Appeal No 34 of 2017); and retaking and admission of necessary pleaded document that was not tendered in evidence, and compose a fresh judgement by the trial tribunal after the judgment was found wanting (Land Appeal No 53 of 2018). In the final analysis, having

gone through the whole file, particularly the proceedings of the original trial tribunal and the addition retaking of evidence, as well as the judgment of the trial tribunal, none of those documents were eventually tendered as ordered by the Court to complete the evidence as directed or at all. In that regard therefore, it is my considered opinion that both parties herein do not have any other documents for tendering and admission despite being accorded extra opportunity so to do.

This observation is important because of the issue which I think is the controversy in this appeal; bringing to mind the issue of ownership between the contending parties. Pertinent to me is who has a better claim of title over the disputed land between the two contenders given the circumstances of the suit land and the submissions by both Appellant and Respondent. In my view both parties do not have any documentary evidence as intended by the law to witness ownership of the disputed land. Rather, both of them had only provided oral proof, on balance of probabilities, of the claim over the disputed land. This is in line with the justice of this matter as well as the legal position obtaining given the prevailing circumstances of the case at hand. I am of the considered view that the trial tribunal's finding was based on a misconceived view that parties had or ought to have documents (particularly because they were annexed in the pleadings), or that the evidence which would decisively settle the contest ought to have come from some written account regarding the facts of allocation of village land which is well away from the requirements of the Village Land Act Cap 114, that followed the procedural steps as enshrined in the law i.e. section 8 (5) of Cap 114. It is on this basis that I would agree with the Appellant's counsel that the holding of the trial tribunal in its decision that the Appellant was required

to tender the village general assembly minutes is stretched because even the Respondent claim of purchase of land which was previously allocated to Masingisa Lengoyai is not supported by those minutes of the Village assembly or any document at all.

On the basis of the cardinal principle that he who alleges must prove, as per section 110 and 115 of the Evidence Act Cap 6 RE 2019, I think that the Appellant has proven his case better than the Respondent. This view is supported by the Court of Appeal of Tanzania in **Paulina Samson Ndawavya vs Theresia Thomas Madaha, CAT-Civil Appeal No. 45 of 2017** (MWZ unreported), wherein the following excerpt was quoted approvingly from **Lord Denning in Re Miller vs Minister of Pensions [1937] 2 All ER 372,** "If at the end of the case the evidence turns the scale definitely one way or the other, the tribunal must decide accordingly, but if the evidence is so evenly balanced that the tribunal is unable to come to a determinate conclusion one way or the other, then the man must be given the benefit of the doubt. This means that the case must be decided in favour of the man unless the evidence against him reaches of the same degree of cogency as is required to discharge a burden in a civil case. That degree is well settled. It must carry reasonable degree of probability, but not so high as required in a criminal case. If the evidence is such that the tribunal can say - We think it is more probable than not, the burden is discharged, but, if the probabilities are equal, it is not ...."

My finding is based on the factual evidence as testified in the trial Tribunal and put on record. Both PW1 and PW2 narrated how the Appellant was allocated land in the year 2004. Even though PW2 spoke of documents being given to witness this allocation, none had been tendered despite

direction by the appellate court which directed retaking and tendering of evidence. In evidence, only exhibit P1 was tendered and admitted. What Exhibit P1 testifies to is allocation, but not as the original document that was issued or would be required under Village Land Act, Cap 114, but rather a letter testifying that the Appellant was allocated a piece of land, addressed to the District Land and Housing Tribunal for Kiteto, dated March 27, 2017. This is to say the persuasive relevance of the letter is to show that the Appellant is recognized as one person who had been allocated a particular piece of land at a particular time. This fact is also not disputed by any of the Respondents witnesses as the testimony of DW2, DW3 and DW4 corroborates this fact. DW2 respond on cross examination that while she did not witness the sale transaction of the Respondent, she was aware of the 2004 allocation, she acknowledges the fact that PW2 was actually the village chairman then, and that having previously been in the position of VEO for Kimana Village where the disputed land is located, she is not aware of any revocation of the allocated farm or the farm in dispute. DW3 while acknowledges to know that PW2 was the village chairman before himself, and that they too used to allocate farms before his tenure came forth; and that he has been the one allocating farms during 2007. He is forthcoming that they allocated 20 acres to Masingisa Longoyai, who later sold this farm to the Respondent. But he controverts the evidence of DW2 who stated she never witnessed the sale. He also states that he did not witness the sale but rather DW2 did. Further, it is evident on the typed proceedings (in compliance to the order of this Court in Land Appeal No 34 of 2017) that DW4 had a different acreage (30 instead of the 20 acres testified by the previous witnesses) of how much land was allocated to Masingisa

Longiyai, from whom the Respondent claims his title. I have also noticed that PW1 named the boarders of the farm in dispute as "South – one Kahaya; East - one Cheusi; North – one Musa Msomali; and West – the road to Tanga in clear identification of the suit land. Nowhere else are the boarders of the suit land being pronounced, and this information is not controverted.

On the other hand, while there is ample proof of the 2004 allocation, there is no proof whatsoever of any revocation of the said 2004 allocation. Even if, on presumption, that it could be orally proved through the evidence on record that the said allocation was actually revoked. Likewise, while the Respondent's witnesses spoke of allocation to Masingisa Longiyai, they all acknowledge that there was a previous allocation which was never revoked.

The Respondent thinks that the issue of revocation would only come to play if the land was properly allocated in the first place. He views Section 45 (1) (a) of the village Land Act Cap. 114 RE 2019 as providing for land considered to have been left idle for not less than five years, but he insists that this would only apply to village land which was properly allocated under section 8 of the Act and not in the situation of the premature allocation of the Appellant. I tend to disagree with this thinking for reasons I demonstrate herein on the basis of evidence on record. It is on evidence that the allocation by the village council to Masingisa Lengoyai is not proved by any documentary evidence, leave aside the sale to the Respondent. But the real issue is whether the second allocattee had a good title to pass on.

There is no gainsaying that a revocation of an allocated land under the Village Land has to follow a laid down procedure. In the case of **Abdi M. Kipoto vs Chief Arthur Mtoi, Civil Appeal No 75 of 2017, [2020] TZCA 26**, the Court of Appeal has guided the process of revocation of land under the Village Land Act Cap 114, RE 2019, particularly after a particular land is said to have been abandoned, Section 45 (4), (5), (6), (7), and (9). In its wisdom, the Court states ".... Our cursory look at the foregoing has it that as far as is relevant to the matter under scrutiny, may be summarized as follows: Land is abandoned if it is not used for five years since allocation, or rent, tax or dues have not been paid. If a village council considers land to have been abandoned, it publishes notice stating that adjudication regarding that land will be done by the Village Council and inviting persons interested to show cause why the land should not be declared as abandoned. If no person shows cause, the Village Council will make a provisional order of abandonment which will become final order on expiry of ninety (90) days if no person challenges it in Court. The effect is to render the Right of Occupancy over the land revoked after which it reverts to the village and becomes available for allocation to another person ordinarily resident in the village. In the case at hand, there was no evidence brought before the Ward Tribunal to show that the procedure under the provisions of section 45 of Cap. 114 was followed. Given the ailment, we are of the considered view that the allocation of the disputed land to the appellant was illegal: Therefore, no good title passed to him by the purported allocation."

The analysis by the apex Court of our land lands in all fours with the present situation in the matter at hand. There is a clear depiction that

Masingisa Lengoyai, from whom the Respondent's claim to title is derived, had no good title to pass to the Respondent. This is exacerbated by the fact that there was ample evidence at the District Land and Housing Tribunal as analyzed above, including the testimony of the Respondent witnesses DW2 and DW3, that the Appellant was allocated the land in dispute, and that the said allocation was never revoked, for it to be free to be reallocated to someone else.

Meanwhile, It is not disputed that the Respondent title is derived from Masingisa Lengoyai, whose allocation came after it is purported that there was a revocation of the land allocated to the Appellant; or reallocation of the land that was previously allocated to the Appellant; and from whom the respondent claims to have bought the disputed land. So while the Respondent disclaims the procedure to revoke the village land allocated; and confine it to only a land that would have been 'properly allocated', he takes cognizance of the same procedure of revocation, or re allocation to validate the second allocation to Masingisa Longiyai, from whom he claimed to have bought the land from. In law, the Respondent is estopped from denying the same fact that on another basis he is claiming advantage of.

I am of the firm view as backed by the Court of Appeal decision above that the Appellant's title is still a good title, and thus between the two contenders, the Appellant still has a good claim over the title of the disputed land. I am inclined to agree with the Counsel for the Appellant, for reasons explained above.

On the final analysis, I allow the appeal. The Appellant is also entitled to his costs.

It is so ordered.

Dated at **Arusha** this **03rd** day of **March 2023**

A. Z. Bade
Judge
03/03/2023

Judgment delivered in the present of parties / their representatives on **03rd** day of **March 2023**

A. Z. Bade
Judge
03/03/2023