

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB REGISTRY OF KIGOMA  
AT KIGOMA**

**APPELLATE JURISDICTION**

**MISC. LAND APPEAL NO. 33 OF 2022**

(Arising from Land Appeal No. 55 of 2021 in the DLHT at Kigoma Before Hon. Chinuku  
Chairperson, Originating from Nyansha Ward Tribunal in Land Case No. 29/2020)

**HEZA KARUGWE.....APPELLANT**

**VERSUS**

**MUSA HAGAYO MNUGWE.....RESPONDENT**

Date of Last Order: 07/02/2023

Date of Judgement: 24/03/2023

**JUDGMENT**

**MAGOIGA, J.**

The respondent **MUSA HAGAYO MNUGWE** sued the appellant **HEZA KARUGWE** at Nyansha Ward Tribunal for the claim over a piece of land located at Ngala in Nyansha -Kasulu. The trial Tribunal ruled in favour of the respondent.

Aggrieved by the decision of the trial Tribunal, the appellant unsuccessfully appealed to the District Land and Housing Tribunal which upheld the trial Tribunal's decision. Still aggrieved, the Appellant has appealed to this court armed with six grounds of appeal, namely:-

- 1. That the District Land and Housing Tribunal erred in law and facts for failing to direct itself that formerly the appellant was dissatisfied with the evidence adduced in the trial tribunal of Nyansha, that's why the*



*appellant appealed to the District Land and Housing Tribunal contesting the Witness who testified for the respondent while the appellant was absent on the material date. The said witness testified with evil-ill knowing that he was not in good terms with the appellant.*

*2. That the District Land and Housing Tribunal erred in law and facts for failing to put in mind that the appellant has been using the disputed property since 1968 without any encumbrances from any person, hence, the respondent cannot deprive the appellant the said property without any ground.*

*3. That the District Land and Housing Tribunal erred in law and facts by failing to consider the contention of the appellant to wit; the Tribunal has failed to visit the Locus in quo but gave its judgement theoretically in the whole proceedings of the trial tribunal there is nowhere in the records where it shows that the trial tribunal visited the locus in quo it would have ascertained itself as to whether the parties are contesting in the boundaries or are contesting on the whole of the suit property.*

*4. That the District Land and Housing Tribunal erred in law and facts by failing to identify the uncertainties found in the trial tribunal. This is because in the trial tribunal the dispute was filed on the 29/11/2021 and started to be determined but the judgment was delivered on the*



*12/11/2021. This leaves much to be desired and it seems the judgment was delivered before the hearing.*

- 5. That, the District Land and Housing Tribunal erred in law and fact by failing to determine that that the trial Tribunal erred by hearing the matter on merits instead of making mediation and reconciliation between the parties as require by the law.*
- 6. That the appellate tribunal erred in law and fact by failing to determine that the whole judgement of the trial tribunal was tainted with irregularities.*

At the hearing of this appeal, both the appellant and respondent were present and unrepresented.

The appellant had nothing to submit other than asking this court to consider his grounds of appeal on the record and allow the appeal. On the other hand, the respondent too invited this court to disallow the appeal with costs claiming that the two lower Tribunals were correct in their decision because the appellant absented himself from proceedings after testifying. He submitted further that, the appellant had himself to blame. He prayed this court to let his reply to the petition be considered.





For the purpose of proper understanding of this appeal, I will also reproduce the reply which is to be taken as the submission on the part of the respondent as hereunder stated;

- 1. The contents under paragraph 1 and 2 of petition of appeal are strongly disputed. Further, it is stated that the trial tribunal without any bias directed itself to both evidences adduced by both parties whereby the respondent's evidence seem to have weight enough, hence this validates the judgment delivered by the trial Ward Tribunal.*
- 2. The contents under paragraph 3 of the petition of appeal are vehemently disputed as the trial Ward Tribunal visited the locus in quo differently to what contented by the appellant otherwise the appellant is put under strict proof thereof.*
- 3. That the contents under paragraph 4 of petition of appeal are vehemently disputed and what contented by the appellant is just to mislead this honourable court as is clearly indicated in the copy of the judgment delivered in the Trial Ward Tribunal that the matter filed on 24<sup>th</sup> November 2020 and heard on 29<sup>th</sup> December 2020 and the judgment delivered on 16<sup>th</sup> February 2021.*
- 4. That, the contents under paragraph 5 and 6 of the petition of appeal are vehemently disputed otherwise the appellant is put under strict proof thereof.*

Having carefully gone through the grounds and reply of appeal and also the short submission for and against the appeal, and after going through



the evidence on record in the trial proceedings, I find the central issue for determination of this matter is whether the appeal has merit or not.

Starting with the first ground that, the District Land and Housing Tribunal erred in law and facts for failing to direct itself that formerly the appellant was dissatisfied with the evidence adduced in the trial tribunal of Nyansha, that's why the appellant appealed to the District Land and Housing Tribunal contesting the witness who testified for the respondent while the appellant was absent on the material date. The said witness testified with evil-ill knowing that he was not in good terms with the appellant.

Having considered the merits of the first ground and having had sufficient time to peruse the trial Tribunal's record, I observed and noted that, the appellant attended the case on 29/12/2020 and testified and the matter was rescheduled for further hearing on 26/01/2021 but he did not show up and no reason whatsoever was given why the appellant did not attend the trial Tribunal on the next hearing date. Therefore, a party who deliberately absented from court proceedings, cannot be heard complaining that the said witness PW3 testified with ill-will and were not in good terms. His failure to attend and cross examine the said witness is for himself to blame.





Not only that but also it should as well be noted that, the issue of testimony of the alleged witness was not among the grounds of appeal in the DLHT and the appellate Tribunal never made any finding on this point.

On that note, I find the first ground of appeal with no merits and is hereby dismissed.

As to ground number two that the appellant had been in occupation of the disputed premise since 1968 but admittedly the record of the trial tribunal proceedings is clear the respondent moved to the disputed land in 1973, then, the appellant cannot now raise up to disturb a person who has been in occupation of the land since 1973 to 2021 which is more than 48 years. The appellant, if truly was in the suit premise in 1968, then, when the respondent invaded or came in 1973, then, one would expect him to take action, which he never took, and thus, the doctrine of adverse possession is against him and not the respondent.

On that note, ground number two in this appeal is equally found without any iota of evidence to warrant this court fault the two concurrent findings of the Tribunals below. This ground is equally dismissed.

As to ground number three after going through the record, this ground too is without any merits. Much as the appellant absented himself from the proceedings and much as he was invited to attend but failed, it is unheard



to complain that the trial Tribunal failed to follow the strict procedure of visiting the locus in quo. This ground too has to fail and is hereby dismissed.

This takes this court to ground number four that the dispute was filed on 29/11/2021 and the judgement was delivered on 12/11/2021. This ground too is without any merits. I have gone through the trial Tribunal proceedings and have observed that the dispute was filed on 24.11.2020 and judgement was delivered on 26.02. 2021. This makes this ground wholly unmerited and is dismissed for want of merits as no uncertainty are proved as alleged.

This trickles this court to ground number five which complaint is failure of the trial Tribunal to conduct mediation. I have carefully considered this ground but I find out that same was raised out of context because it was not an issue before the 1<sup>st</sup> appellate Tribunal and as such this Court cannot entertain it at this stage of the appeal. More so, under section 16 of [Cap 216 R.E 2019] the powers of the trial Tribunal is not limited to mediation but can go hearing landed dispute on merits as it did in this appeal. Hence this ground too has to fail and is hereby dismissed.

The last ground was that the whole judgement was tainted with irregularities. Have careful considered this point and found that this point is as well with no irregularities because no single irregularity was pointed



by the appellant. On that note, this ground too has to fail and is equally dismissed.

That said and done, the whole appeal is dismissed for want of merits and the two concurrent findings of the lower Tribunal are confirmed and the respondent is the lawful owner of the disputed land. The appeal is, thus, dismissed with costs.

It is so ordered.

Dated at Kigoma this 24<sup>th</sup> day of March, 2023.



  
**S. M. MAGOIGA**

**JUDGE**

**24/03/2023**