

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB- REGISTRY)  
AT MWANZA**

**LAND APPEAL No. 89 OF 2022**

*(Originating from the decision of Kagunguli Ward Tribunal in Land case No. 06 of 2021 and the District Land and Housing Tribunal for Ukerewe at Nansio in Land Appeal No. 21 of 2021)*

**ELIAS DEUS----- APPELLANT**

**VERSUS**

**MATEKELE MAUNDE ----- RESPONDENT**

**JUDGMENT**

*Last Order date: 30.03.2023*

*Ruling Date: 19.04.2023*

**M. MNYUKWA, J.**

The Appellant ELIAS DEUS appealed against the decision of the District Land and Housing Tribunal (DLHT) of Ukerewe at Nansio in Land Appeal No 21 of 2021 which was held in favour of the respondent. In the record, it goes that, the parties had their dispute before Kagunguli Ward Tribunal in Land Application No. 06 of 2021 which was decided in favour of the respondent in this appeal on 04.06.2021. Dissatisfied, the appellant in this appeal, approached the DLHT for Ukerewe at Nansio and filed Land Appeal No. 21 of 2021 against the decision of Kagunguli Ward Tribunal in

Land Application No. 06 of 2021. The DLHT determined the matter and decided in favour of the respondent in this appeal. Dissatisfied, the appellant filed this instant appeal with 8 grounds of appeal thus:-

- I. That the DLHT erred in law in deciding in favour of the respondent for failure to identify that the disputed land is allocated at Murutunguru ward while the dispute was determined by Kagunguli ward tribunal instead of Murutunguru Ward Tribunal.*
- II. That the DLHT erred in law for holding that the appellant had no locus stand while the land belongs to the appellant and not to my father, Deus Kaligo as claimed based on the contract of sale.*
- III. That the chairman of the DLHT erred in law in deciding in favour of the respondent for failure to distinguish his evidence and refusing to admit documents which led to a contradictory judgment. Annexure K-1.*
- IV. That the DLHT misdirected itself in law and in fact onto the evidence adduced before the tribunal concerning to the status of the avocado and a mango trees. Annexure K-2.*
- V. That the DLHT misdirected itself in law and in fact onto the evidence adduced before the tribunal concerning to the status of the toilet built on the disputed plot. Annexure K3.*
- VI. That the chairman of the DLHT erred in law and in fact in deciding in favour of the respondent while the*



*appellant is the owner of the disputed land and his relatives and family will suffer both psychological and financial if compensation is not paid as they depend solely on the disputed land.*

- VII. That the DLHT misdirected itself in law and in fact for failure to consider the evidence adduced before the tribunal and that the chairman recorded different versions of evidence in order to please the respondent.*
- VIII. That the DLHT erred in law and in fact for delivering judgment in favour of the respondent and denied the appellant the right to be heard.*

The matter proceeded by way of oral submissions whereas both parties appeared in person unrepresented.

The appellant was the first to submit whereas he prays the court to adopt his petition of appeal and form part of his submissions. He went on that he was not satisfied by the decision of the DLHT for he is the lawful owner of the disputed land after he purchased the same from one Wiliam Kazinza Nangala. He went on that the respondent built a toilet and planted trees on his plot and there were contradictions in the documents tendered by the respondent. He went on to aver that the disputed land is situated at Murutunguru and the respondent resides at Kagunguri. He, therefore, prays the appeal to be allowed and the decision of DLHT to be set aside.



Responding, the respondent prays the court to adopt his reply to the petition of appeal and form part of his submissions.

He went on to submit that, the disputed land was purchased by the appellant's father who had a dispute over the boundaries in 2006 and the respondent won the case. He went on that it was the dispute over the dispute of village boundaries between Kagunguli and Murutunguru which is the source of the dispute. He went on that the boundaries were set by the vilage land council of Kagunguri in 2006 and in 2021 the appellant started the dispute. He prays the appeal to be dismissed.

Rejoining briefly, the appellant insisted that the dispute is not on the boundaries but rather on the piece of land.

After going to the appellant's grounds of appeal and considering the submissions from both parties, I observed that the 2<sup>nd</sup> ,4<sup>th</sup> and 5<sup>th</sup> grounds of appeal raised the same concern. So, they will be determined together and the 3<sup>rd</sup> , 6<sup>th</sup> , 7<sup>th</sup> and 8<sup>th</sup> grounds will also be determined together for they are intertwined.

I am aware that, this is the second appeal in which the two courts below had concurrent findings and as the principle of law requires, I will only disturb the concurrent findings of the two lower courts if there is a misapprehension of evidence, violation of principles of laws or procedure,



or the findings has occasioned a miscarriage of justice. This principle was also enlightened in the case of **North Mara Gold Mining Limited vs Emmanuel Mwita Magesa**, Civil Appeal No. 271 of 2019 CAT at Mwanza, in which the Court of Appeal cited with authority the case of **Neli Manase Foya vs Damian Mlinga** [2005] TLR 167 had this to say;

*".. it has often been stated that a second appellate court should be reluctant to interfere with a finding of fact by a trial court, more so where a first appellate court has concurred with such a finding of fact..."*

Turning now to the appeal at hand, on the first ground of appeal, the appellant claims that the trial ward tribunal had no jurisdiction to entertain the dispute for the reason that the disputed land is situated at Murutunguru ward while the dispute was determined by Kagunguli ward tribunal instead of Mturunguru Ward Tribunal. This ground was not raised in the 1<sup>st</sup> appellate court but being the issue of jurisdiction, the law is well settled that the question of jurisdiction may be canvassed at any stage even on appeal stage either by the parties or *suo motu* by the court since it goes to the substance of a matter as held in the case of **Mwananchi Communications Limited & 2 Others vs Joshua K. Kajula & 2 Others** Civil Appeal No. 126/01 of 2016 referred with authority the case



of **Tanzania Revenue Authority vs Tango Transport Company Ltd,**

Civil Appeal No. 84 of 2009 and in the last case, the Court stated: -

*"Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests".*

See also **Michael Leseni Kweka vs John Eliafe,** Civil Appeal No. 51 of 1997.

In this instant appeal, the appellant claims that the trial Kagunguli ward tribunal of Kagunguli had no jurisdiction to entertain the matter instead it was to be determined by Mturunguru Ward Tribunal. Going to the records, the dispute had its roots way back in 2006 when it was reported in village land council of Kagunguli where they visited the disputed land and decide on the matter. Later in 2021 when the dispute arose again, the appellant went to report the matter to Kagunguli Village and the village executive officer went to the disputed land with the appellant and mediate the parties. As it appears on records, all the disputes were referred to Kagunguli village authorities where the ward tribunal is situated and therefore the appellant can not claim that the tribunal has no jurisdiction. It is therefore that I find this ground with no merit.

On the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> grounds of appeal the appellant raised the concern on the analysis of the evidence on record. The appellant claims

that the trial tribunal erred in holding in favor of the respondent while there was contradictory evidence. As in records, in the trial ward tribunal parties properly prosecuted their case and the evidence reveals that the land in dispute belongs to one Deus Kaligo and the appellant was his son. In his petition of appeal, the appellant annexed annexures K1, K2 and K3 but going through, they are new evidence which can not be entertained by this court at this stage. See **Ismail Rashid Appellant vs Mariam Msati** Civil Appeal No. 75 Of 2015. It is my firm view that, the evidence on the record proved that the disputed area belonged to the respondent as it was correctly held by the two courts below.

On the 3<sup>rd</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> grounds, the appellant alleges that the trial tribunal and the DLHT misdirected by holding in favour of the respondent. Going through the trial tribunal records, I observed that the trial ward tribunal tried the dispute and parties were allowed to adduce their evidence and they all brought their witnesses. It has to be noted that, it is a settled principle of law that court records are deemed authentic and cannot be easily impeached. In the case of **Hellena Adam Elisha @ Hellen Silas Masui vs Yahaya Shabani & Another**, Civil Application No. 118/01 Of 2019 referred to the case of **Halfani Sudi v. Abieza Chichili** [1998] TLR 527 it was held that:-



*"(i) A court record is a serious document. It should not be lightly impeached.*

*(ii) There is always a presumption that a court record accurately represents what happened."*

In this matter, the judgment of the trial ward tribunal is a result of the proceedings and there is no indication in the judgment that the ward tribunal did not consider the evidence of the appellant so as to favour the respondent as he claims. As it stands in **Godfrey Sayi v. Anna Siame as Legal Representative of the late Mary Mndolwa**, Civil Appeal No. 114 of 2012 (unreported) we said: -

*"It is similarly common knowledge that in civil proceedings, the party with legal burden also bears the evidential burden and the standard in each case is on a balance of probabilities."*

Again, upon revisiting the court's records, I find that the appellant was given a right to be heard, right to cross-examine the witnesses of the opponent party and the right to call witness. I did not find any point where the right to be heard was curtailed to the appellant. So, the complaint by the appellant that he was not given a right to be heard is baseless.

Finally, it is my finding that the trial tribunal exercised its duty in the evaluation of the evidence presented before it and rightly give its





judgment. As stated in **Helmina Nyoni vs Yerenia Magoti**, Civil appeal No. 61 of 2020, **North Mara Gold Mining Ltd vs Emanuel Mwita Magesa**, Civil Appeal No. 271 of 2019. This being a second appellate court, it is a settled position that this court can not interfere with the findings of facts of the lower courts based on the assumption that the finding of facts by courts below was based on correct appreciation of evidence on record.

Based on the principle stated above, I see no reason to fault the decision of the lower courts below. consequently, the appeal is dismissed with no order as to costs.

It is so ordered.



  
**M. MNYUKWA**  
**JUDGE**  
**19/04/2023**

Court: The right of appeal explained to the parties.

  
**M. MNYUKWA**  
**JUDGE**  
**19/04/2023**

Court: Judgment delivered on 19/04/2023 in the presence of both parties.

  
**M. MNYUKWA**  
**JUDGE**  
**19/04/2023**