

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA**

AT ARUSHA

LAND APPEAL NO. 48 OF 2022

(Originating from the District Land and Housing Tribunal for Ngorongoro at Loliondo
in Land Application No. 13 of 2019)

BETWEEN

ERNEST NDIBEI MUGWERO.....APPELLANT

VERSUS

NANGUTITI PUMBUNI.....RESPONDENT

EX-PARTE JUDGMENT

03/04/2023 & 27/04/2023

MWASEBA, J.

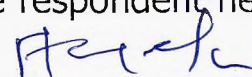
The appellant herein, being aggrieved by the whole decision of the District Land and Housing Tribunal of Ngorongoro District at Loliondo, appealed to this court armed with the following grounds:

- 1. That the Hon. trial Chairman manifestly erred in law and fact by failure to determine the issue number one as was framed*
- 2. That the Hon. Chairman manifestly erred in Law and fact by failure to evaluate the evidence as testified and tendered before the Honourable Trial Tribunal.*



3. *That the Hon. Chairman erred in law and fact by failure to evaluate the evidence as testified and tendered before the Honorable trial tribunal.*
4. *That the Hon. Chairman erred in law and fact for failure to properly interpret the laws governing trial of land disputes in Land Disputes Courts.*
5. *That the Hon. Trial Chairman erred in law and fact by failing to record the evidence of the applicant's witness during testimony and tendering of documentary evidence before a trial tribunal;*
6. *That Honorable trial Chairman erred in law and in fact by failing to comply with the requisite Legal Requirements in hearing Land Application No. 13 of 2019.*

Briefly, the appellant herein filed an Application at the DLHT of Ngorongoro at Loliondo claiming that the respondent invaded his farm and cultivates crops therein claiming that the disputed farm belonged to him. On his side, the respondent alleged that he was allocated the disputed land with Naan Village, in 2013 which was 4 ½ acres and that the appellant is coming from another village, not their village thus, he has no right with the disputed land. Having heard both parties, the DLHT decided that the disputed land belong to the respondent herein as

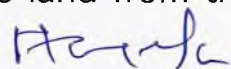


he was having the legal documents that he was allocated the disputed land with Naan Village. The said decision aggrieved the appellant who is now before this court challenging the same.

At the hearing of this appeal, the appellant was represented by Mr. Eliakimu Sikawa, learned counsel. The matter proceeded ex-parte against the respondent as he never entered an appearance before the court despite being served several times as evidenced by an affidavit of the process server Mr. Zakaria Melaiya.

Starting with the 1st ground of appeal, Mr. Eliakimu Sikawa submitted that the trial court failed to determine the 1st issue raised before the beginning of the hearing of the application. He argued further that the said failure occasioned a gross breach on the part of the appellant. He supported his argument with the case of **John William Maeda vs Yono Auction Mart & Co. Ltd**, Civil Appeal No. 76 of 2020(HC-Unreported) where the court insisted on the importance of determining all the issues framed and agreed upon by the parties.

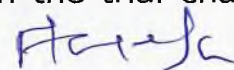
Coming to the 2nd and 3rd grounds of appeal, counsel for the appellant complained that the trial tribunal failed to properly evaluate the evidence of the appellant. It was his further submission that the appellant brought two witnesses who witnessed the allocation of his land from the village



authority. Their evidence did not need documentary evidence to prove the case. He argued further that, the argument by the respondent that he was allocated the disputed land by the Village Hamlet is contrary to **Section 8 of the Village Land Act**, Cap. 114 R.E 2019. Thus, it was not right for the DLHT to rely on that evidence.

It was his further submission that, regarding the contradiction in the year between 2003 and 2007 the same was not supposed to be taken on board as the remaining evidence did support the appellant's claim on the balance of probabilities. Further to that the DLHT is not supposed to be strict in its procedures but rather be smooth particularly when the parties appeared in person without representation. He supported his argument with **Regulation 10 (1) (2) and (3) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations** of 2003, GN No. 174 f 27/06/2003. He submitted that the said provisions allowed the DLHT to receive documents that were not annexed to the pleadings without necessarily following the practice and procedures under the Civil Procedure Code and The Evidence Act.

Coming to the 4th and 5th grounds of appeal, the learned counsel for the appellant complained that the testimonies of the appellant's witnesses were not properly recorded. He added that even the trial chairman did



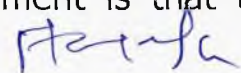
not record the reasons for not admitting the appellant's documents (Minutes of a Village meetings to allocate the applicant/appellant herein the said disputed land).

Mr. Sikawa submitted further that the act of the trial Chairman to disregard the documents of the appellant based on a technicality was a breach of procedural law. His argument was cemented with the case of **Joseph Kereto vs Njachai Maripet and Others**, Misc. Land Appeal No. 23 of 2020 (HC-reported at Tanzlii).

Lastly, they prayed for the decision of Loliondo DLHT to be quashed and set aside and the respondent to be evicted from the suit land and if the appeal fails the appellant will suffer erroneous loss.

Having carefully considered the arguments advanced by the counsel for the appellant and after having examined the record of appeal, the main issue to be considered by this court in this appeal is on evaluation of evidence before the trial tribunal and whether the appellant presented a strong case before the trial tribunal.

Starting with the first ground of appeal, the appellant complained that the trial tribunal failed to determine issue No. 1 as framed. Supporting this ground of appeal, the counsel's main argument is that the trial



tribunal did not deal with the first issue of *who is the lawful owner of the suit land between the parties.*

Perhaps I should revisit the proceedings of the trial tribunal particularly the judgment to ascertain if the allegation were true. On page 5 of the typed judgment, it was written that:

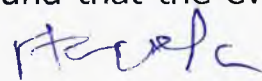
"Kwa hatua hiyo kiini cha kwanza kinajibiwa kuwa mdai ambae ana jukumu la kudhibitisha Madai yake kwa mizani ya uwiano ameshindwa kuthibitisha umiliki wake kama ilivyo amuliwa katika kesi ya Lamshore and J.S Kinyanjui vs Bazanje KUD (1999) T.L.R 330 ambapo Makama ilisema:-

He who alleges has a duty to prove it

Kulingana na kesi tajwa hapo juu Mdai aliyedai kuwa ardhi hiyo ni mali yake ameshindwa kudhibitisha madai ya umiliki wake."

The cited paragraph and the rest of the judgment proved that the first issue was considered by the trial tribunal contrary to the allegation of the appellant herein. Thus, the first ground of appeal has no merit.

Coming to the 2nd and 4th grounds of appeal, the appellant complained that the evidence was not properly evaluated and that the evidence of his witness was not properly recorded.



It is worth noting that this being the first appellate court it is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to critical scrutiny. See the case of **Makubi Dogani vs. Ngodongo Maganga**, Civil Appeal No. 78 of 2019 (CAT - Unreported).

However, after revisiting the records of the trial tribunal, I am of the firm view that the evidence was well evaluated, and the evidence of both parties was considered before the tribunal reaching to its final decision. As for the issue of evidence of the appellant's witness not being properly recorded, the counsel for the appellant did not submit to this court what evidence was not recorded. Thus, rendered his lamentation as mere words which do not hold any legal weight. So, these grounds too failed.

As for the 3rd ground of appeal, the counsel for the appellant complained that the trial tribunal failed to interpret laws governing trials in Land Disputes Courts. In his submission, He submitted that the trial tribunal failed to interpret **Regulations 10 (1), (2) ad (3) of the Lands Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** (GN 174 of 27/06/2003) which allows the receiving of documents which were not annexed to the proceedings contrary to the Civil procedure Code and the Evidence Act.

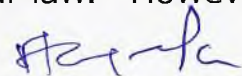
Having revisited the records of the trial court this court noted that when the appellant was cross-examined by the respondent and one of the Assessors Mr Rubunga, he stated as follows:

"I have the minutes of the Village Council for the re-allocation of the land for me in 2007."

It is a settled position of the law that whenever it is intended to introduce any document in evidence, it should first be cleared for admission, and be actually admitted in evidence before it can be relied upon to determine the issues before the tribunal.

In our case, the appellant did not pray to tender the same so that it could be received and admitted as an exhibit. Thus, the said document could not be relied upon by the tribunal in its reasoning to resolve the matter before it. For that reason, this court finds no merit on this ground.

Coming to the last ground of appeal, the learned counsel for the appellant submitted that, the trial court erred in law and fact by failing to comply with the requisite Legal Requirements in hearing Land Application No. 13 of 2019. In his submission, counsel for the appellant argued that failure to record the reasons for not admitting their document as an exhibit was a breach of procedural law. However as



clearly submitted on the 3rd ground of appeal, there is nowhere in the record that the appellant prayed for his document to be received as evidence. Thus, the argument that the same was rejected without any reason is baseless and cannot carry any legal weight.

For the fore stated reasons, this court is of the firm view that there is no need to disturb the findings of the trial tribunal as it decided the matter based on the framed issues and the evidence submitted by both parties as the record speaks by itself.

In the event, this appeal lacks merit, it is hereby dismissed with costs.

It is so ordered.

DATED at ARUSHA this 27th day of April 2023



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba", is written over the printed name.

N.R MWASEBA

JUDGE