

**THE UNITED REPUBLIC OF TANZANIA**

**JUDICIARY**

**IN THE HIGH COURT OF TANZANIA**

**(IRINGA SUB-REGISTRY)**

**AT IRINGA**

**MISC. LAND APPEAL NO. 13 OF 2022**

**MALTIN KIVAMBA ..... APPELLANT**

**VERSUS**

**RASHID MLANGWA ..... RESPONDENT**

**(Being an appeal from the Judgment and Decree of the District Land and Housing  
Tribunal for Iringa District at Iringa)**

**(Hon. A.J. Majengo (Chairperson))**

**Dated the 01<sup>st</sup> day of April, 2022**

**in**

**Land Appeal No. 72 of 2020**

**\*\*\*\*\***

**JUDGMENT**

**Date of last order: 27.04.2023**

**Date of Judgement: 02.06.2023**

**S.M. KALUNDE, J.:**

This is a second appeal. The appellant, MALTIN KIVAMBA, is appealing against the Judgment and Decree of the District Land and Housing Tribunal for Iringa sitting at Iringa (hereinafter referred to as "the DLHT") dated 01.04.2022 in Land Appeal No. 72 of 2020.

The background facts of the matter were briefly that, in 2020, before the Ukumbi Ward Tribunal (hereafter referred to as "the trial tribunal") the respondent filed Land Case No. 13 of 2020 against the appellant. The suit before the trial tribunal concerned a piece of land

measuring 5 acres located at Ukumbi Village, Kilolo District in Iringa Region (hereafter referred to as "the suit property"). The respondent contended that he purchased the suit property from the appellant at the purchase price of Tshs. 500,000.00. He alleged that upon conclusion of the transaction beacons were set to demarcate the boundaries of the farm. Thereafter, he proceeded to plant trees on one part of the farm and he left open the remaining part. However, sometimes in 2020 he noticed that the appellant had invaded the area where he had not planted trees. In addition to that, the appellant stated that the respondent informed him to vacate the farm upon harvesting the said trees. The respondent complained to the appellants family. The two parties were involved in a wrangle for resetting the beacons. The responded opted to institute the suit before the trial tribunal.

The respondent had three witnesses. **Emmanuel Kivamba (SM1)** testified that; the appellant borrowed Tshs. 500,000.00 from the "Kikundi" he failed to repay the money. The matter was reported to the Ward Executive Officer (WEO). The WOE summoned the appellant and informed him about his default. He was held at WEO's office and his relatives including SM1 were notified. SM1 communicated with other family members including **Biatusi Kivamba (SM2)**, Desera Kivamba and Wania Kivamba with a view to raise the amount claimed. The appellants relatives mobilized themselves to raise the money. However, they were unsuccessful to raise the money within themselves. They approached the respondent who offered to give them the required amount of money. In return he was to be offered with a piece of land measuring 5 acres. The money was paid to the family and handed to the "WEO" where the appellant had borrowed. The appellant was released.

Thereafter, SM1, SM2, **Damian Mponzi (SM3)**, the appellant and respondent himself proceeded to the handover the suit property to the respondent. SM1 testified further that, sometimes in April, 2020 the respondent approached him complaining that the appellant had invaded into his farm. When he visited the farm he noticed that it was true that the appellant had encroached into the respondent's farm.

SM2 confirmed what SM1 stated. His version was that, when the appellant was put under arrest for failing to repay the loan. He requested the family members to lease his part of his farm. No one was ready to lease the said farm. He stated that, the respondent offered to issue the money on agreement that the farm would be sold to him. The appellant agreed. The money was paid and the appellant was released. The next day they went to the farm where they handed the respondent a plot measuring 5 acres. The handover of the farm was also witnessed by SM3. Who also testified that the respondent was handed a farm measuring 5 acres.

In his testimony, the appellant, **Maltin Kivamba (SU1)**, conceded that in 2012 he borrowed Tshs. 500,000.00 from the respondent. He added that when the respondent asked about the repayment schedule and interest on the loan he told him he could not pay the amount all at once. Instead, he proposed to allow the respondent to cultivate on part of his farm until the time when he could mobilize the said amount. He gave him 5 acres, where the respondent planted pine trees on one part and left the other for cultivation of other food crops. He stated his dispute with the respondent related to borrowing Tshs. 500,000.00 and not selling of the suit property.

The trial tribunal was satisfied that the appellant borrowed Tshs. 500,000.00 from the "SACCOS" and failed to repay the said amount. The tribunal was also satisfied that the appellant directed his relatives to collect the money the respondent and that he consented to the hand 5 acres to the respondent. The tribunal declared the respondent to be the lawful owner of the suit property. In addition to that, the appellant was ordered to pay the respondent Tshs. 175,000.00 as compensation. He respondent was also ordered to pay Tshs. 50,000.00 in fines.

Aggrieved by the decision of the trial tribunal, the appellant appealed to the District Land and Housing Tribunal for Iringa sitting at Iringa ("the DLHT"). The appeal at the DLHT was predicated on three (3) grounds of appeal as follows:

1. That, the Ward Tribunal erred in both law and facts by trying the matter which is not within its pecuniary jurisdiction;
2. That, the Ward Tribunal erred in both facts and law by deciding the matter in favour of the respondent who failed to substantiate how he acquired suit premise; and
3. That, the trial tribunal erred in law and fact by not considering the testimonial evidence of the parties to suit that, disputed premise was not on the 5 acres but on the garden area (vinyungu).

The appeal at the DLHT was unsuccessful. The appellate tribunal resolved that the trial tribunal had the requisite jurisdiction to hear the matter. Having resolved that the trial tribunal had jurisdiction, the DLHT was further content that the respondent had established that he purchased the suit property from the appellant. The appellant's grounds of appeal were found to be devoid of merits. Subsequently, the appeal was dismissed with costs.

The decision of the DLHT further aggrieved the appellant hence the present appeal. The petition of appeal initiating the present appeal contains three grounds of appeal as outlined hereunder:

1. That, the Honourable Appellate Tribunal erred both in law and fact by upholding the decision of the Trial Tribunal and deciding in favour of the Respondent knowingly exactly that the Respondent before the Trial Tribunal did not prove his case on balance of probability.
2. That, the Honourable Appellate Tribunal erred both in law and fact by upholding the decision of the Trial Tribunal and deciding in favour of the Respondent having in contemplation that the Trial Tribunal Decision is full of Illegalities and Irregularities.
3. That, the Honourable Appellate Tribunal erred both in law and fact by holding that there was no Rejoinder filed by the Appellant knowingly exactly that the same was filed on 21<sup>st</sup> day of September, 2021 with a receipt bearing Control No. 991174721038.

In view of the above grounds of appeal, the appellant fronted the following prayers: one, that, the proceedings, judgment and orders of the trial tribunal and DLHT be nullified and the appeal be allowed in its entirety; two, that the court be pleased to order a retrial; and three, any other relief(s) as the court may deem fit, just and equitable to grant.

All parties enjoyed legal representation from advocates. The appellant enjoyed the services of learned counsel MR. LEONARD LAZARO SWEKE appeared for the appellant whilst MR. LAZARO HUKUMU, learned counsel appeared for the respondent.

At the very outset Mr. Sweke intimated that he was abandoning the third ground of appeal. Submitting in support of the first ground of

appeal, Mr. Sweke pointed out that the DLHT when it joined hands with the learned chairperson of the trial tribunal in ruling that the respondent proved the case beyond reasonable doubt. In amplifying his point, the learned counsel raised two issues; **first**, that the respondent failed to prove the exact size of the suit property. In further clarifying his point, the learned counsel argued that the respondent failed to prove that the 200 paces in length and 110 paces in width were equivalent to 5 acres. Relying on the above argument, the learned counsel was of the view that, the respondent failed to establish his case on the balance of probabilities. To support his argument, he cited the case of **Barelia Karangirangi vs Asteria Nyalambwa** (Civil Appeal No. 237 of 2015) [2019] TZCA 51 (1 April 2019) where the Court of Appeal relied in the words case of Lord Hoffman in the case of **In Re B** [2008] UKHL 35, where he defined the term balance of probabilities. The **second** issue was that, there were inconsistencies between the respondent and his witnesses. The pointed out inconsistencies were; the manner in which the suit property was handed to the appellant; and whether or not there was a written agreement. The learned counsel considered the above inconsistencies to be going to the root of the matter sufficient to nullify the decision of the two lower courts. To support his argument, he cited the case of **Mohamed Said Matula vs. Republic** [1995] TLR 3.

In ground two of the appeal, Mr. Sweke observed that there were two illegalities and irregularities in the decision of the trial tribunal that were not adequately addressed by the DLHT. The first illegality was that the DLHT failed to acknowledge that, under section 10(2) of **the Land Disputes Courts Act [Cap. 216 R.E. 2019]** (henceforth "the LDCA"), the trial tribunal had no power to impose Tshs. 175,000.00 as

compensation and Tshs. 50,000.00 in fines. In view of the above pointed irregularity, the learned recommended that the proceedings and decision of the trial tribunal be declared a nullity. To buttress his argument, the counsel cited the case of **Melisho Sindiko vs. Julius Kaaya** [1977] LRT 18 and **William Rajabu Mallya and Two Others vs. Republic** [1991 TLR 83] TLR 83.

The second illegality fronted by Mr. Sweke was that, the trial tribunal was not properly constituted in contravention of section 4(5) of **the Ward Tribunals Act [Cap. 206 R.E. 2002]** and section 11 of the LDCA. On this, the learned counsel argued that on several occasions the coram and gender of tribunal members were not indicated. In conclusion, the learned counsel prayed that the court re-evaluate the findings of the trial tribunal and draw its own conclusion, imploring that the appeal should be allowed.

In response to the first ground of appeal, Mr. Hukumu contended that the appellant's claims that the respondent failed to establish the size of the suit property were baseless and unfounded. The learned counsel argued that, before the trial tribunal, the respondent established that he purchased the suit property from the appellant in 2015. According to Mr. Hukumu, there was no dispute that after being handed with the farm, the respondent planted trees and left the other part of the farm which was subsequently invaded by the appellant. As regards to the process of purchase of the suit property, Mr. Hukumu argued that, the appellant does not dispute that he sold the suit property to the respondent at the cost of Tshs. 500,000.00. The counsel added that the sale of the property was witnessed by the appellants' family members. Citing the decision in **Hemed Said vs. Mohamed Mbilu** [1984] TLR

113, the counsel contended that, before the trial tribunal, the respondent established his claims to the balance of probabilities and that the trial tribunal was correct in declaring him the lawful owner of the suit property. He maintained that the DLHT was right in upholding the decision of the trial tribunal.

Remarking on whether or not there was a valid written agreement between the appellant and respondent for the sale of the suit property, the learned counsel maintained a view that, the arrangement between the appellant and respondent had all attributes of a valid contract regardless of whether or not it was reduced into writing or not. To support his argument, the learned counsel cited section 10 of **the Law of Contract Act [Cap. R.3. 2019]** and the case of **Abualy Alibhai Azizi vs. Bhatia Brothers Ltd.** [2000] TLR 288.

In reply to the second ground of appeal, Mr. Hukumu submitted there were no illegalities or irregularities in the decision of the trial tribunal. On another limb, the learned counsel argued that the alleged illegalities were not raised or decided upon by the first appellate tribunal. In his view, it was inappropriate for the appellant to raise the same in a second appeal. To support his argument, he referred to the case of **Ally Hassan Abdallah vs Republic** (Criminal Appeal No. 383 of 2021) [2022] TZCA 654 (24 October 2022). Mr. Hukumu countered that, there were no inconsistencies and irregularities necessitating interference of the trial tribunal proceedings. He implored that, this court to make a finding that the said irregularities and irregularities did not go to the root of the matter. The learned counsel concluded with a prayer that the appeal was devoid of merits and ought to be dismissed.



In a brief rejoinder, Mr. Sweke insisted that, in the instant case, there was no sufficient evidence on record to support an argument that the respondent proved the case on the balance of probabilities. He insisted that there was no written sale agreement between the appellant and respondent for the sale and purchase of the suit property. On allegation of illegality in the proceeding and decision of the trial tribunal, Mr. Sweke argued that claims of illegality or irregularities may be raised at any stage of the proceeding including at appellate level. To substantiate his argument he cited the case of **Zaid Sozy Mziba vs. Director of Broadcasting, R.T.D and Another**, Civil Appeal No. 4 of 2001 and **Pan Construction Company and Another vs. Chawe Transport Import and Export Co. LTD**, Civil Reference No. 20 of 2006.

Rejoining further, the learned counsel insisted that the trial tribunal had no mandate to impose fines and compensation. He also claimed that the trial tribunal was not properly constituted and therefore it lacked the requisite jurisdiction. The learned counsel argued that, had the DLHT considered the above illegalities and irregularities it would have reversed the decision of the trial tribunal. Having said that, the counsel prayed that the appeal be allowed and thereby, nullify the proceedings, judgment and orders of the two lower courts.

Having presented a brief background to the case as well as the summary of evidence and submission of the parties, I think I am in a better position to delve into determination of the merits of the appeal.

I have pointed out at the commencement of this judgment that this is a second appeal, the settled practice is that, a second appellate

court should very sparingly depart from concurrent findings of fact by the trial court and the first appellate court. However, the position is also well settled that, a second appellate court may nevertheless interfere as such only if it is evident that the two courts below misapprehended the evidence or omitted to consider available evidence or have drawn wrong conclusions from the facts, or if there have been mis-directions or non-directions on the evidence. See **Salum Said Matangwa @ Pangadufu vs Republic** (Criminal Appeal No.292 of 2018) [2020] TZCA 1814; (09 October 2020) and **Daniel Kivati Monyalu vs Republic** (Criminal Appeal No.224 of 2019) [2021] TZCA 561; (07 September 2021).

It is also trite, without mentioning any authority, that a second appellate court will not have jurisdiction to deal with grounds of appeal not canvassed by the first appellate court. This position has been a subject of discussion in several decision of the Court of Appeal. In **Julius Josephat vs Republic** (Criminal Appeal No.03 of 2017) [2020] TZCA 1729; (18 August 2020 TANZLII) for example having noted that some of the grounds raised before it were not raised before this court, the Court stated:

*"We checked the memorandum of appeal featuring at page 60 of the Record of Appeal and satisfied ourselves that sincerely, those three grounds are new. As often stated, where such is the case, unless the new ground is based on a point of law, the Court will not determine such ground for lack of jurisdiction - See the cases of **Abdul Athuman v. Republic** [2004] T.L.R.151 and **Juma Manjano v. The DPP**, Criminal Appeal No. 211 of 2009, CAT (unreported). In the circumstances, except for the third ground which we are duty bound to address because it is based on a point of law, we are constrained to ignore grounds 2 and 5 as requested by Mr. Njau."*

Guided by the above principles I will proceed to resolve the first ground of appeal. In the said ground the appellants contends that, the DLHT failed to appreciate that at the trial tribunal, the respondent failed to prove the actual size of the suit property. He also alleged that there were inconsistencies and contradictions between the respondents witnesses as to the manner in which the property was handed over to the respondent and where the money was paid. The appellant contended further that, there was no written agreement presented before the court.

I have carefully considered the evidence on record, the proceedings before the trial tribunal and those in the DLHT. I have also considered the arguments both in support and against the first ground of appeal. I think this ground should not hold me much than needed. I say so, because it is clear to me that, the issues raised in the first ground of appeal are all factual and not points of law. It is also common ground that the issues raised in the said ground are all new complaints which were not raised and considered by the DLHT. Having compared the two sets of the grounds of appeal I am satisfied that the first ground of appeal is new. Since this ground was not raised and decided by the first appellate court, I cannot look at it and determine the same.

Additionally, I have examined the records and noted that the two courts made concurrent findings that the respondent established, on the balance of probabilities, that he purchased the suit property from the appellant. That the suit property measured an estimated five acres. The trial tribunal had an opportunity to visit the locus in quo and was satisfied about the size of the suit property. It is also on records that, four witness testified before the trial tribunal and the tribunal considered

and evaluated their testimony and found them believable. On the other hand, the appellant himself conceded that he took the Tshs. 500,000.00 from the respondent and that he gave the suit property to the respondent. His only, unsubstantiated, claim was that he gave the property to the respondent to cultivate until he could repay the entire amount of money owed.

In his submission in chief, Mr. Sweke urged the court to interfere with the findings of the two courts below quash and set them aside; and order a fresh trial. With due respect to the learned counsel, I do not think that, on the basis of the issues raised in the first ground of appeal, this court is justified in interfering with the findings of the two lower courts. This is so because, upon examination, I have not seen any misapprehension of the evidence or omission to consider the available evidence or whether the two lower courts drew wrong conclusions from the facts. I must say that, the first ground of appeal is devoid of merits.

In the second ground of appeal the appellant has raised two points of law that I gather are worth of consideration. Firstly, he alleges that the DLHT failed to acknowledge and consider that, under section 10(2) of the LDCA [Cap. 216 R.E. 2019], the trial tribunal had no power to impose Tshs. 175,000.00 as compensation and Tshs. 50,000.00 in fines. Secondly, that the trial tribunal was not properly constituted in contravention of section 4(5) of Cap. 206 R.E. 2002. As regards to the first point I think it would be ideal to quote the decision of the trial tribunal. In the last paragraph, the decision of the trial tribunal, reads:

*"Mkosaji utatozwa Faini ya baraza Tsh. 50,000/= na unaamriwa kurudisha fidia kwa mdai Tsh.*

*175,000/=. Ambaye hajaridhika na maamuzi ya baraza rufaa ndani ya siku 45."*

The literal translation the above excerpt of the decision of the tribunal is that:

*"The respondent is ordered to pay Tsh. 50,000/= in fines to the tribunal and Tsh. 175,000/= as compensation to the applicant. Anyone who is not satisfied with the decision of the tribunal may appeal within 45 days.*

From the above passage from the decision of trial tribunal, there is no dispute that the tribunal ordered the appellant to pay Tsh. 50,000.00 in fines and Tsh. 175,000/= as compensation to the respondent. Mr. Sweke contended that the trial tribunal had no powers to award compensation. His argument is that section 10 of the LDCA [Cap. 216 R.E. 2019] does not give powers to award compensation and fines.

Having carefully examined and evaluated the provisions of the LDCA [Cap. 216 R.E. 2019], I must say that do not agree with Mr. Sweke that the powers of the ward tribunal were then limited to section 10. In essence that section provides for the territorial jurisdiction of ward tribunal. The powers of the ward tribunal were articulated under section 16(1) of the LDCA [Cap. 216 R.E. 2019]. That section reads:

*16.-(1) Notwithstanding the provisions of section 23 of the Ward Tribunals Act, the Tribunal in proceedings of civil nature relating to land may-*

- (a) order the recovery of possession of land;*
- (b) order the specific performance of any contract;*
- (c) make orders in the nature of an injunction both mandatory and prohibitive;*

- (d) award any amount claimed;*
- (e) award compensation;*
- (f) order the payment of any costs and expenses incurred by a successful party or his witnesses; or*
- (g) make any other order, which the justice of the case may require.*

I am aware that the section has since being amended, however, by the time the decision was made the ward tribunal had such powers as provided for under section 16(1)(e) of the LDCA [Cap. 216 R.E. 2019].

However, I am content that compensation are a form of specific damages. The guiding principle in our jurisdiction when it comes to specific damages is that, they are to be specifically pleaded and strictly proved. This view was articulated by the Court of Appeal in **Reliance Insurance Co. T. Ltd & Others vs Festo Mgomapayo** (Civil Appeal No. 23 of 2019) [2019] TZCA 323 (2 October 2019) where the Court (**Levira, J.A**) at page 19 stated:

*The law in **specific damages** is settled, the said damages **must be specifically pleaded and strictly proved**, but this is not the case in the current appeal. Much as we appreciate that, the respondent's vehicle was damaged during the said accident as expounded above, the evidence on record falls short of materials to form the basis of awarding specific damages.*

In the above cited case, the Court observed further that the standard required in proving special damages is higher than on balance of probabilities. Upon going through the records, I am satisfied that, in the instant case, the respondent did not plead any amount in specific or

general damages. I have also carefully inspected the proceedings and decision and found no trace that that the respondent adduced any evidence substantiating any damages incurred by the actions of the appellant to warrant compensation.

It is trite law that, interference of the award of damages is only permissible if it will be seen that the magistrate or a judge assessed the said damages by using a wrong principle of the law. This view was articulated by the Court of Appeal in **Reliance Insurance Co. T. Ltd** (supra) where the Court cited with approval the decision of the Privy Council in **Nance v. British Columbia Electric Rail Co. Ltd** (1951) AC.601 at page 613 where it was stated as follows:

*"Whether the assessment of damages be by a judge or jury, the appellate court is not justified in substituting a figure of its own for that awarded below simply because it would have awarded a different figure if it had tried the case...before the appellate court can properly intervene, it must be satisfied either that the judge, in assessing the damages, applied a wrong principle of law (as taking into account some irrelevant factor or leaving out of account some relevant one); or, short of this that the amount awarded is so inordinately low or so inordinately high that it must be wholly erroneous estimate of the damage."*

Guided by the above authority, I am satisfied that, in awarding compensation to the respondent, the trial tribunal as well as the DLHT failed to appreciate that the said amount was not specifically pleaded neither it was strictly proved in evidence. I am also satisfied that; the trial tribunal had no legal justification to order the appellant to pay the tribunal Tshs. 50,000.00 in fines.

In the last part of the second ground of appeal, Mr. Sweke attacked the composition of the trial tribunal. He alleges that the gender of the members of the tribunal was not recorded as required by section 4(5) of Cap. 206 R.E. 2002. The composition of the ward tribunal is provided for under section 11 of the LDCA. The section reads:

*"11. Each Tribunal shall consist of **not less than four nor more than eight members of whom three shall be women** who shall be elected by a Ward Committee as provided for under section 4 of the Ward Tribunals Act."*  
*[Emphasis is mine]*

On the other hand, section 4 of the Ward Tribunals Act, which is being referred to under section 11 of the LDCA cited above, reads as follows:

- "(1) Every Tribunal shall consist of-*
- (a) **not less than four nor more than eight other members** elected by the Ward Committee from amongst a list of names of persons resident in the ward compiled in the prescribed manner;*
  - (b) a Chairman of the Tribunal appointed by the appropriate authority from among the members elected under paragraph (a).*
- (2) There shall be a secretary of the Tribunal who shall be appointed by the*
- local government authority in which the ward in question is situated, upon recommendation by the Ward Committee.*
- (3) The quorum at a sitting of a Tribunal shall be one half of the total number of members.*
- (4) At any sitting of the Tribunal, a decision of the majority of members present shall be deemed to be the decision of the Tribunal, and in the event of an equality of votes the Chairman shall*



*have a casting vote in addition to his original vote." [Emphasis is mine]*

I have gleaned from the records and noted that, hearing of the application before the trial tribunal commenced on 30<sup>th</sup> June, 2020 on that day the coram was as follows:

**Mbele ya Wajumbe:**

***Bwana Fabian Kitoya (M/Kiti) Sgd***

***Bibi Asnati Kiyeyeu Sgd***

***Bibi Lucia Mpogole Sgd***

***Bwana Sabinus Mawasa Sgd***

On the respective day, the respondent was heard. Hearing was adjourned. Subsequently, on 17<sup>th</sup> July, 2020 hearing of the respondents witnesses proceeded. The members present were BWANA FABIAN KITOYA, BIBI LUCIA MPOGOLE, BWANA SABINUS MAWASA and BIBI ASNATI KIYEYEU. The same members were present at the hearing of the appellants case on 21<sup>st</sup> July, 2020. It is also on record that all members were also present on 03<sup>rd</sup> August, 2020 when the site visit was conducted and 11<sup>th</sup> August, 2020 when the decision was delivered. From the above observation it is clear that the tribunal was properly constituted as there were four members as required under section 4 of the Ward Tribunals Act and section 11 of the LDCA.

Mr. Sweke argued that the gender of each of the members of the tribunal was not indicated. However, upon going through the records it is quite clear that each of the name of the members of the tribunal contained an initial, "Bwana" or "Bibi", which connotes their gender. Unless the learned counsel did not have an opportunity to examine the original records, I fail to understand the basis of his argument. Even

assuming there lapses here and there, of which they were not, I am aware that section 13 of the Land Disputes Courts Act, underscores the spirit of simplicity and accessibility of Ward Tribunals, by reminding all and sundry that the primary functions of each Ward Tribunal is to secure peace and harmony, mediating between and assisting the parties to reach amicable settlements. That harmonious spirit cannot be attained if this Court accedes to the prayer of the appellant to prescribe judicially that the record of proceedings should be vitiated for the slight mistake made to the title of the Ward Tribunal and lacking a coram disclosing the names of members who were present during the trial. These were the words of the Court of Appeal in **Zahara Mingi vs Athumani Mangapi** (Civil Appeal 279 of 2020) [2023] TZCA 212 (2 May 2023). This limb of the second grounds lacks merit as well and is here by dismissed.

In the final analysis, as it has been shown in the above discussion that, although the trial tribunal had powers to award compensation those powers were exercisable upon proof that they were specifically pleaded and strictly proved. However, there is no evidence on record that the respondent pleaded the said amount or that he adduced any evidence justifying the compensation. There are also no reasons adduced by the trial tribunal in justifying the award of compensation or fines. That said, I partly allow the appeal. I quash and set aside the order of the trial tribunal and the DLHT that awarded the respondent compensation of Tshs. 175,000.00 and Tshs. 50,000.00 in fines to the tribunal.

In the same stride, I uphold the decision of the trial tribunal and the DLHT which declared the respondent as the lawful owner of the suit property.

Considering the circumstances, I make no order for costs.

**It is so ordered**

**DATED at IRINGA this 02<sup>nd</sup> day of JUNE, 2023.**



A handwritten signature in blue ink, appearing to be "S.M. Kalunde", is written over the printed name.

**S.M. KALUNDE**

**JUDGE**