

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

LAND APPEAL NO.23 OF 2022

(C/f Application No.170 of 2017 in the District Land and Housing Tribunal for Arusha Region at Arusha.

KANANKIRA KITOMARI..... APPELLANT

Vs

ELIREHEMA MUNGURE.....1st RESPONDENT

BOARD OF TRUSTEE @

**SCHOOL COMMITTEE MKOMAZI PRE & PRIMARY
SCHOOL.....2nd RESPONDENT**

JUDGMENT

Date of last order: 4-4-2023

Date of judgment: 12-6-2023

B.K.PHILLIP,J

Briefly stated, the background to this appeal is as follows; the appellant was applicant before the District Land and Housing Tribunal of Arusha at Arusha ("DLHT") in application no.170 of 2018. The controversy between appellant and respondents is over ownership of a plot of land (Henceforth "the suit land") located at Kitefu Village, Maji ya Chai Ward within Arumeru District. At the DLHT the appellant alleged that he is the lawful owner of the suit land, measuring 35 paces (Length) and 60 paces (width), worth approximately Tshs 10,000,000/= as at the date of filing the application. He was allocated the suit land on 1st March 2008 by Kitefu Village Council following his application for the same. In 2009 and 2012 on unknown date the first respondent on his own capacity without either engaging the Village Council or obtaining any consent from the applicant, he took advantage of his power and

unlawfully sold the suit land to the 2nd respondent. It took time for the appellant to realize the unlawful and unjustifiable acts done by the 1st respondent, until March 2014, when he wrote a demand letter to Kitefu Village Authority dated 20th March 2014 complaining on the unlawful sale of his suit land. Later on he discovered that the Village Council was not involved in the sale of the suit land. The appellant annexed to his application, a document evidencing handing over of the suit land to him dated 1st March 2008, a letter dated 10th April 2015 from Kitefu Village Council addressed to the appellant and demand letter dated 20th March 2014 from Human and Legal Aid center addressed to District Executive Director, Meru District Council.

On the other hand the respondents filed a joint written statement of defence in which they disputed the appellant's claims and alleged as follows; that the 2nd respondent was a chairman of Kitefu Village Council between 2009 and 2014. During his tenure the Village Council of Kitefu Village did not sale any land belonging to the appellant.

The application was heard on merit and after receiving evidence from both sides the DLHT ruled out that appellant failed to prove his case and dismissed it with costs. Undaunted, the appellant lodged this appeal on the following grounds;

- i) *That, the trial tribunal erred in law and fact for not considering the evidence and testimony as the result it pronounced a shoddy decision.*
- ii) *That, the trial tribunal erred in law and fact when it failed to properly evaluate the evidence adduced before it as the result a bad decision was reached.*

- iii) That the trial tribunal erred in law and fact by pronouncing the 2nd respondent to be the lawful owner of the land in dispute by considering the weak evidence and testimony by the respondents.*

The appellant prays that the judgment of the DLHT be set aside and an order declaring him as the lawful owner of the suit land be issued. In this appeal appellant appeared in person, unrepresented whereas the respondents were represented by Mr. Mruma Shabibu, a learned advocate. The appeal was disposed of by way of written submission. The appellant submitted for the 1st and 2nd grounds of appeal only. On the 1st ground of appeal the appellant submitted that the DLHT did not consider his evidence. He contended that the chairman did not receive and put into consideration his title deed which he was given by Kitefu Village Council which was his strong evidence in proving his ownership of the disputed land. He further added that he tendered his title deed as his exhibit in order to prove his ownership of the disputed land. In contraventions of the laws governing the hearing of cases at DLHT and without any justifiable reasons the chairman of the DLHT did not take into consideration title deed. To support his argument, he cited regulation 10 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN No. 174 of 2003 and the case of **Tubone Mwambeta Vs Mbeya City Council, Land Appeal No.25 of 2015** (unreported).

With regard to the 2nd ground of appeal the appellant submitted that the DLHT erred for failure to properly evaluate the evidence adduced by the parties on the ground that it failed to determine which title

deed is valid between the appellant's and respondent's title deed. To buttress his argument, he cited the case of **Paulina Ndawavya Vs Theresia Thomas Madaha, Civil Appeal No.45 of 2017** (unreported). He insisted that the DHLT was duty bound to properly evaluate the title deeds presented by both sides and make a finding on who is the rightful owner of the disputed land. He further added that this court being the 1st appellate court is obliged to re-evaluate the evidence. To cement his argument, he cited the case of **Kaimu Said Vs Republic, Criminal Appeal No.391 of 2019** (Unreported) and prayed this appeal to be allowed.

In rebuttal, with regard to the 1st ground of appeal Mr. Mruma submitted that the DLHT did not err in law or in fact because during the trial there is no any title deed which was attempted to be tendered as an exhibit by the appellant and denied to be admitted as alleged by appellant. Referring this court to pages 19 to 22 of the proceedings Mr. Mruma insisted that there is nowhere in the proceedings showing that the appellant prayed to tender in evidence the alleged title deed. He pointed out that the only documentary evidence successfully tendered as exhibits by the appellant are copies of judgment in civil case no. 106 of 2009 (exhibit P1), judgment and proceedings in Criminal Case No. 218 of 2012 (exhibit P2 collectively) and a letter ((exhibit P3). He further argued that the appellant did not annex any title deed in respect of disputed land to his application and It is trite law that parties are bound by their pleadings. He maintained that the appellant's allegation that he produced a title deed in respect of the disputed land is an afterthought.

Furthermore, Mr. Mruma argued that a document which was not prayed to be tendered in evidence and was not mentioned anywhere in the entire pleadings or in the additional list of documents filed by the appellant how can it be expected to be admitted by the DLHT. He was of the opinion that the provisions of the law and cases cited by the appellant in his submission are distinguishable since the circumstances in those cases are totally different from the appeal at hand. He contended that those cases are applicable where there is an attempt to tender a document in evidence and is wrongly denied to be admitted in evidence by the court or tribunal.

With regard to the 2nd ground of appeal, Mr. Mruma supported the impugned judgment. He argued that it is clear from the judgment that the chairman gave a sound decision. She evaluated and considered the evidence adduced before DLHT very well. The evidence from defence side was very strong to form basis of the DLHT's judgment since the then chairman and members of the village council who allocated the land to all villagers testified to the effect that the appellant was allocated a plot somewhere else not the disputed land. The disputed land was sold to the 2nd respondent herein who successfully explained through the testimonies of DW1 and DW2, and produced in court documentary evidence to substantiate his assertions how he acquired the disputed land, to wit; customary certificate of title, deposit slip for payments made to the village, receipt for the purchase of the plot of land from the village council which were admitted (exhibit D1 collectively). He maintained that the impugned judgment is proper since it is founded on the evidence adduced by the parties.

Furthermore, Mr. Mruma was of the view that this court has a duty to review the findings and evidence from the DLHT and determine if there is sufficient evidence to support the findings made by the DLHT, and finally determine if the DLHT applied the law properly not to re-evaluate the evidence as argued by the appellant. It was Mr. Mruma's stance that the appellant was duty bound to show that the DLHT did maliciously deny to admit in evidence the appellant's documents and failed to evaluate the evidence adduced by the parties by showing the strong/heavy evidence which was ignored by the DLHT to warrant this appeal to be allowed.

In rejoinder appellant submitted that Mr. Mruma did not deny the fact that in 2007 the appellant did apply to be allocated land by Kitefu Village council. He contended that the record shows that he sued successfully the retired chairman one Goodluck Pallangyo for alleging that he did not pay for the land allocated to him. Thereafter, he effect development on the disputed land including built a foundation thereon.

Moreover, the appellant submitted that he has a right of ownership over the disputed land as well as the right to claim the same even if the document pertaining to the ownership of the disputed land did not form party in the pleadings. He contended that the DLHT was supposed to allow him at later stage before conclusion of hearing to produce his title deed under regulation 10 (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN No.174 of 2003 which gives power to the DLHT at any stage before the conclusion of hearing to allow any party to the proceedings to produce any material documents which were not annexed or produced at the hearing.

In addition, it is appellant's contention that respondent did not prove his assertion that the appellant was allocated land in another location not at the disputed land. He insisted that the DLHT erred in law and fact for failure to properly evaluate his evidence, embracing technicalities and refusing to accept his title deed only because it was not part of the pleadings. To support his argument, he recited the case of **Tubone Mwambeta** (supra).

Having dispassionately analyzed the rival submissions made by the parties as well as perused the court's records, let me proceed with the determination of the merit of this appeal.

I will deal with both grounds of appeal conjointly because they are intertwined. I have perused the proceedings of the DLHT. There is no where indicating that the appellant or his witnesses made any prayer to tender title deed before DLHT as an exhibit as alleged by the appellant in his submission. The courts records reveal that the appellant prayed to tender in evidence the copy of judgment of civil case no.106 of 2009 (exhibit P1), copy of judgment and proceedings in criminal case no. 218 of 2012 (exhibit P2 collectively) and a letter dated 10th April 2015 from Kitefu Village Council addressed to Legal and Human Rights Center (LHRC) copied to the appellant (Exhibit P3). The appellant did not pray to tender any documentary evidence apart from the ones I have mentioned herein above. Thus, it is not true that the appellant was denied to tender his title deed as an exhibit in his case. It is the finding of this court that this ground lacks merit.

With regard to the 2nd ground of appeal on the analysis and evaluation of the evidence adduced by both sides, upon perusing the court's

records I do not see any plausible reason to fault the analysis of the evidence made by the chairman of DLHT as well as the judgment. The chairman's analysis of the evidence adduced is correct since the testimonies of DW1 DW3, DW4 and exhibit D1 prove that the disputed land belongs to 2nd respondent. In a nutshell the respondent's evidence was as follows; DW1, the 2nd respondent's Manager testified that the disputed land was bought from the Village Council of Kitefu Village by Big Expedition & Safari Ltd the owner of the 2nd respondent (the School).He tendered before the DLHT a number of documents including the receipts for payment of the purchase price for the land to the Village Council of Kitefu, documents showing the demarcations of the land owned by the school, handing over of land to the respondent (Exhibit D1 collectively).DW2, was the 1st respondent. His testimony was to the effect that he was the chairman of Kitefu village from 2009 -2014 and was elected again to be the chairman of that Village in 2019 for another tenure. He denied the appellant's claims and told the DHLT that before 2009 he was the member of Kitefu Village Council and by that time Mr. Goodluck Pallangyo was the village chairman. Kitefu Village allocated plots of land to villagers measuring 15 paces by 30 paces only each not more than that size. He admitted that he was involved in process in which the 2nd respondent obtained its land and he signed the customary right of occupancy issued to the 2nd respondent. Also, he confirmed that the documents tendered as exhibit D1 collectively were genuine one. DW4, was Mr. Goodluck Pallangyo who was the chairman of Kitefu Village from 2004 to 2008. He testified that he was once involved in the allocation of land measuring 15 paces by 30 paces to the appellant and no one was allocated bigger area than that. His

testimony was corroborated by the testimony of DW4, who was member of Kitefu Village council from 2003 to 2008 and the chairman of the village committee for allocation and sale of the Village land. His testimony was to the effect the appellant was allocated land measuring 15 paces by 30 paces.

On the other side the appellant did not produce any document to prove that he was allocated the disputed land by the Kitefu village Council. Moreover, when the respondent's advocate told the DLHT that the respondents were ready to visit the *locus in quo*, the appellant told the DLHT that there was no need of visiting *locus in quo*. The appellant's refusal to visit the *locus in quo* constrains this court to draw adverse reference to him as same is tantamount to refusal to bring before the DLHT material evidence or witness because by the nature of the dispute and the evidence adduced by the parties in this case visiting the *locus in quo* would have given more light to the DLHT on the reality of the appellant's claims as well as the respondent's defence in particular the location of the disputed land. The DLHT would have obtained opportunity to see the demarcations of the disputed land.

From the foregoing, it is the finding of this court that this appeal has no merit. It is hereby dismissed in its entirety. Since this appeal has been filed under the legal aid scheme of Legal and Human Rights Center each party will bear his own costs.

Dated this 12th day of June 2023


B.K. PHILLIP

JUDGE

