

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE SUB REGISTRY OF MANYARA**

**AT BABATI**

**LAND APPEAL NO. 28 OF 2023**

*(Originating from the judgment and decree of the District Land and Housing Tribunal for Babati at Babati, in Land Application No. 13 of 2015)*

**SINDANO OYE.....APPELLANT**

**VERSUS**

**MUHALE MONDI..... RESPONDENT**

**JUDGMENT**

*13<sup>th</sup> & 26<sup>th</sup> June 2023*

***Kahyoza, J.:***

**Muhale Mondi** (the respondent) sued **Sindano Oye**, the appellant for trespassing. The District Land and Housing Tribunal for Babati at Babati (the tribunal) decided in favour of **Muhale Mondi**, that he is the owner of the disputed land measuring 0.5 acre, granted him vacant possession, awarded him damages to the tune of Tzs. 510,000.00 and Costs of the suit. **Sindano Oye** appealed contending that the tribunal's judgment was erroneous because the tribunal failed to evaluate evidence, violated the laws and the judgment was marred with irregularities. **Muhale Mondi** supported the tribunal's judgment.

**Sindano Oye** marshalled three grounds of appeal, which culminated to the following issues-

1. did the tribunal failure to properly analyze and evaluate the evidence resulting to an erroneous decision?
2. did the tribunal violated the laws resulting to an erroneous judgment?
3. is the judgment bad in law for being marred with irregularities?

A brief background is that; **Muhale Mondi**, (Pw1) alleged that he purchased land from one Mgeni Layda in 2001. He tendered a sale agreement as exhibit **A1**. The suit land measured 0.5 acres that is 15 by 114 paces, which was part of 2.5 acres that he bought, located at Mgeni Hamlet – Nakwa village. After he bought, **Muhale Mondi** took possession and utilized the said land. In December 2014, **Sindano Oye** trespassed to **Muhale Mondi's** land, cultivated the suit land, and destroyed **Muhale Mondi's** crops. **Muhale Mondi** tendered exhibit **P2**, which is a survey report.

**Joshua Homa**, (Pw2) witnessed the sale agreement between **Muhale Mondi** and Mgeni Layda and described the land **Muhale Mondi** bought as Hiiti Layda (south), Sindano Oye (West), Dismas Baran (North) and Asier Peter (East). **Ramadhani Majenzo**, (Pw3), a ten-cell leader,

stated that at one time he was involved in the mediation on the land dispute that ensued between the respondent and the appellant, on the suit land, and they settled it by placing local beacons (sisal plants). He added that it was evident that **Sindano Oye** trespassed **Muhale Mondi's** land. There was yet another evidence of **Samweli Pius Mvungi**, (PW4), a Ward Extension Services Officer, supported the evidence of **Muhale Mondi**. He deposed that after **Muhale Mondi** lodged a formal complaint that his crops were damaged, he assessed and valued the damage. The damage was quantified and assessed at Tzs. 510,000/=, as reflected in exhibit A2.

On his part, **Sindano Oye**, (Dw1), denied the claim. He denied **Muhale Mondi** to be his neighbor, before he changed and deposed that **Muhale Mondi** bought a piece of measuring 2.5 acres from Mgeni Layder. He did not dispute that Mgeni Layder was his neighbor. However, **Sindano Oye** alleged that **Muhale Mondi** did not involve neighbours at the time he bought land. That it is the respondent who trespasses to his land measuring 2.5 acres. **Sindano Oye** added that it was true that is true that **Ramadhani Majenzo**, (Pw3), and other elders mediated them and placed beacons. He alleged that it was **Muhale Mondi**, the respondent removed boundaries, local beacons and trespassed to his land.

It is from the above evidence, being the first appellate court, I tasked with a duty of reviewing the evidence. The Court of Appeal held in **Future Century Ltd v. TANESCO**, Civil Appeal No. 5 of 2009, that-

*"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision."*

The appeal was heard orally. Parties appeared in person and thus, this court being the first appellate court, a review of the whole evidence in light of the raised issues is called for.

**Did the tribunal failure to properly analyze and evaluate the evidence resulting to an erroneous decision?**

**Sindano Oye**, the appellant complained that the tribunal did not properly analyze and evaluate the evidence resulting to an erroneous decision. He expounded that the disputed land did not belong to Mgeni Layder, but it was his property and that the tribunal ignored that piece of evidence. On the part of **Muhale Mondi**, Mr. Festo, **Muhale Mondi's** advocate submitted that there was ample evidence that the suit land belonged to **Muhale Mondi**, the respondent.

It is on record **Muhale Mondi**, the respondent bought 2.5 acres of land from Mgeni Layder in 2001. The dispute is whether the land **Muhale**

**Mondi**, the respondent, purchased from Mgeni Layder includes the suit land. **Muhale Mondi's** evidence is that the suit land was part and parcel of the land he procured from Mgeni Layder in 2001. **Sindano Oye**, the appellant contended that the suit land was not part of the suit the land purchased. He also contended that **Muhale Mondi** did not involve neighbours when he was buying respective land.

It is trite law of evidence in civil procedure that he who alleges is the one responsible to prove his allegations. See the **Abdul Karim Haji Vs. Raymond Nchimbi Alois and Joseph Sita Joseph** [2006] TLR. 419. Thus, had a duty to prove by balance of probability that the suit land was part and parcel of the land he procured from Mgeni Layder in 2001. I have considered the evidence on record and concluded that **Muhale Mondi** proved his case to the required standards. The evidence of **Ramadhani Majenzo**, (Pw3), a ten cell-leader and one of the elders, deposed that the disputed land belonged to **Muhale Mondi**. I find him like the tribunal to be the most reliable witness, a witness with no obvious interest to serve. He also deposed that after the dispute between **Muhale Mondi** and **Sindano Oye** ensure he took part with other elders to mediate. They mediated the parties and demarcated the land using local beacons. **Ramadhani**

**Majenzo**, (Pw3) added that despite the settlement reached, **Sindano Oye** trespassed and damaged crops.

It is on record that after the dispute, **Muhale Mondi** cultivated his land and planted crops. In disregard of the settlement and the boundaries set by **Ramadhani Majenzo**, (Pw3) and other elders, **Sindano Oye** enter the suit land and destroyed **Muhale Mondi's** crops. Had it been true as **Sindano Oye** alleged that it was **Muhale Mondi** who violated the settlement and trespassed, **Sindano Oye** ought to have been the one to take action and not vice versa. Not only that but also, **Sindano Oye** would have summoned at least one of the elders who mediated the dispute to testify on his behalf. Surprisingly, **Sindano Oye** did not call any witness. He defended the suit alone.

Like the tribunal, I am of the firm view that **Muhale Mondi** proved his claim. I had an opportunity to consider whether the tribunal analyzed the evidence properly. The reply is that the tribunal discharged its duty. I found on page 5 of the said impugned judgment the following analyses-

*"Hakuna ubishi na DW1 hapingi kwamba aliingiza trekta na kulima eneo lenye mgogoro ambalo ilikuwa tayari limeshalimwa na kupandwa mazao na AW1"*

The above is translated as follows-

*"There is no dispute and DW1 does not dispute that he tilled the disputed land using a tractor when Pw1 had already planted crops."*

I find that the tribunal did analyse the evidence and its decision was justified.

**Did the tribunal violate the laws resulting to an erroneous judgment?**

The appellant complained that the tribunal violated the laws resulting to an erroneous judgment. The appellant did not expound on his complaint.

The respondent's advocate refuted the complaint. He submitted jointly to the second and third grounds of appeal that the tribunal conducted the trial in accordance with law. The tribunal heard the respondent and his witness. It gave the appellant an opportunity to cross-examine them and give evidence.

I will not dwell on the issue. I examined the record of the tribunal. Unfortunately, there is nothing on the record to support the appellant's complaint in the second ground of appeal. I, therefore find no merit. I dismiss the second ground of appeal.

**Is the judgment bad in law for being marred with irregularities?**

The appellant complained that the tribunal's judgment was marred with irregularities. He did not point out the irregularities in the judgment.

The respondent's advocate opposed the allegation that the judgment was marred with irregularities. He added that the tribunal gave the appellant an opportunity to present his case, exercised that right. He did not find any irregularities anywhere in the tribunal's judgment. The appellant did not point out the alleged irregularities. He contended that there are no irregularities.

It is obvious that the trial tribunal considered his evidence. Thus, the first ground of appeal is hereby dismissed for want of merit.

I had a cursory review of the judgment and laws. Like the respondent's advocate, I did not find the alleged irregularities. I find no merit in the third ground of appeal which, I proceed to dismiss.

The appellant raised the issue - did the suit proceed against one person when there were two persons sued as defendants. It is settled that a plaintiff or applicant enjoys a right to sue whoever he intends sue. I am inclined to the *obita dicta* in **Tanzania Railways Corporation (trc) vs Gbp T. Ltd**



(Civil Appeal No. 218 of 2020) published in [www.tanzlii.org](http://www.tanzlii.org) as [2021] TZCA 198 where the Court of Appeal observed that-

*"That is correct and indeed, a plaintiff has that unfettered prerogative and freedom not to join a party it does not feel like joining."*

The record shows that **Muhale Mondi** sued **Mgeni Layder** and **Sindano Oye**. Before the matter proceeded with the hearing **Muhale Mondi** and **Mgeni Layder** reached a settlement. They filed a settlement deed. There is nothing wrong with that procedure.

In the end, I find **Sindano Oye** appealed without sufficient grounds of complaint. Thus, **Sindano Oye's** appeal has no merit. Consequently, I dismiss it with costs for want of merit. I uphold the tribunal's judgment.

It is ordered accordingly.

Dated at Babati this **27<sup>th</sup>** day of **June**, 2023.



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**John R. Kahyoza,**  
**Judge**

**Court:** Judgment delivered virtually in the presence of the appellant, the respondent and Mr. Chami advocate holding Mr. Festo's. Ms Fatina (RMA) is present.



A handwritten signature in black ink, appearing to read "John R. Kahyoza", written over a horizontal line.

**John R. Kahyoza,**

**Judge**

**27.06.2023**