

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 64 OF 2022

(C/F Misc. Land Application No. 79/2021, High Court of the United Republic of Tanzania-Arusha District Registry; Original Application No. 100 of 2013 at Babati District Land and Housing Tribunal)

BETWEEN

ALLY LAGWENAPPELLANT

VERSUS

MATILDA PETER BEI.....RESPONDENT

JUDGMENT

05/06/2023 & 28/06/2023

MWASEBA, J.

Being aggrieved by the whole decision of the District Land and Housing Tribunal for Babati at Babati, in Application No. 100 of 2013, the appellant knocked the door of this court armed with the following grounds:

- 1. That the trial tribunal erred in law and facts by not considering the respondent's application to the trial tribunal in Maombi Na. 100 ya 2013 was bad in law for being res judicata.*



- 2. That the trial tribunal erred in law and fact by not considering the appellant's evidence when defending the respondent's claim over the land in dispute.*
- 3. That the trial tribunal erred in law and facts by deciding in the respondent's favour without considering that the respondent's evidence was tainted with contradictions and inconsistencies.*
- 4. That the trial ward Tribunal erred in law and fact by taking witnesses' testimony without inquire their signatures which led to most of the appellant's testimonies not being recorded and considered in the judgment.*

Briefly, the respondent herein filed an application at the DLHT of Babati against the appellant herein, who invaded the suit land/plot measured 6x30 meters located at Negamsi Village in Babati Town Council in Manyara Region. Having heard both parties, the Tribunal on 27/04/2021 decided that the disputed land belonged to the respondent herein and the appellant was ordered to bear the costs of the application. The said decision distressed the appellant, hence, the present appeal.

At the hearing of this appeal which was done by way of written submissions, both the appellant and the respondent appeared in person, unrepresented.

Submitting in support of his appeal, the appellant abandoned the 1st and 4th grounds of appeal and remained with the 2nd and 3rd grounds. Starting with the 2nd ground of appeal, the appellant complained that his

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evidence was never considered by the trial Tribunal. He submitted further that his evidence at the Tribunal was too strong as he tendered exhibits D1, D2, and D3 together with two credible witnesses but all were not considered by the trial Tribunal. He prayed for this court to re-evaluate the evidence submitted at the trial tribunal as the judgment of the DLHT was not maintainable at law.

Replying to this ground, the respondent submitted that the evidence of both parties was well-evaluated. It was the duty of the appellant to convince the Tribunal with regard to legality of his claim.

On the 3rd ground of appeal, the appellant submitted that the evidence of the respondent at the trial Tribunal was tainted with illegalities due to the following reasons. First, the respondent alleged that she was the administrator of the estate of her late father, but she failed to tender any letters of administration to prove that she was duly appointed. Second, PW2 alleged that his mother-in-law and Peter Bei were both buried in the suit land while the suit land had only one grave as per the report of the visiting *locus in quo*. Further to that, PW3 testified that the land was a surveyed one while the rest of the witnesses testified that the land was not surveyed. He supported his arguments with the case of **Mohamed Said Matula vs Republic** (1995) TLR 3.



He submitted further that the application was not read over to the appellant to understand its contents as required by **Regulation 12 (1) (2) of the Land Disputes (The District Land and Housing Tribunal) Regulations, 2002**. More to that, there was a change of Chairman without assigning any reasons. He referred this court to the case of **Finiasi Libwela and Another vs Republic**, Criminal Appeal No. 139 of 2019 [2018] TZHC 2515.

Responding to this ground, the respondent submitted that there was no contradiction in the evidence of the respondent at the trial Tribunal. She clarified that the late Peter Bei was buried on the disputed land in 2004, and there is only one grave on the suit land. The allegation that there are two graves is not true, as Victoria Homy was not buried on the disputed land. Thus, she prayed for the appeal to be dismissed with costs for being non meritorious.

In his brief rejoinder the appellant reiterated what he already submitted in chief.

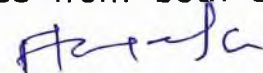
Having gone through the evidence against and in support of the appeal, this court will now determine the issue of whether the appeal is meritorious or not.



Starting with the 2nd ground of appeal, the appellant complained that his evidence was never considered by the trial Tribunal. This allegation was strongly opposed by the respondent herein who submitted that the appellant's evidence was considered, but he failed to convince the Tribunal to be the owner of the land in dispute.

This court, having gone through the records of the trial Tribunal, particularly the judgment, it is noted that the appellant's evidence was considered as shown on page 4-5 of the judgment. However, I agree with the appellant that his documentary evidence i.e exhibit D1, D2 and D3 were not evaluated. This being the first appellate court will exercise its duty to re-evaluate the evidence. See the Court of Appeal decision in **Philipo Joseph Lukonde vs Faraji Ally Saidi** (2020) TLR, 576.

Looking at the evidence from both sides, the respondent claimed to be the owner of the land after being given by her late father. More to that, his late father was buried at the disputed land in 2004. On his side, the appellant stated that the suit land is his property from long time ago and that he had been residing there with his mother. He said the said land was involved in a dispute and he was declared the winner. He tendered at the tribunal the exhibit D1, D2 and D3 to substantiate his allegations. The trial tribunal after weighing the evidence from both sides and



visiting the *locus in quo*, it was convinced that the evidence of the respondent was heavier than that of the appellant. I concur with the verdict of the trial Tribunal. The appellant alleged that he has been the owner of the disputed land for a long time but he had not stated how he became the owner of the same. He tendered in court a number of court decisions where as the Exhibit D1 and D2 was a case between Ally Lagwe vs Peter Joachim and another in which the appellant herein won the case over a dispute land. However, the location of the said land is unknown. It is not clear if it is the same plot with the disputed land herein. When the Tribunal visited the *locus in quo*, they confirmed that there was a grave of the respondent's late father. The appellant did not dispute this but he said they buried him there to threaten him over his property. This does not come into my mind as if it was not the respondent's landed property, they could not bury her father thereon. Furthermore, the appellant could have complained to the village leaders to restrain the respondent to perform burial ceremony on the disputed land. Therefore, this court finds no merit on the 2nd ground of appeal, and the same is dismissed.

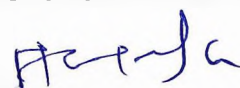
On the 3rd ground of appeal, the appellant complained that the evidence of the respondent at the trial Tribunal was full of contradictions and inconsistencies. He explained those contradictions as follows; first, the

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respondent testified that she is the administrator of the estate of Peter Bei, but she also admitted she doesn't have the letters of administration as she was not duly appointed. Second, PW2 testified that the disputed land has two graves, one of the respondent's father and one of her mother-in-law, while the disputed land had only one grave. Third, PW3 testified that the disputed land belongs to Peter Bei, which means it was never located to the respondent herein and she said it was a surveyed land, while others said it was unsurveyed land. On her side, the respondent submitted that the disputed land has only one grave of Peter Bei.

Concerning the complaints that there was a contradiction on a number of graves in the disputed land, I have revisited the trial Tribunal's records and noted that PW2 testified that Peter Bei died in 2004 and was buried at the disputed land and also her mother-in-law was buried over the suit area but there was no dispute. PW1 said there was one grave of her father at the disputed land. This is not disputed by the appellant. This contradiction does not go to the root of this case because the rest of the witnesses from both sides agree that there is one grave.

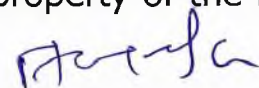
As for the complaint that there was contradiction as to whether the disputed land was surveyed or not, the record shows that all witnesses



from both sides testified that the disputed land was unsurveyed save for the testimony of PW2. However, the fact that the disputed land was surveyed or not was not at issue at the trial Tribunal. The issue was on who was the lawful owner of the disputed land. The contradiction regarding the status of the land as to whether it was surveyed or not does not go to the root of the case. See the Court of appeal decision in the case of **Said Ally Ismail vs Republic**, Criminal Appeal No. 249 of 2008 (reported in the TanzLii).

Regarding the allegations that there was a change of trial Chairman without assigning reasons, the record is clear on that. The trial Chairman C.P Kamugisha determined the case from the beginning up to the time they went to visit the *locus in quo*. Thereafter the record shows that he was transferred to Morogoro. But the judgment was composed by himself but it was delivered by M.S. Mahelele Chairperson. Therefore, the record speaks by itself that the chairperson who heard the case is the same person who composed the judgment.

The last complaint is that the respondent was neither given the disputed land nor appointed as the administrator of the estate of the late Peter Bei. I have perused the records of the trial Tribunal, all witnesses admitted that the disputed land was once the property of the late Peter



Bei, who after his death, the land was given to the respondent herein, his daughter. However, there was no proof submitted by the appellant on how he acquired the disputed land apart from stating that the disputed property belonged to him a long time ago. It is well settled that the one who alleges has a duty to prove his/her claim. The respondent did discharge her duty by proving that the disputed property once belonged to her late father, and after his death, it became her property. See **Section 110 (1) and (2) of the Evidence Act**, Cap.6 R.E 2022. The respondent proved that the disputed land belongs to her and her father was buried there. When the Tribunal went to visit the locus in quo confirmed that there is a grave in the disputed land. The appellant also agrees that there is a grave of respondent's father there. Therefore, this court finds no merit on the 3rd ground of appeal.

That being said and done, the appeal is hereby dismissed for want of merit. The appellant should bear the costs of the case.

It is so ordered.

DATED at ARUSHA this 28th day of June 2023.




N.R. MWASEBA

JUDGE