

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)
AT MTWARA

LAND APPEAL NO. 3 OF 2023

*(Originating from the District Land and Housing Tribunal of Mtwara at
Mtwara in Land Application No.49 of 2021)*

JUMA SUWEDI MAIDA (Suing as Administrator of the Estate
Of the late SUWEDI MAIDA MAIDA) **APPELLANT**

VERSUS

ASHA ABASI MILLANZI **RESPONDENT**

JUDGEMENT

8th & 27th June 2023

LALTAIKA, J.

The appellant herein **JUMA SUWEDI MAIDA** who is ad administrator of estate of his late father SUWEDI MAIDA MAIDA, is dissatisfied with the decision of the District Land and Housing Tribunal (the DLHT) for Mtwara in Land Application No.49 of 2021. He has appealed to this court on seven grounds. The grounds, probably penned down by a wannabe paralegal based in downtown Masasi, contains quite a few grammatical errors, repetitions and at times outright contradictions. Nevertheless, I am inclined to reproduce them, in their original, for record keeping purposes as I hereby do:

1. *That the Tribunal Chairman erred in law and fact to admit exhibit D1 which was tendered without being read over and explained to the parties contrary to the law.*
2. *That the Tribunal chairman erred in law and fact to admit and rely in his decision on exhibit D1 a sale agreement which was tendered before the court after the closure of appellant (sic!) and respondent evidence (sic!)*
3. *That the trial Tribunal Chairman erred in law and fact to rely in his decision on a fabricated sale agreement, exhibit D1 which is purported to be written and witnessed by Hassan Hashim Chipanga as Village Executive Officer while at the time of the signing of that forged sale agreement in 16/8/2015 Hassan Chipanga was not Village Executive Officer rather a normal citizen*
4. *That the Tribunal Chairman erred in law and fact by holding that the respondent purchased the disputed farm from the appellant father (sic!) while in fact the respondent was just leased the disputed farm by appellant father.*
5. *That the Tribunal Chairman grossly erred in law and fact to hold that the respondent purchased the disputed farm from the appellant father while she knew it was leased to her and she was ready to be given back her Tshs 300,000*
6. *That the Tribunal Chairman erred in law and fact to disregard a just and correct opinion of a gentleman assessor without giving sufficient reason of departing from the opinion.*
7. *That the Tribunal chairman erred in law and fact by relying his decision on appellant's weak evidence and disregarding respondent's strong evidence over the ownership of the disputed farm.*

When the appeal was called on for hearing on the 14th day of June 2023, both parties appeared in person, unrepresented. This court read out loud and explained the grounds of appeal to the parties, in Kiswahili, and they responded, offering their version of the story each. Before sharing a summary of their arguments, a brief contextual and factual backdrop is considered imperative.

The appellant and respondent have known each other for most of their lives. They are members of the same village in Masasi District. Whereas the appellant is a young man in his mid-30s, the respondent is an elderly woman in her sixties. She is also an elected councilor *diwani* for her ward. It appears that the respondent and the late SUWEDI MAIDA (the appellant's father)

were good neighbours who shared ups and downs in life. When the late Maida needed money for hospitalization, the respondent extended a soft loan. In an attempt to refund the respondent, it appears the late Maida wanted to sell his piece of land to the village football team. Members of the team could not get the money on time, so the respondent bought it for 300,000/=

No sooner had the late Maida passed away than the appellant and some members of his family including his stepmother started demanding the land from the respondent. The respondent reluctantly agreed to be compensated rather than engage in a never-ending quarrel with her neighbours. It appears that the amount she proposed for compensation 2,700,000/= exceeded the appellant's budget. Nevertheless, he still wanted the land claiming that his father never sold it in the first place. He accused the respondent of forging a sale agreement and abusing her position as a diwani to obtain favour from local leaders. He took all those grievances (and some more) to the DLHT. After a full trial, the DLHT adjudged in favour of the respondent hence this appeal.

Submitting on the **first ground of appeal**, the appellant stated that his complaint was regarding the reception of exhibit D1 in the Tribunal. He claimed that the exhibit, which was the alleged contract of sale of land between his late father and the respondent, **was not read out** and explained to them. He prayed for the court to thoroughly examine how the exhibit was admitted, as it deviated from the proper procedure, in order to ensure justice is served.

The respondent, on her part, expressed her opinion that the exhibit **was received properly** according to the regulations governing the tribunal. She stated that it was read over to all of them, and they were asked if the document was indeed the contract. She believed that the judgment was properly arrived at.

The appellant moved on to **his second ground**, asserting that the chairman made a legal and factual error by relying on the content of exhibit D1. He claimed that the exhibit was admitted after both the plaintiff and defendant had concluded their cases. He mentioned that he was asked if he recognized it and he responded negatively, which left him with insufficient time to defend himself.

The respondent objected to this and stated that she brought her exhibit on time. After the initial judgment was decided in her favour, the exhibit remained in the tribunal. When asked about the exhibit's whereabouts during the second hearing, she explained that it was still in court. She was advised to write a letter requesting the exhibit, which she did. She insisted that the exhibit **was tendered on time for both hearings** and was even ready to provide a copy of the letter as evidence.

The appellant presented **his third ground**, claiming that the Village Executive Officer (VEO) mentioned in the document was a different person named **SALVINA NDEMBO**, while the named person in the document was just a regular citizen. He believed that **the document was forged** by the respondent, who overlooked the actual person holding the office at that time.

He requested the court to closely examine the document and the overall decision, not solely relying on the contract.

The respondent **defended the authenticity of the sale agreement**, stating that the late Maida's signature on the document was genuine. She mentioned that he was summoned to court and testified before his passing. She explained that he had only been acting as the VEO and never became the substantive VEO. According to her, the documents were thoroughly examined at every stage. She accused the appellant of trying to find support to unlawfully claim the land.

The appellant's **fourth ground involved his late father's illness** and the circumstances surrounding the land transaction. He stated that his father intended to sell the land to fund his medical treatment. He alleged that they put the land **in bond for TZS 300,000 in 2015**, but due to the friendship between his late father and the respondent, **they decided not to have a written agreement**. He claimed that they (meaning his family members and himself) later discovered that the land was never actually sold, as the respondent continued to cultivate and profit from it. He requested the court to critically consider this ground and mentioned that his mother, **FATUMA ALLY NAMWANDU**, testified accordingly.

The respondent countered the appellant's claims by assuring the court that the land **was sold by Mr. Suedi Maida while he was in good health**. She mentioned that when she bought the land in 2005, it was during the cashew season, and she cleared unproductive cashew trees and planted new ones. She denied the appellant's assertion that her husband and the

late Maida were friends who did not document their agreement. She argued that they were **pressuring their stepmother** to testify against her. She claimed that she purchased the land with her own money and shared the details of the transaction.

The appellant's **fifth ground addressed their failure to pay the respondent TZS 300,000**, stating that the money they received was used to cover medical expenses. He emphasized the involvement of the stepmother, who jointly acquired the land with her late husband. He clarified that he was the appointed administrator of the estate since 2019, with no other duties.

The respondent disputed the appellant's claim that the stepmother had jointly acquired the property. She asserted that the deceased inherited the farm from his uncle, whose children still reside in **SONGAMBELE VILLAGE**. She denied demanding TZS 300,000 and explained that she sought compensation for her investment in the land from 2015 to 2020. She reported the issue to the Prevention and Combating of Corruption Bureau (PCCB) due to feeling unfairly treated. She mentioned that the ward tribunal warned the appellant against making false accusations. She maintained that the farm is now under her care, and she has planted crops.

The appellant presented **his sixth ground, pointing out the contrasting views of the chairman and the assessors**. While the two female assessors and one male assessor sided with him, the chairman went against their opinions. He expressed a desire to understand why the

chairman diverged from the assessors and why the judgment was read in the absence of the assessors and the defendant.

The respondent **corrected the appellant's statement**, stating that there were only two assessors, not three. She explained that assessors usually do not interfere with cases they did not initiate. She mentioned that she was absent during the judgment due to attending to her sick husband. She expressed confidence in the court's adherence to proper procedures and suggested that they were aware of what they were doing. She mentioned that one of the assessors had passed away, leaving only one assessor.

The appellant's **seventh ground emphasized** the strength of their evidence throughout the case, from the Ward Tribunal to the DLHT. He claimed that their evidence impressed the assessors, who initially ruled in his favor. However, he expressed surprise at the tribunal's final decision, where the respondent was declared the owner of the farm. He criticized the chairman for **relying heavily on the flawed sale agreement**.

The respondent clarified the history of the case, explaining that it was initially brought against her by the stepmother, **Fatuma Ally Namwandu**. She mentioned that the appellant took over as the administrator of the estate two months later. She highlighted that the process to appoint him as administrator came after his stepmother failed in her case against her. She questioned the appellant's claim of having more knowledge about the land sale than his late father and stepmother.

Having dispassionately considered the above rival arguments and keenly examined the trial tribunal's records, I am inclined to decide on the

merits of the appeal. This court, as the first appellate court, has the duty to re-hear the evidence available on record. It is my responsibility to re-evaluate the evidence, akin to hearing the case, although I do not have the opportunity to personally observe the demeanor of the witnesses, as that falls within the domain of the trial court. I must either arrive at my own decision, which may differ from the District Land and Housing Tribunal (DLHT) or concur with the DLHT's decision.

This position has been reiterated in various decisions of the Court of Appeal, including the case of **GAUDENCE SANGU VS REPUBLIC** (Criminal Appeal No. 88 of 2020) [2022] TZCA 784 (7 December 2022) Tanzania, where it was established that the first appellate court must re-evaluate the evidence on record and may either agree with the trial court's finding of fact or arrive at its own conclusion.

With regard to the **first and second grounds of appeal**, I have thoroughly reviewed the hand-written and typed proceedings of the DLHT and find the appellant's assertion to be flawed. It is important to note that exhibit D1 was read soon after its admission and subsequent marking as exhibit D1. Furthermore, it was admitted into evidence while the respondent (DW1) was testifying, as evidenced on page 29 of the typed proceedings. Contrary to the appellant's claim of insufficient time to prepare evidence against exhibit D1, it was made available through the respondent's reply. Additionally, the appellant's objection to the validity of the sale agreement was duly considered by the Tribunal and overruled for lack of merit. Consequently, I find no merit in these grounds of appeal and dismiss them accordingly.

Moving on to the third ground of appeal, which questions the **alleged forgery of the sale agreement** (exhibit D1), I reiterate the principle that the burden of proof rests on the party making the allegation. After careful consideration, I find the appellant's evidence to be weak in proving the forgery. Notably, the appellant failed to testify on the illegality of exhibit D1, despite having knowledge of its contents through the respondent's reply. Moreover, the appellant did not call his material witness, **Hassan Chipanga**, who could have provided insights into the legality and authenticity of the sale agreement.

It was crucial to establish that Hassan Chipanga was not the Village Executive Officer at the time of executing exhibit D1, but the appellant did not present any evidence to support this claim. Consequently, I find that the appellant did not discharge the burden of proof regarding the validity, legality, or authenticity of the sale agreement. Hence, the third ground of appeal is dismissed for lacking merit.

Regarding the **fourth, fifth, and seventh grounds of appeal**, which challenge the existence of a lease agreement and the amount of lease rent, I must emphasize that the appellant's evidence is weak and contradictory. The burden of proof lies on the party making the allegation, and in this case, the appellant and his witnesses failed to prove the existence of the lease agreement as required by the Evidence Act. Their evidence did not sufficiently demonstrate that the late Suwedi Maida Maida **had leased the suit land to the respondent** for the specified lease rent of TZS. 300,000/=, or that there was a condition requiring the late Suwedi Maida Maida to pay back the rent. I have carefully examined the evidence, including

the contradictions present in the testimony of the appellant's witnesses, and find that it does not establish the existence of the alleged lease agreement. Therefore, I conclude that the fourth, fifth, and seventh grounds of appeal lack merit and dismiss them accordingly.

Lastly, **the sixth ground of appeal**, which alleges that the learned Chairman disregarded the opinion of the gentleman assessor, requires thorough consideration. Upon reviewing the impugned judgment, I find that the learned Chairman provided reasons for departing from the opinion of the assessor, as indicated on pages 6 and 7 of the impugned judgment. Consequently, I dismiss the sixth ground of appeal for being unmerited.

Before I windup, I am inclined to provide albeit in passing that the appellant has exhibited an extremely zealous attempt to reverse the otherwise clear and well settled "deal" between the respondent and his late father. I must say that there are significant signs of the abuse of the court process. The respondent has been sued twice on the same subject matter first by the stepmother and secondly by the current appellant. This is not right.

All said and done, I dismiss the appeal in its entirety. I make no orders as to costs.

It is so ordered.




E.I. LALTAIKA
JUDGE
27.06.2023

Court

Judgement delivered under my own hand and the seal of this court this 27th day of June 2023 in the presence of both the appellant and the respondent who have appeared unrepresented.

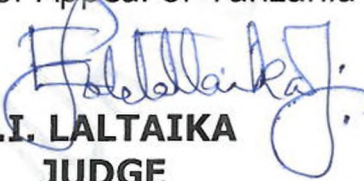



E.I. LALTAIKA
JUDGE
27/6/2023

Court

The right to appeal to the Court of Appeal of Tanzania fully explained.




E.I. LALTAIKA
JUDGE
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