IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO.12 OF 2022

(Originating from the District Land and Housing Tribunal for Mtwara at Mtwara in Land Application No.51 of 2022)

HALIFA EMANUEL MBUTI (An administrator of the estates of the late EMANUEL YOHANA MBUTI).....**APPELLANT**

VERSUS

SIMONI MALUKUSI.....1ST RESPONDENT

NAMMENGE MOHAMEDI NAMMENGE.....2ND RESPONDENT

JUDGEMENT

20th and 27th July 2023

LALTAIKA, J.

The appellant herein **HALIFA EMANUEL MBUTI** is dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara (The DLHT or the Tribunal) delivered on 15/7/2022. The controversy is on the ownership of land (the suit land) measuring 15 acres situated at Maparagwe Village, Chikukwe Ward, in Masasi District. After a full trial, the Tribunal adjudged in

favour of the respondents. Thus, the appellant has lodged this appeal on the following grounds:-

1. *That, the District Land and Housing Tribunal erred in law and fact in failing to properly weighing and analyse the strength of the evidence of the parties and consequently finding that the suit land belonged to the 2nd respondent.*
2. *That, the District Land and Housing Tribunal erred both in law and in fact in relying on an invalid sale agreement and making a decision of the basis of the same.*

When the appeal was called on for hearing on 18/10/2022 both parties appeared in person and without representation by Counsel. However, the parties agreed to dispose of the matter by way of written submission.

Submitting on the first ground of appeal, the appellant submitted that in civil cases the standard of proof is on the balance of probability. He insisted that the balance of probability is tested by weighing the quality and authenticity of the evidence or testimonies of the parties. The appellant stressed that he lined up three witnesses who testified that the suit land belonged to the late EMANUEL YOHANA MBUTI.

To buttress his argument, the appellant submitted that PW2 (ABDUL MCHOPA) the local government leader (village Chairman) who is familiar with the suit land and the parties raised a serious issue on the authenticity of the sale agreement purported to have been executed on 17/6/1993 which was relied upon by 2nd respondent. The appellant submitted further that PW2 wondered how Damian Killian would have witnessed the sale agreement while he died way back before 1993.

In addition, the appellant asserted that the second respondent denied having sold the suit land to the first respondent because he was not the

owner of the same. The appellant contended that the suit farm has never been sold to the respondent but was owned by the late EMANUEL YOHANA MBUTI. He maintained further that there has never been any dispute in respect of the suit farm when deceased was alive unlike the second respondent whose witnesses do not know the boundaries of the suit farm. To this end, the appellant complained that the Tribunal analyzed the evidence on the high standard of proof which is not the principle in civil cases.

On the second ground, the appellant asserted that the ownership of the suit land by the second respondent is founded on the alleged sale agreements. He insisted that it is unlike that of the late Emanuel Yohana Mbuti founded the suit farm way back before the second respondent was born. The appellant maintained further that the authenticity of the sale agreement of 1993 is questionable since the person purported to have witnessed the same died before 1993 as was testified by PW2 (Mr. Abdul Mchopa). To this end, the appellant called upon this court to quash and set aside the decision of the Tribunal and declare that the suit land belong to the late Yohana Emanuel Mbuti.

In response, the first respondent fully supported the appeal and appellant's submission in chief. He asserted that it is cannon of law as per section 110(1), (2) and 115 of the Evidence Act requires a standard of proof in civil case to be on balance of probabilities. The appellant contended that at the tribunal the appellant and the first respondent testified that the suit land was not sold to any person since the demise of the late Emmanuel

Yohana Mbuti. He stressed that he did not sign the contract with the second respondent.

The first respondent submitted that the trial chairman really erred in law SM1,SM2,SM3 and DU1 who testified on the ownership of the suit farm and that the first respondent never solid the same to the second respondent. The respondent maintained that he had no title to pass to second respondent regarding the suit land. The first respondent submitted that he only leased one acre of the suit farm to the second respondent. However, the second respondent wondered how the said village chairman who died in 1985 had witnessed the sale agreement of the suit land of 1993. To this end, the first respondent prayed this court to find the first ground of appeal has merit.

Responding to the second ground, the first respondent contended that he did not sale the suit land to the second respondent. The first respondent maintained that he wondered how the late Damian Killian who died in 1985 could be able to witness the sale agreement between him and the second respondent. Furthermore, the first respondent stressed that the alleged sale agreement between him and the second respondent was obtained by fraud. He denied having executed it and emphasized that no other witness signed the same. He went further and submitted that the trial chairman ought to have properly evaluated the authenticity of exhibit D1.

On the other hand, the second respondent replied to the submission of the appellant that during trial he testified heavily how he became the owner of the suit land. The second respondent contended that he purchased the suit land on 17th June 1993 from the first respondent and witnessed by the

lawful authority. He insisted that at the time of sale the appellant and his late father were living on the same village, and no one disputed about the sale. The second respondent averred that his evidence was credible as seen at the first and second paragraphs of page 3 of the typed proceedings.

More so, the second respondent argued that in order for the party to win the case has a duty to prove the claim as per section 111 of the Evidence Act [Cap. 6 R.E. 2002]. He contended that the standard of proof in civil cases is on preponderance or balance of probability, the duty which the appellant failed to discharge it and that is why he lost the suit. To bolster his argument, the second respondent cited the case of **IKIZU SECONDARY SCHOOL VS SARAWE VILLAGE COUNCIL,** Civil Appeal No.163 of 2016, CAT (unreported) which cited with approval the case of **MADAM MARY SILVANUS QORRO VS EDITH DONATH KWEKA AND WILFRED STEPHEN KWEKA,** Civil Appeal No.102 of 2016.

Again, the second respondent contended that the matter is time barred because it was instituted after the expiry of 27 years. He submitted that even the deceased did not dispute the sale agreement. The second respondent cemented his argument by citing the cases of **JOHN BARNABAS VS HADIJA SMOARI**, Civil Appeal No.195 of 2018, CAT at page 9 (unreported), **NASSORO UHADI VS MUSSA KARANGE** [1982] T.L.R. No.302 and **KANDIA NAA VS HUSSEIN SAIDI** (1976) L.R.T. No.1

Regarding the second ground, the second respondent emphasized that he purchased the suit land before the lawful authority of Mbaju Village which was witnessed by six witnesses brought by both sides of the suit. The second

respondent submitted that the first respondent was the owner of the suit land and when decided to sale the same was supported by his relatives including his brother one Emanuel Mbuti. He insisted further that the sale agreement tendered in the tribunal is genuine and has all qualifications of being a legal document. To fortify his stance, he referred this court to the case of **ABDALLAH RASHID JALINI VS AHMADI ASALI SILI**, Misc. Land Appeal No.3 of 2018 (HC) (Unreported) and **SWEYA SELELI VS SHILINGITO BOMBASA** (1978) L.R.T. No.48.

It was the second respondent's submission further that it was the first respondent who sold the suit land with his own free will, without force, intimidation or promise. He also submitted that even the brother of the first respondent saw each and everything and showed the boundaries of the disputed suit. To this end the second respondent prayed this court to dismiss the appeal with costs for want of merit.

Having dispassionately considered rival submissions and keenly examined the tribunal records, the issue for determination is whether the appeal is meritorious. The appellant's father, the late Emmanuel Yohana Mbuti, died intestate on 11/01/2013. He resided in Mbuja Village within Chigugu Ward, Masasi District. The record confirms that the late Emmanuel Yohana Mbuti and the first respondent were blood brothers. It is further alleged that sometime in 1960, the late Emmanuel Yohana Mbuti developed the suit land. The dispute over the suit land arose after the appellant's father's demise.

Upon witnessing the second respondent cultivating the suit land, the appellant approached him and learned that the first respondent had sold it in 1993. In an attempt to resolve the dispute, the appellant and his relatives approached the first respondent, who denied selling the suit land to the second respondent. Instead, the first respondent claimed that during the late father's lifetime, he was given one acre of land. He utilized that plot of land until he later leased it to the second respondent for TZS 70,000/-.

From the above story, the learned Chairman proceeded to conduct a full trial and ruled in favour of the second respondent. I have observed that there have been occasional contradictions in the testimonies of the witnesses of both parties. However, I am convinced that such contradictions were expected given the fact that the conflict is over a piece of land whose history of ownership goes as far back as 1960.

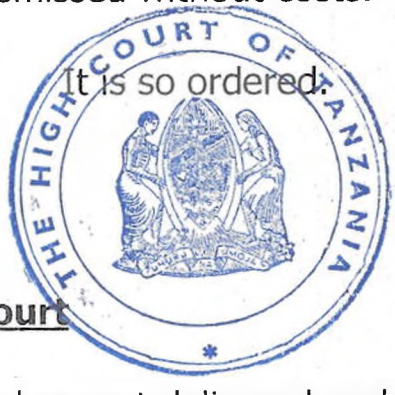
My interest in considering the merits of the appeal has also been examining whether the learned Chairman properly analyzed the evidence presented to him in spite of the contradictions as alluded to above. My finding has been in the affirmative. See, **LEONARD MWANASHOKA VS REPUBLIC**, Criminal Appeal No.226 of 2014 CAT at Bukoba (unreported) where the Court of Appeal of Tanzania stated:

> *"It is one thing to summarize the evidence for both sides separately and another thing to subject the entire evidence to an objective evaluation in order to separate the chaff from the grain. Furthermore, it is one thing to consider evidence and then disregard it after a proper scrutiny or evaluation and another thing not to consider the evidence at all in the evaluation or analysis."*

In the present case the learned Chairman vigorously analyzed the evidence. I see no reason to fault his judgement in spite of all the unfounded complaints by the appellants many of which are not even supported by the court records. To be fair, some of their requirements, if considered, would turn the burned of proof required in civil cases into that of criminal cases which as we know is much higher.

All said and done, I see no merit in the appeal. The same is hereby dismissed without costs.

It is so ordered.



E.I. LALTAIKA
JUDGE
27/7/2023

Court

Judgement delivered under my own hands and the seal of this Court on this 27th day of July 2023 in the presence of both parties who have appeared in person, unrepresented.

E.I. LALTAIKA
JUDGE
27/7/2023

Court

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

E.I. LALTAIKA
JUDGE
27/7/2023