IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT MOSHI

LAND APPEAL NO. 37 OF 2023

(Originating from Application No. 78 of 2018 of the District Land and Housing Tribunal for Moshi at Moshi).

PETER CASMIR KIWALE ..... APPELLANT

VERSUS

FIKIRA GERALD PAUL ..... 1ST RESPONDENT

ELCT SACCOS LTD ..... 2ND RESPONDENT

JUDGMENT

06/09/2023 & 11/10/2023

SIMFUKWE, J.

This appeal emanates from the decision of the District Land and Housing Tribunal of Moshi (trial Tribunal) in Land Application No. 78 of 2018. In a nutshell the appellant herein instituted a land dispute before the trial tribunal against the respondents herein. The 1st respondent borrowed money from the 2nd respondent at a tune of Tshs 1,000,000/= and mortgaged a plot located at Mabogini measured 27 by 21 as collateral. It has been alleged that the 1st respondent defaulted to pay the said loan. Following such default, the 2nd respondent issued notice of intention to sale the said plot. However, he faced the encumbrance from the appellant herein who claimed that the said collateral belonged to him as he bought

it in 2013 from the 1st respondent's mother. The appellant decided to institute a suit at the trial tribunal. The trial tribunal decided the dispute against the appellant. Aggrieved, the appellant instituted this appeal and advanced the following grounds of appeal:

1. *That, the Trial Chairman of the Tribunal erred in law and fact by holding that the 1st Respondent is the lawful owner of the suit land.*
2. *That, the Trial Chairman of the Tribunal erred in law and fact by failure to consider the weakness of the 2nd Respondent's evidence on the issue of loan security as the result, ruled in 2nd Respondent's merit.*
3. *That, the Trial Chairman of the Tribunal erred in law and fact by failure to consider the document for evidence tendered by the 1st Respondent only admit mere statement stated by the 1st Respondent. (sic)*
4. *That, the chairman of the Tribunal erred in law and fact by determining the land dispute without visiting the Status quo whether it was the loaned security or not.*
5. *That, the trial Chairman of the Tribunal erred in law by conducting hearing when the quorum was not proper constituted according to the gender. (sic)*

During the hearing of this appeal, the appellant and the 1st respondent were unrepresented while the 2nd respondent was represented by Mr. Daniel Samwel, learned counsel.

On the first ground of appeal, the appellant disputed the findings that the 1st Respondent is the lawful owner of the suit land. The appellant averred that he is the owner of the disputed property as he purchased it from one Natalia Paul Msaki, the 1st respondent's mother and the 1st respondent was the witness of the said sale (He attached the sale agreement to his submission).

The appellant continued to narrate that after purchasing the said land, he managed to develop it by constructing frames for business. He leased one frame to the 1st Respondent so as to conduct his business. The appellant continued to be the owner of the said premises until when the 2nd respondent issued the notice of intention to sale claiming that the 1st respondent is the owner of the premises and has defaulted to pay the loan on the agreed time.

The appellant argued further that the trial Chairman erred to declare that the 1st Respondent is the lawful owner of the suit land while he failed to prove by showing any document of ownership unlike the appellant who adduced evidence to prove that the said property belongs to him. That, the trial Chairman relied on mere words adduced by the 2nd respondent instead of issuing an order to call the 1st respondent's mother Natalia Paul Msaki to come and adduce evidence that she was the owner of the suit land before transferring ownership to the appellant by way of sale.

It was further submitted by the appellant that, from the time when he bought the said land, he stayed over that land peacefully without being disturbed until when the issue of intention to sale the suit land was raised by the 2nd Respondent. That, they were surprised as they had never seen the officer of the 2nd respondent visiting the disputed property and asked

the 1st respondent or any one about the issue of loan. He added that, the appellant and his family are living at the disputed land.

Supporting the second ground of appeal, the appellant faulted the trial Chairman for failure to consider the weakness of the 2nd Respondent's evidence on the issue of loan security. He explained that, the trial Chairman did not request for the loan form which could show the specific dimensions of the land and place as the land owned by the 1st respondent and that of the appellant have no title and have different dimensions and location. The appellant wondered why the Chairman relied on what was said by the 2nd respondent instead of making perusal of all the loan documents filed by the 1st Respondent to ascertain if the details of the alleged land resemble to the suit land or not. That, it is not clearly understood as before one request for loan from any institution, the officer of that institution have to visit the place where the Borrower stays and see the property secured for the loan security. If satisfied then, they will call that person to sign another form for agreement and grant the loan. The appellant was confused by the act of the 2nd respondent to issue notice of sale to the property which the defaulter was found staying or doing business. He was of the view that it is possible that the 2nd respondent has no habit of keeping records of their loan clients and the places which they own which could avoid confusion and invading into property of other people just because the place is valuable.

On the 3rd ground of appeal, it was submitted that the trial Chairman failed to consider the documentary evidence tendered by the appellant and opted to rely on the mere statement of the 1st Respondent. That, the trial Chairman ignored the fact that it is the 1st Respondent who requested for

the loan from the 2nd respondent and they know each other. It is the 1st respondent who had all the documents which prove that he borrowed money from the 2nd respondent's institution and what he put as security to secure such loan. It was emphasized that the trial Chairman ignored such evidence and relied on what the 2nd respondent claimed and blessed the 2nd respondent to sale the suit land which belonged to the appellant.

On the fourth ground of appeal, the appellant asserted that the trial Chairman determined the dispute without visiting the status quo to ascertain whether the disputed property was the mortgaged property or not. That, from the issuance of the stop order until the hearing of the suit, no effort was done by the Tribunal to assure that what is claimed by the 2nd respondent was true considering the fact that about 2 or 3 years had elapsed since the 1st respondent requested for the loan from the 2nd respondent. It was the opinion of the appellant that visit to the locus in quo could assist the Tribunal to see the neighbours of the 1st respondent and the appellant and get more information on who is the real owner of the suit land.

He explained that the meaning of Latin word visiting the locus in quo in land matters means: *" visit to the location of the disputed land, the extent, boundaries, neighbours and physical features on the land."*

Elaborating the importance of visiting the Locus in quo on land matters, the appellant referred to the case of **Kimonidimitri Mantheakis vs Ady Azim Dewji & 7 Others,** Civil Appeal No. 4 of 2018 which held that:

"Visit the locus in quo should be a substitute for evidence."

The appellant averred further that in the above cited case, the Court of Appeal referred to the case of **Akosile vs Adeye** (2011) 17 NNWL R (Pt 1276) page 263 where it was held that:

> *"The essence of a visit in locus in quo in land matters includes location of the disputed, the extent, the boundaries and boundary neighbour and physical features on the land the purpose is to enable the court see objects and places referred to in evidence physically and to clear doubts arising from conflicting evidence if any about physical objects."*

On the strength of the above authorities, the appellant faulted the trial tribunal for failure to observe the requirement of visiting the disputed land and decided based on experience which led to confusion and conflict of interest on the said landed property.

He went on to submit that when the 1st respondent took the loan from the 2nd Respondent, his land was just a bear land and it was located in another place different from the appellant's land, which could be discovered by the trial Chairman if he had visited the locus in quo.

On the 5th ground of appeal, the appellant complained that the Tribunal conducted hearing while the quorum was not properly constituted according to the gender. It was the appellant's argument that it is a legal requirement that a Tribunal must be properly constituted based on the number of assessors who should be not less than four, one of the assessors must be of different gender that is, three women and one male. He said in the present situation, the quorum was constituted with two

assessors and both of them were female. He opined that there should be at least one-man assessor to have proper quorum. He cited the provision of **Section 11 of the Land Disputes Courts Act** [Cap 216 R.E 2002] which provides that:

> *"There shall consist of not less than four nor more than eight members of whom 3 shall be women..."*

The appellant said, in the present matter, the Tribunal had only two assessors of the same gender which is less than the quorum required by the law. Also, the appellant blamed the trial Chairman for supporting the statement of assessors of the same gender while it could be different if there was at least one man who could bring different idea including the idea of visiting the disputed property. Moreover, the appellant stated that the chairman of the Tribunal is not bound by the opinions of assessors. He must give reasons in the judgment for differing with the opinions of assessors once he decides to the contrary as the assessors are not intended to provide expert advice or guidance on local practice (sic) but on customary. That, assessors' opinions of the measurement of the disputed land were technical matter which required land expert to give opinion which the trial chairman could rely upon and draw conclusion on it.

In reply, the 1st respondent supported the submissions made by the appellant with few remarks. On the first ground of appeal, the 1st respondent added that, when the Officer of the 2nd respondent was making follow up of the loan, they found him at the shop at the appellant's premises and decided to write a notice that he is the owner of that premise.

On the second ground of appeal, the 1st respondent submitted that the owner of the land is the one with the title and in case he lacks the title, ownership may be proved by the contract of sale. He made reference to **Sarkar's Laws of Evidence 18th edition M.C SARKAR AND P.C SARKAR,** published by Lexis Nexis (at page 1896) which explains the principle of proving a fact.

In support of the third ground of appeal, the 1st respondent referred to the loan agreement (Annexure F3) and claimed that he had already paid all the debt as per the receipts (he attached the receipts).

The 1st respondent supported the 4th ground of appeal and reiterated what had been submitted by the appellant. In addition, he said the appellant's land has different estimated measurement compared to the land taken for loan which belonged to the 1st respondent.

On the issue of assessors, he reiterated what was stated by the appellant. He supplemented the appellant's argument by referring to **the International Journal of science arts and commerce written by Bahati Colex** at page 13 and 14 at paragraph 3 which states that:

> *"The main role of assessors is to opine on matters relating to customary law and practice of the community and the chairman is deemed to be expert of land laws and matters related to law while* assessors *are supposed to be very conversant with customs and practice relating to land in the particular community and the assessors should be knowledgeable in land related customs and practice."*

The 1st respondent submitted further that, the land which he used to secure the loan was inherited from his grandfather Paul Kinyala Msaki as shown in the agreement which was entered between the 1st respondent and his grandfather who is the father of Natalia Paul Msaki who was also among the witnesses.

The 1st respondent urged this court to look back at the loan form so as to clear doubts of the loan security and the suit land owned by the appellant. He also prayed the court to allow the appeal with costs.

On part of the 2nd respondent, he vehemently disputed the submissions made by the appellant and the 1st respondent.

Responding to the first ground of appeal that the Tribunal erred to declare the 1st respondent owner of the disputed property; Mr. Daniel said that this reason was raised to prevent the 2nd respondent from exercising his right to attach and sale the security after the borrower had defaulted payment. He contended that, the 1st respondent has been in occupation of the suit premises before the date mentioned by the appellant to have acquired rights over the land. Although the appellant alleged to have allowed the 1st respondent to use the land by way of lease, he did not produce any proof to support the alleged lease agreement between him and the 1st respondent. Thus, the trial Chairman could not rely on his sole testimony to rule in his favour.

Responding to the allegations that there was weakness in the 2nd respondent's evidence proving the accuracy of the procedure in issuing the loan and using the land in dispute as a security; Mr. Daniel said the 2nd respondent was able to produce documents to prove that the

procedures and requirement for issuing the loan were complied with. The same was corroborated with the testimonies of the 1st respondent and the officer of the 2nd respondent.

Countering the argument that the appellant together with his family had peaceful enjoyment of the land in dispute from when he purchased the same, Mr. Daniel submitted that during the trial, the appellant stated that he purchased the land, built a business facility and leased it to the 1st respondent. Thus, his allegations are not only contradictory to what was stated during the trial, but also amount to new evidence produced on appeal. The learned advocate stated that the conditions to be fulfilled to justify receiving additional evidence on appeal were stated in the case of **S.T. Paryani vs Choitram and Others (1963) EA 462**, whereby the Court quoted with approval Lord Denning L (as he then was) in the case of Ladd **vs Marshall** (4) (1954) which held that:

> *"To justify the reception of fresh evidence or a new trial three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that; if given would probably have an important influence on the result of a case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible."*

The learned advocate for the 2nd respondent clarified that the above position was upheld by the Court of Appeal of Tanzania in the case of

Ismail Rashid vs Mariam Msati, Civil Appeal No. 75 of 2015 in which it was held that, it was improper for the judge to admit a certificate of title which was not tendered in evidence during the trial. When the court noticed that according to the record the certificate of title was not admitted in evidence, whilst the certificate was considered by the judge in reversing the trial court's decision which is prejudicial to the appellant; the Court in exercising its revisional powers, went ahead to quash and nullify the entire proceedings and judgment of the trial court and the High Court for the reason that the entire evidence at the trial was mishandled, the trial was flawed and in essence there was no trial.

From the above authorities, it was the comment of Mr. Daniel that it will be mishandling of evidence and fatal to the entire proceedings if this court will consider and admit new evidence from the appellant.

Mr. Daniel went on to submit that in civil cases, it is settled law that he who wants the court to give verdict in his favour on a certain right or liability depending on existence of certain facts, must prove that the same do exist and the burden of proof lies on that person who alleges.
In the case at hand, the learned counsel submitted that the appellant gave his own testimony claiming that he purchased the land from one Natalia Paulo Kinyata. Although the trial Chairman admitted the sale agreement, the appellant could not call other witnesses to strengthen his testimony be it his wife who he claims to have been residing in the suit premises with or neighbour or witness to the sale agreement. He was of the view that in such circumstances, the appellant cannot blame the trial Chairman for arriving to his decision when he left so much doubt in his case. He supported the point with the case of **Mary Agnes V. Shekha**

Nasser Hamad, Civil Appeal No. 136 of 2021 which cemented the principle of burden of proof by stating that:

> *"(i) We are also guided by the basic rule that he who alleges has the burden of proof as per section 110 of the Evidence Act, Cap. 6 R.E. 2019. (ii) Standard of proof in a civil case is on a preponderance of probabilities, meaning that the Court will sustain such evidence that is more credible than the other on a particular fact to be proved. (iii) The burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his burden and that the burden of proof is not diluted on account of the weakness of the opposite party's case."*

Mr. Daniel maintained that, the appellant herein was required to prove his case the best way he could and not to dwell on the assumption and rely on the weakness of the respondents' case.

On the 4th ground of appeal on visiting locus in quo; Mr. Daniel submitted that the essence of visiting locus in quo in land matters includes observing the location of the disputed land, the extent, boundaries and neighbours, and physical features on the land. Also, the purpose is to enable the Court to see objects and places referred to in evidence physically and to clear doubts arising from conflicting evidence if any about physical objects on the land and boundaries.

In this case, the learned counsel told this court that the location and developments of the land in dispute were not a fact in issue during the trial. He cemented the point with the case of **Nizar M. H. vs. Gulamali Fazal Jan Mohamed [1980] TLR 29,** in which the the trial magistrate

visited the locus in quo and the judge sitting on appeal also did so. However, the Court of Appeal was of the following opinion:

> *"It is only in exceptional circumstances that a court inspects a locus in quo, as by doing so a court may unconsciously take on the role of a witness rather than an adjudicator. At the trial, we ourselves can see no reason why the magistrate thought it was necessary to make such a visit. Witnesses could have given evidence easily as to the state, size, location and so on of the premises in question."*

Basing on the above decision, Mr. Daniel opined that due to the fact that the facts that needed elaboration were easily explained by witnesses during the trial, the issue of failure to visit the locus quo is not fatal to the proceedings and cannot be raised as the ground of appeal.

Regarding the allegation that the quorum of the Tribunal was not proper, Mr. Daniel replied that **section 11 of the Land Disputes Courts Act** (supra) which was cited by the appellant falls under Part IV of the Act which contains provisions for Ward Tribunal and not District Land and Housing Tribunal.

The learned advocate explained that the amendments of **the Land Disputes Courts Act** (supra) by **the Written Laws (Miscellaneous Amendments) Act No. 5 of 2021** require parties facing land disputes to first submit the matter before the Ward Tribunal for mediation. He suggested that had the dispute arose after the above-mentioned amendments, then the issue of the composition of Ward Tribunal would be admissible but given that the dispute arose in the year 2018, the ground lacks merit at this juncture.

Mr. Daniel highlighted further that, evidence of both the appellant and the respondents shows that the 1st respondent had been occupying the land in dispute since the year 2013 and the appellant has never occupied the land since his alleged purchase from the 1st Respondent's mother. In addition, the 2nd respondent's advocate submitted that the procedure to issue loan, attach and sale the land in dispute was in conformity to the requirements of the law.

Mr. Daniel believed that this appeal lacks merit and must be dismissed with costs.

Having considered the grounds of appeal, the rival submissions of both parties as well as the trial Tribunal's records; the issue to be considered is **whether this appeal has merit**. Looking at the grounds advanced by the appellant, I am of considered opinion that the 1st, 2nd and 3rd grounds of appeal concern evaluation of evidence while the 4th and 5th grounds of appeal are in respect of violation of law. Thus, I will tackle the 1st, 2nd and 3rd grounds of appeal jointly and generally.

On the first ground of appeal, the appellant challenged the decision of trial tribunal on the reason that the Chairman erred to hold that the 1st respondent is the lawful owner of the disputed property. He explained that the said land belonged to him since he purchased it from the 1st respondent's mother, developed it and leased it to the 1st respondent for business purpose. He claimed that he tendered the sale agreement unlike the 1st respondent who did not prove ownership of the said property. Thus, on the third ground the appellant blamed the trial Tribunal for relying on the mere evidence of the 2nd respondent. Under the second ground of appeal, the appellant believed that the 2nd respondent's

evidence is weak. The appellant alleged that he has been in the peaceful possession of the disputed land together with his family.

The 1st respondent agreed with the appellant while the 2nd respondent disputed all the three grounds of appeal. The learned advocate for the 2nd respondent submitted that the 1st respondent had been in occupation of the said land before the date mentioned by the appellant to have acquired right over the said land. It was the learned advocate's argument that, the allegations that the appellant leased the property to the 1st respondent have no proof of the lease agreement. Also, the argument that the appellant has peacefully stayed at the disputed property is contradictory to the argument that he leased the said property to the 1st respondent.

In civil cases, the burden of proof lies on the person who alleges. The onus never shifts to the adverse party unless the one who alleges discharges his/her onus. The Court of Appeal in the case of **Paulina Samson Ndawavya vs Theresia Thomasi Madaha (Civil Appeal No. 45 of 2017) [2019] TZCA 453** at page 14 had this to say:

> *"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved."*

In the case at hand, since it was the appellant who instituted the matter before the trial Tribunal, he was enjoined to discharge the onus of proof

and not to blame the respondents for failure to discharge the onus of proof on balance of probabilities.

While discussing this issue on whether the property belonged to the 1st respondent; at page 6 and 7 of the judgment, the trial Chairman had this to say:

> *"… Eneo aliloweka kama dhamana lina ukubwa wa hatua 27 kwa 21, Na kwa mujibu wa Kielelezo D2 mjibu maombi alipewa eneo hilo na baba yake aitwaye Paul Kinyala Msaki. Ni baada ya kuwasilisha Mkataba huo wa kupewa eneo na ndipo ELCT SACCOS waliporidhika na kumpa mkopo huo. Hivyo basi na kwa kuzingatia maoni ya Wajumbe wa Baraza hili, hoja ya kwanza bishaniwa inajibiwa kwamba mjibu maombi wa kwanza aliweka eneo la mgogoro kama dhamana ya kuchukua mkopo wa kiasi cha Tsh 1,000,000/= kutoka kwa mjibu maombi wa pili.*
>
> *Nikirudi kwenye hoja ya kwanza bishaniwa, mwombaji anadai kuwa yeye ni mmiliki wa eneo lenye ukubwa wa mita 12 urefu kwa 10 upana ambalo alilinunua kutoka kwa mama yake na Mjibu maombi wa kwanza Mwaka 2013 na kisha kujenga hapo kibanda na car wash. Aidha mjibu maombi 1 alisema kwamba yeye alipewa eneo hilo na babu yake mwaka 2005 likiwa na ukubwa wa hatua 27 urefu na hatua 21 upana. Kwa ushahidi uliopo na hasa ushahidi wa upande wa Mjibu maombi wa pili eneo la mgogoro lenye ukubwa wa mita 12x10 ni sehemu ya eneo lililowekwa dhamana lenye ukubwa wa hatua 27 x 21.*

Lakini pia wakati SU1 anaulizwa maswali na Mjumbe Sarah Mchau alisema kwamba wakati eneo hilo linawekwa dhamana car wash haikuwepo. Hivyo inaonekana kwamba "car wash" imewekwa baada ya eneo hilo kuwekwa dhamana."

From the above findings, I agree with the trial Chairman that the disputed property was mortgaged by the 1st respondent so as to secure the loan from the 2nd respondent. Together with the reasons advanced by the trial Chairman above, my line of reasoning is supported with **exhibit D1** the Loan Form which shows that the property which the 1st respondent used to secure the loan was the disputed property measured 21 X 27 paces which he claimed that he was given by his grandfather one Paul Kinyala since 2005 which was before 2013 when the appellant alleged to buy the same from the 1st respondent's mother.

Concerning the allegation that the land used to secure loan is different from the land of the 1st respondent; with due respect to the appellant, exhibit D1 is clear and was supported by evidence of the 2nd respondent at page 27 of the typed proceedings when he was cross examined that he visited the land before granting the loan to the 1st respondent.

Besides such evidence, according to paragraph 6(iii) of the Loan Form (exhibit D1), the 1st respondent himself stated that he has a business house (frames) worth 4 million. Thus, claiming that the said business rooms were constructed by the appellant herein is contrary to what was stated by the 1st respondent while securing the loan.

It has been alleged that the appellant is residing in the disputed house together with his family. However, this argument is contrary to what was stated by the appellant himself at page 18 of the typed proceedings when he was cross examined by the learned counsel of the 1st respondent that no one is residing at the disputed property.

Moreover, the appellant advanced the argument that he allowed the 1st respondent to conduct business at the suit premises but he did not tender such agreement to support his contention. On the other hand, the 1st respondent by using exhibit D1 (Loan Form), confirmed to the 2nd respondent that the said rooms belonged to him.

On the allegations that the trial Chairman failed to consider the fact that the appellant tendered the sale agreement between him and the 1st respondent's mother to prove that the said property belonged to him; with due respect, he did not call witnesses to prove such agreement. Also, at page 19 of the typed proceedings, the appellant confirmed that the said sale was not witnessed by the village authorities. In other words, on balance of probabilities, the appellant failed to prove ownership of the disputed property before the trial tribunal.

I am of considered opinion that the 1st, 2nd, and 3rd grounds of appeal have no merits at all.

Turning to the 4th ground of appeal which concerns failure to visit the locus in quo; the appellant herein did not move the Tribunal to visit the locus in quo. In absence of such prayer then the appellant cannot at this stage blame the Tribunal for failure to exercise what he himself did not pray for.

Moreover, as the applicant before the Tribunal, the appellant was required to prove his claims on balance of probabilities and not to require the Tribunal to discharge that duty on his behalf by visiting the locus in quo.

Apart from that, there was no dispute over the boundaries and location for the trial Tribunal to visit the locus in quo. The officer of the 2nd respondent at page 27 of the proceedings confirmed that he even visited the disputed land before issuing the loan. Therefore, the contention that the disputed land and the 1st respondent's land which he used to secure the loan are different is misplaced. Under the circumstances, there was no need of visiting the locus in quo.

Lastly, on the 5th ground of appeal the appellant was of the view that the coram of the tribunal was not proper since it composed only two women assessors contrary to **section 11 of the Land Disputes Courts Act** (supra).

As rightly submitted by Mr. Daniel for the 2nd respondent, the appellant has referred to the provisions which deals with the quorum of the Ward Tribunal while the impugned decision was delivered by the District Land and Housing Tribunal. In addition, the law requires the Chairman of the District Land and Housing Tribunal to sit with not less than two assessors. The specific provision in respect of assessors before the District Land and Housing Tribunal is **section 23(1)(2) of the Land Disputes Courts Act** (supra) which provides that:

> *"23 (1) The District Land and Housing Tribunal established under section 22 shall be composed of at least a Chairman and not less than two assessors.*
>
> *(2) The District Land and Housing Tribunal shall be duly constituted when held by a Chairman and two assessors*

who shall be required to give out their opinion before the Chairman reaches the judgment."

Therefore, the provision which was cited by the appellant is irrelevant to this matter.

Having said that and done, I am of considered opinion that this appeal lacks merit in its entirety. I therefore dismiss it with costs.

It is so ordered.

Dated and delivered at Moshi this 11th day of October, 2023.

X

S. H. SIMFUKWE
JUDGE
Signed by: S. H. SIMFUKWE

11/10/2023