IN THE HIGH COURT OF TANZANIA

(SUMBAWANGA DISTRICT REGISTRY)

AT SUMBAWANGA

LAND APPEAL NO. 30 OF 2022

(Originating from the District Land and Housing Tribunal for Rukwa at Sumbawanga in Land Application 59 of 2020)

EMIL S/O MPANGAMILA.....APPELLANT

VERSUS

ALEXANDER S/O MILAMBO.....RESPONDENT

JUDGMNET

9th October & 31st October, 2023

MRISHA, J.

This is an appeal against the judgment and decree of the District Land and Housing Tribunal for Rukwa at Sumbawanga (the trial tribunal). It emanates from the Land Application No. 59 of 2020, and has been brought to this first appellate court by the appellant, **Emil Mpangala** who is not amused by the above judgment which was decided in favour of his counterpart, one Alexander Milambo (henceforth the respondent).

Initially, the appellant sued the respondent for allegedly invading his land (the suit land) estimated to be 8 acres which is located at Nkundi

Village within Sumbawanga Village in Rukwa Region, claiming that the suit land is part of a 60 acres land he brought from one Ivo Mkoma (now the deceased) on 1987. On the adversary side, the respondent testified before the trial tribunal that the suit land belongs to him because he acquired it since 1984 and had been using the same undisturbed until 2020.

After a full trial, the trial tribunal found that the respondent had made his case to the required standard. Hence, it decided in favour of the respondent and declared him to be the lawful owner of the suit land. Also, the trial tribunal ordered the appellant to vacate from the suit land.

As I have mentioned above, the above decision did not please the appellant at all. In order to challenge the same, he has lodged an appeal to this court, which is predicated into the following grounds: -

1. That the Hon. Trial Tribunal erred in law and facts for being decide (sic) the matter contrary (sic) the law of limitation which is unjust in the eyes of law.
2. That the Hon. Trial Tribunal erred in law and facts for being decided the matter (sic) by basing (sic) documentary evidence adduced by Respondent which is vague and baseless.

3. That the Hon. Trial Tribunal erred in law and facts for being decide the matter (sic) without considering the evidence adduced by appellant.
4. That the Hon. Trial Tribunal erred in law and facts for being decide the matter (sic) contrary (sic) the laws.
5. That the Trial Tribunal erred in law and facts for being decide the matter (sic) by stating that disputed land is owns (sic) by respondent.
6. That the Hon. Trial Tribunal erred in law and facts for being decide the matter (sic) without considering the location of the disputed land which is unjust.
7. That the Hon. Trial Tribunal erred in law and facts for being decide the matter (sic) by biasness which is unjust before the law.
8. That the Hon. Trial Tribunal erred in law and facts for being decide the matter (sic) by stating that the Appellant is a trespasser in disputed land.

When the appeal was called on for hearing, the appellant appeared in person, unrepresented and urged this court to adopt his eight grounds of appeal in order to form part of his submission in chief stating that the same are self-explanatory. He therefore, requested the court to allow his

appeal with costs, quash the decision of the trial tribunal and set aside the proceedings of the said trial tribunal.

On the other side, the respondent enjoyed the services of Ms. Neema Charles, learned Advocate who opposed the instant appeal, made her submission against all the grounds of appeal raised by the appellant, and in the end implored me to dismiss the present appeal with costs for being unmerited.

Submitting in respect of the first ground of appeal, Ms. Neema Charles contended that the law of limitation could not be used in this case because there is a sale agreement which was tendered by the respondent before the trial tribunal and admitted without objection, which proves that the suit land belongs to the respondent who brought it from the late Ivo Mkoma.

The respondent's counsel added that acquisition of land through adverse possession must be proved by the one claiming possession of land. The learned counsel cited the cases of **Registered Trustees of Holy Spirit Sisters Tanzania vs January Kamili Shayo & Others**, Civil Appeal No. 193 of 2016 (unreported) which made reference to the cases of **Mose vs Lovegrove** [1952] QB 533 and **Hughes v Griffin** [1969] 1 All ER 460, to bolster her proposition.

On the second ground, it was the respondent's counsel submission that the same is baseless because the documentary exhibit tendered by the respondent before the trial tribunal, proves that there was a sale agreement between the respondent and the late Ivo Mkoma and that the appellant did not raise any objection against that document when it was sought to be tendered in court.

As for the third ground, the learned counsel submitted that the same is strongly disputed because the evidence adduced by the appellant does not prove ownership of the suit land and it is contradictory when compared to the testimonies of his witnesses. Ms. Neema Charles clarified, for instance, that while testifying before the trial tribunal the appellant who stood as DW1, testified that the dispute between him and the respondent arose on 2000 while his witnesses who were DW2 and DW3, testified that it arose on 2020.

Also, regarding the size of the suit land, the respondent's counsel submitted that the appellant testified that it is 40 acres, but after visiting to the *locus in quo*, it was realised that the suit land is composed of 8 acres. In supporting her argument regarding the contradictory evidence on the part of the appellant, the respondent's counsel referred this court to the case of **Emmanuel Abraham Nanyaro vs Peniel Ole**

Salitabwo [1987] T.L.R 48 in which it was held that unreliability of witnesses, conflict, inconsistence in their evidence entitles a chairman to reject their evidence.

In winding up on that ground, the learned counsel submitted that the appellant was a trespasser of the suit land because the same was kept for livestock grazing, not for farming as claimed by the appellant. She also submitted that the respondent in his evidence proved the fact that the appellant trespassed into his land which he purchased from the late Ivo Mkoma and witnessed by the said deceased's son who also testified before the trial tribunal that he witnessed the sale agreement between his late father and the respondent who bought the same for 250,000/= Tanzania Shillings.

Ms. Neema Charles also submitted in respect of the fourth ground that the same has not merit because the whole procedure of conducting trials before the trial tribunal, was properly followed by the trial chairperson of the trial tribunal because she gave both parties a right to be heard and to call their witnesses who also testified and that led to determination of the parties' dispute.

Regarding the fifth ground of appeal raised by the appellant, the respondent's counsel submitted that the discussion of that ground was

covered when she was arguing on the third ground. However, she went far by citing the case of **Hemed Said vs. Mohamed Mbilu** [1983] T.L.R 113 in which the court held that:

> *"The person whose evidence is heavier than that of the other is the one who must win."*

In regards the sixth ground, the respondent's counsel submitted that the same is disputed because apart from the appellant who successfully managed testify on the location of the suit land with his witnesses, the respondent failed to prove that the suit land is located at Makingwa and also, he failed to call witness to prove that the same is located there, and not Nkundi Village.

Coming to the seventh ground, Ms. Neema Charles submitted that the same is baseless because every witness was given an opportunity to testify and tender exhibit and the trial tribunal used such testimonies to assess them and make its decision.

On the eighth ground of appeal, the respondent's counsel submitted that the appellant is a trespasser to the suit land because since 1989 the respondent had no dispute with any person including the appellant. Hence, she prayed to this court to dismiss the appellant's appeal, uphold the decision of the trial tribunal and make an order for costs.

In rejoinder, the appellant submitted that he started cultivating the suit land since 1984 when there were three persons, but during that time the late Ivo Mkoma did not cultivate the suit land; he passed away on 1993. He wondered how could it be said that the late Ivo Mkoma reported the dispute on 2020 when he was already dead.

On my part, I wish to say that I have paid much attention and considered the entire proceedings of the trial tribunal, the impugned decision of the trial tribunal, the grounds of appeals as well as the submissions by both parties in support and against the said grounds of appeal. In my view, the issue for determination of this appeal is whether or not the present appeal has merit. I propose to deal with all the grounds of appeal in the manner proposed by the parties herein.

In the first ground, the appellant has complained that the trial tribunal erred in law and fact for deciding the matter before it contrary to the law of limitation which is unjust in the eyes of the law. It is unfortunate that the appellant did not clarify how the law of limitation was contravened.

However, after going through the submission of the counsel for the respondent, I have noticed that his argument was that since he occupied the suit land for long time undisturbed, then under the

doctrine of adverse possession, he became the lawful owner of the suit land.

To the adverse side, Ms. Neema Charles has not supported such argument stating that since there was a sale agreement which was admitted by the trial tribunal as exhibit A, then the doctrine of adverse possession cannot apply in such situation.

I have revisited the typed proceedings of the trial tribunal particularly at page 5, and noted that despite being given an opportunity to comment on the alleged sale agreement, the appellant ended by just saying he does not want the same to be tendered as an exhibit because the evidence of the appellant was false, without clarifying why he was of that view. In the circumstance, I think the trial chairperson was right to admit the sale agreement as exhibit A.

Also, in the case of **Registered Trustees of Holy Spirit Sisters** (supra) it was held that:

> *"...it is trite law that a claim for adverse possession cannot succeed if the person asserting the claim is in possession with the permission of the owner or in pursuance of an agreement for sale or lease or otherwise".*

Back to the case at hand, it is apparent that apart from adducing sufficient evidence to show how he came into possession of the suit land which evidence was well corroborated by his witnesses, including PW2 who is the son of the vendor of the suit land, the respondent successfully tendered a sale agreement before the trial tribunal and the same was admitted in evidence as indicated above.

In the circumstance, and being guided by the principle of law as stated in the above case, I am persuaded to follow the invitation of the respondent's counsel that the circumstances of this case do not attract the application of the law of limitation. With the above reasons, the first ground of appeal is therefore, dismissed for want of merit.

Through the second ground of appeal, the appellant has faulted the trial tribunal for deciding the matter before it basing on documentary evidence tendered by the respondent which is vague and baseless. Again, it has not been clarified how such document is vague and baseless.

The counsel for the respondent has urged the court to dismiss that ground arguing that the same is baseless because the respondent proved his case by tendering a sale agreement which shows that he purchased the suit land from the late Ivo Mkoma, but the appellant did

not object it legally. The law under section 110 (1) of the Evidence Act, Cap 6 R.E. 2022 is very clear that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

Despite claiming that the documentary evidence tendered by the respondent is vague and baseless, the appellant has not assigned any reason to support his claim nor has he said anything in relation to that evidence in his rejoinder submission. Hence, I fail to agree with him that the said evidence is vague and baseless. I would therefore, find that the second ground also falls down.

I now turn to the third ground of appeal in which the appellant has complained that the trial tribunal erred in law and fact for deciding the matter before it without considering the evidence adduced by the appellant who obviously, was the respondent in that suit. In my view, this ground need not detain me much to address it.

First, because it has been strongly disputed by the respondent's counsel, and the second reason which is very important, is that the impugned judgment of the trial tribunal clearly shows that the honourable trial chairperson considered the appellant's evidence before deciding in favour of the respondent. The above court's observation is fortified by

what the said chairperson wrote at page 9 of the typed proceedings, thus:

> *"Ununuzi wa eneo hilo umethibitishwa na kilelezo A ambao ni mkataba unaodhihirisha kuwa eneo gombewa ni mai (sic) ya mleta maombi toka alipolinunua mwaka 1989. Sm1, Sm2, Sm3 na SM4 waliimba wimbo mmoja ambao ni kwamba eneo gombewa ni mali ya mleta maombi kwa njia ya ununuzi wimbo ambao mimi ninaona kuwa ni wa ukweli* ***ukilinganisha na madai ya mjibu maombi ya kukamatia eneo hilo. Madai ambayo mimi ninayaona kuwa hayana ukweli wowote...*** *" [Emphasis is mine]*

From the above except it does not need anyone to use much energy to realise that the honourable trial chairperson properly considered the evidence of both parties including the one adduced by the appellant, before making her decision. Therefore, I find the complaint of the appellant to be unfounded and proceed to dismiss his third ground of appeal for being unmerited.

In regards the fourth ground of appeal, it is the complaint of the appellant that the trial tribunal erred in law and in fact for deciding the matter before it contrary to the laws. Beyond wanting the court to

consider that ground and allow his appeal, the appellant has not clarified which laws were contravened by the trial tribunal.

On her side, the counsel for the respondent has submitted that such ground is baseless because the trial chairperson complied with the procedure of conducting trials before the trial tribunal which included to afford both parties with the right to be heard.

I agree with her that the trial chairperson abided to the law which regulate trials before the trial tribunal. I may also add that no law was contravened by the trial tribunal because the records are clear that both parties were given an opportunity to adduce their evidence. Due to the above reasons, the fourth ground is therefore, found to be without merit.

Regarding the fifth ground of appeal, the appellant has challenged the trial tribunal for deciding the matter before it by stating that the suit land belongs to the respondent. On her part, Ms. Neema Charles has argued that the trial chairperson reached her decision in favour of the respondent because the respondent adduced evidence which became more heavier than that of the appellant.

She has also referred this court to the case of **Hemed Said vs. Mohamed Mbilu** (supra) with a view of backing up her proposition. I

have gone through the proceedings of the trial tribunal as well as the judgment of the said tribunal in order to see whether there is merit in that fifth ground of appeal by the appellant.

What I have observed therein is that between the two, it is the respondent whose evidence was heavier than that of the appellant; first, because he tendered a sale agreement which proves that the suit land belongs to him, and secondly, his evidence seems to be well corroborated by the evidence of his three witnesses compared to the one adduced by the appellant which failed to disprove the evidence of the respondent. With the above reasons, the fifth ground fail as well.

The appellant has also alleged through his sixth ground of appeal, that the trial tribunal erred in law and fact when it decided the matter before it without considering the location of the suit land. In her submission regarding that ground, Ms. Neema Charles has contended that the respondent proved before the trial tribunal that the suit land is located at Nkundi Village and his evidence was corroborated by the evidence of PW3.

The judgment of the trial tribunal depicts that the trial tribunal considered the location of the suit land. This can be retrieved at

paragraph one of page 1 of the said judgment in which the learned trial chairperson wrote the following: -

> *"Mleta maombi anamdai mjibu maombi eneo lenye mgogoro lililopo katika kijiji cha Nkundi, Sumbawanga"*

In a literal translation, the above words mean that the respondent (who was the applicant in Land Application No. 59/2020), sued the appellant (who was the respondent thereat) for allegedly invading into his land which is located at Nkundi Village within Sumbawanga District.

Not only that, but also paragraph 3 of the Application form dated the 13th day of November, 2020, clearly indicates that the suit land is located at Nkundi Village within Sumbawanga Village. Moreover, in his written statement of defence dated the 24th day of November, 2020, the appellant did not dispute that the suit land is located at Nkundi Village.

It is a trite law that matters not raised in the lower court and determined by the trial court cannot be dealt with by the appellate court at the appellate stage; See **Seifu Mohamed Seifu v. Zena Mohamed Jaribu**, Misc. Land Case No. 84 of 2021.

Thus, in the light of the above reasons, and considering the principle of law stated in the above case, I find that the sixth ground of appeal has

no merit for it is an afterthought which I am unable to entertain at this appellate stage.

Turning to the seventh ground of appeal in which the appellant has blamed the trial tribunal for deciding the matter before it by biasness, I do not think if there is any merit in that ground. I say so because the records of trial tribunal do not show anywhere if the learned trial chairperson had any personal or financial relationship with the respondent, nor do they show if the appellant raised any complaint against the said chairperson regarding the manner she was handling the case before her. The foregoing being said, the seventh ground of appeal also collapses.

As for the eighth ground, the complaint of the appellant is that the trial tribunal erred in law and in fact for deciding the matter before it by stating that the appellant is a trespasser of the suit land. The counsel for the respondent has submitted that the trial tribunal was right to find that the appellant is a trespasser of the suit land because since the year 1989 the respondent had been using the same without any dispute.

As I have said before, what is normally considered in civil cases as the one at hand, is the weight of evidence adduced by one party compared to the other party. Since, it has already been observed that the

respondent's evidence outweighs that of the appellant in as far as the ownership of the suit land is concerned, then the appellant cannot escape the findings of the trial tribunal that he is a trespasser of the suit land unless he quits therefrom. It is due to the above reason that I find no merit in the above ground of appeal by the appellant.

In the upshot, it is my holding that the instant appeal is unmerited. I therefore, dismiss it on its entirety. Consequently, I upheld the decision of the trial tribunal and all orders made thereto. However, considering the circumstance of this case, I make no order as to costs.

It is so ordered.

A.A. MRISHA
JUDGE
31.10.2023

DATED at **SUMBAWANGA** this 31st Day of October, 2023.

THE HIGH COURT OF TANZANIA
UHURU NA UMOJA

A.A. MRISHA
JUDGE
31.10.2023