

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND APPEAL NO. 05 OF 2022

1. DOKTA LISSU1st APPELLANT
2. ABEL GHUMPI2nd APPELLANT

VERSUS

1. HEMA MURO.....1ST RESPONDENT
2. SELEMANI ATHUMANI.....2nd RESPONDENT
(Originating from the District Land and Housing Tribunal for Dodoma at Singida)

**Dated 10th December, 2021,
In
Land Application No. 84 of 2019**

JUDGMENT

Date of last Order: 31st October, 2023

Date of Ruling: 16th November, 2023

S.S. SARWATT, J.:

This appeal seeks to challenge the judgment and decree of the District Court of Singida (The DLHT) in Land Application no 84/2019 dated 10th December 2021, in which the applicants Hema Muro and Selemani Athumani (now the respondents) sued Dokta Lissu and Abel Ghumpi (now the appellants) over a parcel of land located at Mtamaa B village in within Singida District (*'the suit land'*). The suit land size is 38 acres. While at

the DLHT, the 1st respondent is alleged to have purchased the suit land in 2005 from the family of the 2nd respondent, who had inherited it from their father, the late Siuhi Ntandu. On the other hand, the 1st appellant averred to have inherited it from his father, Lisu Ghwae, and later on, he sold it to the 2nd appellant. Having heard the parties, the DLHT declared the 1st respondent is the lawful owner of the suit land. It was this decision that aggrieved the appellant, hence this appeal before this Court relying on two grounds of appeal to wit;

- 1. That, the learned trial Chairperson erred in law and in fact in entering judgment in favor of the respondents without considering that the 2nd appellant has been in occupation of the suit land for 21 years without being interrupted hence the respondents were time barred to claim the suit land.*
- 2. That, the learned trial Chairperson erred in law and in fact in entering judgment in favour of the respondents without considering the evidence tendered by the appellants and their witnesses which prove on the balance of probability the suit land to belong to the 2nd appellant upon purchasing the same from the 1st appellant herein the evidence which*

overwhelmed that tendered by the respondents and their witnesses.

When the parties were invited for a hearing, both laymen who appeared unrepresented prayed this Court to rely on grounds of appeal and reply thereto, respectively.

Having enthusiastically gone through the grounds of appeal, the reply thereto, and the records, the main issue for determination before me is whether the DLHT, in its decision, assessed properly the evidence by parties. It is trite law that the first appellate Court is duty-bound to reassess the evidence on record to make its finding on whether, based on the evidence on record, the case was proved at the trial court. The Court of Appeal held this in the case **Makubi Dogani v Ngodongo Maganga, Civil appeal No 78 of 2019(2020) TZCA 1741 (TanzLii)** the Court of Appeal that;

'We wish to note that this being the first appellate Court it is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and if warranted, arrive at its own decision.

From the above principle, my duty is to assess the parties' evidence and the decision made thereafter by the said DLHT.

According to the record of the DLHT, the 1st appellant testified that he had inherited a total of 60 acres from his father, Lisu Gwae, in the year 2000. His father bought it from the father of the father of 2nd respondent Siuhi. He further stated that he sold the suit land to the 2nd appellant. The 2nd appellant added that in 2001, he had bought the suit land from the 1st appellant. All the appellant's witnesses that is, SU2, SU3, SU4, and SU5, testified to the effect that the suit land belongs to the 2nd appellant after he purchased it from the 1st appellant in the year 2001 and that the 1st appellant was given the said land by his father. On his side, the 1st respondent testified briefly that he had bought a suit land at a price of Tshs 500,000/= and that the dispute arose after he started to use it. The 2nd respondent's testimony was that the suit land belongs to their late father and that he sold it to the 2nd respondent after it was redeemed from the father of the 1st appellant. The evidence of other appellants' witnesses, that is, SM3, SM4, and SM6, was to the effect that the father of the 2nd respondent, the late Siuhi, had permitted the father of the 1st appellant, the late Gwae, to occupy the suit land, however, in the year 2005 the sons of the said late Siuhi redeemed it and sold the same to the 1st respondent.

Upon this evidence, the DLHT declared that the suit land was the property of the 1st respondent. In my considered opinion, the decision of

DLHT is justifiable. This is because the evidence from the respondent's side strongly proves how the respondents came into ownership of the suit land. The evidence on the appellants' sides only describes how the 1st appellant acquired the suit land from his late father and sold it to the 2nd appellant. Neither the appellants nor their witnesses testified on how the suit land came into ownership of the father of the 1st appellant.

Based on evidence from the record, I agree with the fact that the 1st respondent father permitted the 1st appellant father to occupy the land in dispute; this is how the 1st appellant's father came into possession of the said land. From the evidence of both sides, I also agree that the suit land, after being redeemed, was peacefully owned by the family of the 2nd respondent, who later sold it to the 1st respondent. I differ from the 1st appellant's claim at the DLHT that his father bought the said land from the 2nd respondent's father. This is because, firstly, there is no evidence to prove this fact, and secondly, if the said land was sold to the 1st appellant's father, he would have resisted giving it back to the family of the 2nd respondent.

Moreover, in his evidence, the 1st appellant did not state whether he used the suit land after being given by his late father. It is crystal clear that these are, among many factors which made the DLHT and this Court believe the evidence from the respondents' side that originally the suit

land was the property of the late father of the 2nd respondent and legally sold to the 1st respondent by the family of the 2nd respondent.

In the case of **Hemedi Said v Mohamedi Mbilu (1984) TLR 113**, it was stated that;

"He who alleged must prove the allegations."

However, in the case of **Paulina Samson Ndawavya v Theresia Thomas Madaha, Civil Appeal No. 45 of 2017**(unreported), the Court of Appeal observed that;

"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."

Based on the above, this Court finds that the DLHT was correct in its decision as it properly assessed the evidence before it.

In view of the foregoing discussions, I have no reason to fault the decision made by the DLHT rather than upholding it. That is, I find that this appeal lacks merit and is hereby dismissed in its entirety. No orders as to costs.

Order accordingly.




S.S. SARWATT

JUDGE

16/11/2023

DATED at **DODOMA** this 16th day of November, 2023




S.S. SARWATT

JUDGE

16/11/2023