

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**KIGOMA SUB-REGISTRY**  
**AT KIGOMA**  
**MISC. LAND APPEAL NO.05 OF 2023**

**ALLY MOHAMED MADARAKA .....APPELLANT**  
**VERSUS**  
**FALES MAHUNDO.....RESPONDENT**

(From the District Land & Housing Tribunal for Kigoma Region, at Kigoma)

(Chinuku, Chairperson)

dated 8<sup>th</sup> June 2022

in

Land Appeal No. 111 of 2021

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**JUDGEMENT**

25<sup>th</sup> October & 27<sup>th</sup> November 2023

**Rwizile, J.**

This second appeal arises from the decision of the District Land and Housing Tribunal. It is the appellant who filed a land dispute before the Ward Tribunal of Uvinza over a piece of land measuring 26 meters wide and 30 meters long located at Ruchugi village, where he complained of it being trespassed into by the respondent who then built a house. After a full trial, he lost in both courts. Still aggrieved, he has now appeared to this court protesting the decisions of tribunals, on the following grounds;

1. *That, the District Land and Housing Tribunal for Kigoma as the 1<sup>st</sup> appellate court/tribunal did not perform to the required standard, her statutory duty of re-evaluating oral and documentary evidence adduced by the respondent as they greatly and fatally contradicted themselves rendering the said victory legally hanging.*
2. *That, since the appellant had raised serious concerns about the genuineness and veracity of the documentary evidence tendered by the Respondent as particularized in the appellant's written submissions in support of the appeal (page 2 points No. I to vii), then the Hon. Chairperson erred in law and in fact in not responding to all serious matters raised against the document in accordance with section 75 (1) and (2) of the Evidence Act Cap. 6 R.E 2019 and or by using such other powers vested in tribunal as the 1<sup>st</sup> appeal body instead of terming them as criminal allegations as if she had no powers whatsoever to determine them.*
3. *That, the District Land and Housing Tribunal erred in law and in fact in confirming the respondent's victory over the suit land (approximately measuring 26 by 30 metres) based on the claim of purchasing the land from Mohamed Ally and Salum Juma whose evidence was very controversial and doubtful particularly that of Salum Juma whose names inter alia were not written in the*

effect including **Joseph Safari Massay v. R**, Criminal Appeal No. 125 of 2012, CAT, and **Felix Kichele & Another v. R**, Criminal Appeal No 159 of 2005, CAT (both unreported), where the Court of Appeal held that:

*"This Court may, however, interfere with such finding if it is evident that the two courts below misapprehended the evidence or omitted to consider available evidence or have drawn wrong conclusions from the facts, or if there have been misdirections or non-directions on the evidence."*

Thus, where it is apparent that the evidence on the record of proceedings had not been subjected to adequate scrutiny by the trial court or the first appellate court, the second appellate court should do so and this was the argument of Mr. Kagashe for the appellant. His invitation, with respect, is not in my view tenable. To do so, for all intents and purposes, there must be evidence that was not given weight by the courts below. I have as I was invited tried to mirror what was the complaint before the trial tribunal. The issue was about who owned the piece of land measuring 26 and 30 meters. The appellant had the duty

to prove it belonged to him. His evidence was to show how he acquired it. He testified and called a witness.

Conversely, it was replied, witnesses called and documents tendered. I hesitate to hold that given the number of witnesses tendered a case was decided in the favour of the respondent, I think, it is due to the quality of the evidence that the trial tribunal ventured into. I do not think, the evidence was not evaluated by both tribunals below. I have gone through the evidence and the evaluation made by both of them. I see, nothing that suggests that this court has to interfere with the concurrent finding of the tribunals below. In the event, therefore, I find no merit in this appeal. It is dismissed with costs.



A handwritten signature in black ink, consisting of a stylized name followed by a horizontal line.

**ACK. RWIZILE**  
**JUDGE**  
**27.11.2023**

document purportedly jotted down in 2006 and subsequently signed by village leadership in 2019 and further that, the sale document was never tendered in evidence generally leaving the alleged sale transactions between the respondent and vendors thereof in 2006 very doubtful to cement a victory.

4. That, the District Land and Housing Tribunal for Kigoma erred in law and in fact in declaring the respondent a lawful owner of the suit land notwithstanding the many years that the appellant had been in actual use and occupation of the land, having purchased it from RAJABU HAMIS in 2000 and developed it to 2016 when the respondent emerged, claiming the same land as having purchased it from MOHAMED ALLY and SALUM JUMA in 2006 who in turn, had purported to have had acquired it from Mr. TOYI KALIMA, but none of whom had any quarrels with the appellant and or predecessor in the title before 2016.
5. That, the District Land and Housing Tribunal for Kigoma erred in law and in fact in not believing the appellant's evidence of purchasing the suit land from RAJABU HAMIS in 2000 on the ground that despite his testimony about the sale, the same did not establish how he had acquired the land before selling it to the appellant but at the same time, believed the story by the

*respondent whose predecessors in the title too including TOYI KALIMA, had similarly not established how they had acquired it before the impugned sale in 2006 rendering the decision unfair.*

*6. That, since there was no tangible evidence that TOYI KALIMA had rented the suit land to RAJABU HAMIS particularly when the lending took place, witnesses thereof, and when it ended before the said TOYI had subsequently granted the suit land to Mohamed Ally and Salum Juma on one hand, while Rajabu Hamis on the other hand had already sold the land to the Appellant in 2000, then that the District Land and Housing Tribunal had no legal basis to believe in the story of TOYI lending the land to Rajabu leading to the dispute in 2016.*

*7. That, in the circumstances of this case where the litigants are all purchasers of the suit land from conflicting vendors where the respondent alleges to have purchased it from Mohamed Ally and Salum Juma who had acquired it from Toyi Kalima while the appellant alleges to have purchased it from Rajabu Hamis who is said to have been licensed thereto by Toyi, then that the District Land and Housing Tribunal erred in law in dismissing the appellant's ground of appeal on the importance of joining as*

*necessary parties, the vendors/original owners and that the cases laws used were misapplied and distinguished to this case at land.*

In the service of Mr. Ignas Kagashe learned advocate, it was orally argued on all grounds together that, this court should be guided by the case of **Hassan Mzee Mfaume vs R** [1981] TLR 167, that because the first appellate court failed to evaluate the evidence, this court should step into its shoes and evaluate the same.

According to Mr. Kagashe, the appellant bought land from Rajab Almas in 2000 long before the respondent allegedly bought it in 2016 from Mohammed Ally and Salum Juma. The learned counsel further argued that there was evidence from them that it was bought from Toyi Kalima in 2006. He said, that even though the land was bought in 2006 and a deed executed, it was witnessed by the village leaders in 2019. He said the appellant used the land for at least 13 years without interruption. The learned counsel held the view that since the agreement was admitted without any objection, and that only one piece of land out of two has the dispute, this court has to evaluate the evidence and allow this appeal with costs.

On his part, Mr. Msuya, who stood for the respondent argued that the question that land was used without interruption is a new ground. It was not in his view, traversed before the first appellate tribunal. He said, the evidence was evaluated properly and a decision was arrived at properly. In his view, there are no chances for the appellant to call for new evidence at this stage. He asked this court to dismiss this appeal with costs.

By way of a rejoinder, Mr. Kagashe pointed out that the time spent by the appellant peacefully enjoying the use of the land was stated in the grounds of appeal and is therefore worth consideration. He said, the agreements tendered were witnessed by the persons who were not on the premises in 2006 when the land was purchased, it was not proper therefore to be witnessed in 2019. He therefore asked this court to allow this appeal.

As often restated, the practice is that in a second appeal, the courts rarely interfere with the concurrent findings of facts by the two courts below. As a wise rule of practice, the courts may interfere as such only when it is clearly shown that there has been a misapprehension of the evidence, a miscarriage of justice, or a violation of some principles of law or procedure by the courts below. There is a range of cases to that