

**IN THE HIGH COURT OF TANZANIA
(SONGEA DISTRICT REGISTRY)
AT SONGEA**

LAND APPEAL NO. 59 OF 2023

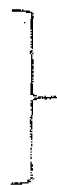
(Originating from the Application No. 48 of 2020 at the District Land and Housing
Tribunal for Songea)

BETWEEN

**KAMILIUS MAXMILIAN TINDWA (An administrator of the estate of the late
MAXMILIAN TINDWA.....APPELLANT**

VERSUS

- 1. ALLY AMIMU MWINGIRA**
- 2. JAWADU MILANZI**
- 3. JOSEPH LAGUS NGONYANI**
- 4. AMIMU ISSA MWNINGIRA**



.....RESPONDENT'S

JUDGMENT

1st to 28th November, 2023

E. B. LUVANDA, J.

The appellant named above is aggrieved by the decision of the Tribunal which dismissed his claim against the Respondents mentioned above, in respect of ownership of a piece of land measuring thirty acres located at Matimila Village Songea District.

In the memorandum of appeal, the Appellant grounded that; One, the trial Tribunal erred in law and facts for allowing assessors to cross examine the witnesses instead of seeking clarification, Two; the trial Tribunal erred in law and facts for delivering the judgement against the Appellant despite of the weak and contradictory evidence of the

Respondents during the trial; Third the trial Tribunal erred in law and facts for delivering the judgment against the Appellant basing on the document which does not grant the ownership of the disputed land to the Respondent; Four, the trial Tribunal erred in law and facts for delivering the judgment contrary to the law.

Mr. Makame Sengo learned Counsel for Appellant abandoned ground number three. The learned Counsel submitted in respect of ground number one that, the proceedings of the Tribunal show how the trial Chairman erred for allowing assessors to cross examine the witnesses, citing DW3, DW4 and DW5, arguing DW3 to have been cross examined by assessors on the issue of boundaries including a fact as to when started owning land; DW4 was cross examined on the issue of boundaries and DW5 was cross examined on the issue of boundaries and size of the land he owns. He submitted that assessor's questions only meant to impeach the witnesses credibility as to see if the disputed land, belongs to them, arguing it was the role of the Appellant to cross examine on those aspects. He submitted that assessors proceeded beyond their statutory role. He cited section 146 (1) of the Evidence Act, Cap A. R.E.2019; **Timoth Sanga and Another vs. The Republic** Criminal Appeal No. 80/2015 C.A.T.

In reply, the Respondents submitted that there is a misconception and failure to differentiate between cross examination and questions put

for clarification. They submitted that it was correct for the assessors to put questions to witnesses on the size of the land and boundaries, argued that these questions cannot be said or termed as cross examination, rather were questions for clarification and to clear doubts.

On my view, a complaint by the Learned Counsel is without substance. According to the Tribunal records, the question as to boundaries and when DW3 started occupying land, was asked to DW3 during cross examination by the learned for Appellant and the Fourth Respondent; the question of boundaries in respect of a farm of DW4 was also explained on his testimony in chief; The issue of boundaries and size of the land of DW5 is also depicted in his title deed for customary surveying his land exhibit AM1.

In the premises, when the wise assessors were asking questions were typically for clarification purpose, it was not an introduction of a new facts or assisting building up the case for Respondent. Above all, the learned Counsel did not say how his client was prejudiced by such questions. Therefore, ground member one is dismissed.

Ground number two and four, the learned Counsel argued jointly that the Appellant testified on how the deceased came into the ownership of the disputed land, how many acres owned by the deceased including location and boundaries of the trespassed land and when the cause of action arose. He submitted that the defence evidence are weak and very

contradictory. Since they claim to own the land but failed to testify where do their land is, its size and boundaries. He submitted that DW3 alleged he was given land in 1971, but on cross examination and question by assessors, DW3 said he was given land in 1996. He submitted that DW1 said he was given land by his parents, but never disclosed as to where his parents got the said land, arguing the Tribunal used the same spot against the Appellant.

On reply, the Respondents submitted that the Tribunal was correct when it held the Appellant's evidence to be weak and contradictory, arguing in the application (plaint) the Appellant alleged his late father acquired the suit land from the village council, however in his testimony is not known as to whom the deceased acquired suit land. They submitted that the Tribunals was correct to rule that the Appellant was bound by his pleadings.

They submitted that the Appellant failed to know the boundaries of the suit land, argued the Tribunal had no option other than disbelieving the Appellant.

Essentially, the Tribunal is faulted for nothing. It is the case and evidence of the Appellant which was marred with full contradictions in each and every aspect of facts which he attempted to defend and prove the title of the deceased; One as to when the land was acquired, in the application said the deceased was allocated by Matimila Village Council,

but could not even mention as to when the purported allocation was done, in his testimony, the Appellant said the deceased acquired it customarily. The Appellant alleged to have acquired the suit land from his father in 1946, while his (Appellant) Senior brother one Ansgar Maximillian Tindwa (PW2) alleged his father started using that farm after he (PW2) was born in 1943.

The Appellant (who testified PW1) as aged 75 anos while, PW2 is aged 80. One could wonder how PW1 acquired the land in 1946 prior his birth, because mathematically he was born sometimes in 1947. Both PW1 and PW2 stated that their parents relocated from the suit land in 1974.

In view of the above contradictions, discrepancies and a fact that it was an abandoned land from 1974, it cannot be said the Appellant managed to prove his case. Importantly, the Appellant was proving a title of the late Maximillian Tindwa per the letter of administration form No. 4 exhibit CM1. It was therefore imperative for him to lay a solid foundation as to how, when and to whom the late Maximillian Tindwa acquired the suit land, which evidence I have ruled was contradictory.

Regarding the contradiction in the testimony of DW3 who said he was born in 1971 and acquired the suit land from his parent in 1971, while when answering a question from assessors said he was given by his parent in 1996. Even if the contradiction is there, it could not assist in the circumstances where the evidence of the Appellant is generally wanting.

Regarding a fact that DW1 failed to explain as to where his parent acquired the suit land.

However, according to Jastin Gervas Banda (aged 90 years testified as DW2), stated that parents of DW1 were the original owner, where the family (parents) of the Appellant requested an area from the parents of DW1, a request was refused and the parents of the Appellant forcefully constructed thereon, As such, it cannot be said that the root of ownership in respect of DW1's parents was completely missing.

Therefore, the appeal is without merit whatsoever.

The appeal is dismissed. However, as opined by one of the wise assessor (R. Mbunda) at the Tribunal that cost should not be granted for reasons that parties are neighbors, it is valid. Therefore, each parties to shoulder its costs.



E.B. LUVANDA
JUDGE
28/11/2023

Judgment delivered through virtual court attended by the Appellant and the Respondents.



E.B. LUVANDA
JUDGE
28/11/2023