IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 106 OF 2022

(Originated from Application No. 119 of 2023 from the District Land and Housing Tribunal of Babati at Babati)

SAFARI ARRA.....1ST APPELLANT

MOGUSHA JOSEPH.....2ND APPELLANT

VERSUS

PAULO YAKOBO.....RESPONDENT

JUDGMENT

26/10/2023 & 22/2023

GWAE, J

Dissatisfied by the decision of the District Land and Housing Tribunal of Babati at Babati (trial tribunal) the appellants have filed this appeal with the following grounds of appeal;

1. That, the Honourable Chairman of the trial Tribunal erred in law and fact by nullifying the valid and proper sale agreement of 2009 entered between the 1st and 2nd respondent regarding the sale of the disputed land measuring six (6) acres and wrongly referred the appellant as the conman.
2. That, the trial chairman of the District Land and Housing Tribunal erred in law and fact by considering the unfounded evidence of the respondent that he bought the unknown disputed land

measuring nine (9) acres via the fabricated sale agreement of the year 2008 between the appellant and the respondent.

3. That the trial chairman erred in law by not ascertaining the actual size location of the disputed land without visiting the locus in quo as the two conflicting sales agreements indicated different dates, location, size and local jurisdictions on which those agreements were executed.

At the trial tribunal, the respondent filed a suit against the appellant alleging that, he is the lawful owner of the suit land measuring nine (9) acres which he purchased from the 1st appellant in the year 2008 located at Magara Village. The respondent went further to state that, the appellants invaded his land in 2012 and cultivated on it. Substantiating his assertions, he attached a sale agreement, which he executed with the 1st appellant.

Responding to the respondent's allegations, the 2nd appellant contended that, he is also the lawful owner of the disputed land. According to him, he bought the said land from the 1st appellant and contracted a sale agreement on 25th June 2009 which was also attached to his written statement of defence. Both agreements were tendered and admitted in trial court during hearing. In his defence, the 1st appellant who is the seller in this case testified that, he sold the land to the 2nd

appellant and technically he denied to have sold the land to the respondent.

The trial tribunal having evaluated the evidence from both parties gave its decision in favour of the respondent and the 1st appellant was ordered to compensate the 2nd appellant.

When the appeal was called on for hearing before me the appellants were represented by Mr. Omary Gyunda the learned counsel whereas the respondent appeared in person unrepresented save for the drawing of his submission from the Legal and Human Rights Centre. The appeal was ordered to be disposed of by way of written submissions, which I shall consider while disposing this appeal.

Having considered the rival submissions from both parties, this court is generally called upon to determine whether the trial tribunal was justified to hold that, the respondent herein is the lawful owner of the disputed land.

Reading from the records of this appeal, this court has observed the following; that in the year 2008, the 1st appellant entered into a sale agreement with the respondent where he sold to him the land measuring 9 acres located at Magara village. The agreement was witnessed by one Husseni Hatibu the Village Executive Officer of Magara Village. On the

other hand, in the year 2009 the 1st appellant again entered into a sale agreement with the 2nd appellant where he sold to him the disputed land measuring 6 acres located at Maweni village. Nevertheless, the court observed that, in the said two agreements the borders of the disputed land were the same as follows; on east, it is bordered with Jerome Ngalawa, on west it is bordered with Juma Ramadhani and south Magdalena. That is to say, the first person to own the land was the respondent.

In cases of double allocation of land, even when it is occasioned by an authority or a person with legal mandate to allocated or transfer the land, the law is that, the transferor would have no title to pass to a subsequent transferee, by the application of the priority principle. The priority principle is to the effect that, where there are two or more parties competing over the same interests especially in land each claiming to have titled over it, a party who acquired it earlier in point of time will be deemed to have a better or superior interest over the other. See the decision of the Court of Appeal of Tanzania in the case of **Ombeni Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal,** Civil Appeal No. 33 of 2017 CAT sitting at Dar es Salaam (Reported Tanzlii).

Guided by the above provision of law, I find no reason to fault the decision of the trial tribunal on the reason that, much as both parties executed sale agreements but guided by the principle of priority the first one to buy the suit land is deemed to have superior interest over the land compared to the other one. In this instant dispute, it is the respondent who has legal interest over the suit land compared to the 2nd appellant.

The above said, I find no merit in the appeal at hand. Consequently, it is hereby dismissed with costs to be borne by the 1st appellant for this appeal and those before the trial tribunal. Other ancillary orders trial tribunal orders to remain undisturbed.

It is so ordered.

DATED at **ARUSHA** this 22nd December 2023

MOHAMED R. GWAE

JUDGE