

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
AT MBEYA
MBEYA DISTRICT REGISTRY
LAND APPEAL NO. 62 OF 2023

(Arising from the Judgment of the District Land and Housing Tribunal of Songwe in
Land Application No. 36 of 2023)

SELESTINO SIMON SIWITIAPPELLANT

VERSUS

THE REGISTERED TRUSTEES OF.....RESPONDENT
TANZANIA ASSEMBLIES OF GOD (T.A.G)

JUDGMENT

Date: 23 October 2023 & 21 November 2023

SINDA, J.:

This is an appeal from the decision of the District Land and Housing Tribunal of Songwe (the **DLHT**) in Land Application No. 36 of 2021, delivered on 26 August 2022, in favour of the respondents.

The brief facts of the case are the respondent sued the appellant at the DLHT, claiming that half an acre of land, which has two houses located at Chilulumo village, Chilulumo ward, Momba District, Songwe region (the **Disputed Property**), belongs to the respondent and the appellant is a trespasser. The appellant claimed he was the rightful owner of the

Disputed Property. The DLHT decided in favour of the appellant, hence this appeal.

The appellant, being aggrieved with the decision of the DLHT, made this appeal on the following grounds that:

1. That the trial chairman erred both in law and fact to entertain the land case and issued a judgment in favour of the respondent without complying with locus quo as it promised the parties;
2. The trial chairman erred in law and fact by issuing a judgment and decree in favour of the respondent based on weak evidence;
3. The trial chairman erred both in law and fact by not regarding and determining the evidence adduced by the appellant during the trial;
4. The trial tribunal chairman erred in law and fact for failure to analyse effectively the evidence adduced by the parties during the trial that resulted in favoring the respondent without any merit; and
5. The trial tribunal erred in law and fact for not recording the essential explanation of the appellant and his witness, which reduced some words in the judgment recording.

The appeal hearing proceeded by way of written submissions, where parties submitted on the grounds of appeal contained in the memorandum of appeal. Both parties were unrepresented.

On the first ground of appeal, the appellant submitted that the DLHT, during the hearing of the case, promised the parties to visit the locus in quo in order to understand the evidence. The DLHT ordered each party to pay a fee of Tshs 300,000.00/= for the DLHT and the assessors to visit the locus in quo. The appellant paid the amount, but the DLHT and the assessors did not visit the locus in quo without giving any reason. The appellant added that this was not recorded in the copy of the judgment.

The appellant further submitted that the failure of the DLHT to visit the locus in quo infringed his legal right concerning the Disputed Property. The appellant added that there were conflicting contentions with respect to which land the Disputed Property is located. He referred to the case of ***Nizar M.H. Vs. Gulamali Fazal Jummohamed 19980 TRL 29*** to support his argument.

Arguing on the second ground of appeal, the appellant contended that there was no evidence proving the respondent's ownership of the Disputed Property. The respondent claimed that the land in question was allocated to him by the Chilulumo Village Council in 2008, but he did not tender any document before the tribunal to prove his claim.

The appellant further contended that the respondent also did not file a mandatory certificate from the ward tribunal according to section 45 (4) of the Written Laws (Miscellaneous Amendments) No. 3 Act of 2021, which requires any dispute in the land should first be referred to the ward tribunal for settlement before instituting a land case to the DLHT.

On the third ground of appeal, the appellant argued that the DLHT disregarded the evidence adduced by the appellant. During the hearing, the appellant tendered the document which showed that the Disputed Land was allocated to him by the Chilulumo village council on 29 June 2008 after he paid Tshs 5,000.00/= . He added that the evidence of his witnesses, Cretus Martin Mkoma (**DW2**), who was the village chairman when he acquired the Disputed Property and Apolonia Mponda (**DW3**), who was a village council member at the time the Disputed Property was allocated to him, was disregarded by the DLHT.

Submitting on the fourth grounds of appeal, the appellant stated that parties are bound by their pleading as explained in the case of ***Barclays Bank Tanzania Ltd Vs Jacob Muro Civil Appeal No. 357 of 2019 (CAT at Mbeya, unreported)***. The appellant added that the respondent has no document to prove his ownership of the Disputed Property. He tendered the evidence that the Chilulumo village council gave him the Disputed Property. The appellant wondered how the DLHT failed to effectively analyse the evidence the parties adduced.

Concerning the fifth ground of appeal, the appellant argued that the DLHT did not record essential explanations in the judgment and proceeding, which led to the reduction of some words in the judgment recording. He stated that, in 2000 years, the appellant served as pastor of the respondent. He explained that the church had no building at the time, and they used to pray at Chilulumo Primary School from 2000 to 2007 when the government warned them to use school classes for worshipping. The appellant then invited the respondent to use his house for worship

until the church obtained money to purchase land and build the church. This was done in good faith, and in 2016, the respondent left the appellant's house and found another area for praising.

In the same year, 2016, the appellant voluntarily ceased to be a pastor of the respondent and moved to Dar es Salaam. He added that when he came back from Dar es Salaam after living there for three years, he found his land trespassed by the respondent and used his house as a church and that the respondent built another house for accommodation on the Disputed Land. He stated that the cause of the action arose here and that these words were not recorded in the judgment and proceeding of the DLHT.

In conclusion, the appellant submitted that he had been harassed by the respondent a lot. The respondent executed the bill of cost awarded by the DLHT of Tshs 1,6638 000.00/= and attached another house belonging to the appellant. The court broker & process server evicted the appellant, and the house was sold by public auction. The appellant has lost the Disputed Land illegally and has been evicted from his other house, which was not part of the dispute. The appellant urged this honourable court to allow this appeal with cost.

In reply to the submission, the respondent submitted that the respondent's evidence had a greater weight than the appellant's. The respondent argued that the DLHT never promised parties to visit the locus in quo or collected the amount. The respondent added that even if the tribunal promised to visit the locus in quo and failed to do so by whatever

reasons still it is not fatal in law. The respondent referred to ***Herieth Kasidi vs. Augustino Bushiri***, Civil Appeal No. 480 of 2020 (CAT at Dar es Salaam, unreported), which cited the case of ***Nizar M. H. Ladak vs. Gulamali Fazal JanMohamed [1980] T.L.R 29*** to support his argument.

The respondent replied jointly to the second, third and fourth grounds that the Disputed Property was allocated to the respondent by the Chilulumo village council in 2008, and the appellant, as the pastor, was the one who acted on behalf of the respondent. The respondent added that during the trial at the DLHT, the respondent brought three witnesses who were part of the process during the allocation. The witnesses confirmed that the respondent was the owner of the Disputed Property, and the appellant was the one who acted on behalf of the respondent before he shifted to another church. That is when he alleged that he was the owner of the disputed land.

The respondent submitted that the respondent did not have supporting documents to support the claim because the appellant was the one who had all the documents concerning the Disputed Property.

In opposition to the fifth ground of appeal, the appellant argued that the DLHT recorded each and every word adduced by both parties. The DLHT analysed and considered the evidence of both parties when preparing the judgment. He added that submissions are not evidence, and annexures are not allowed in a written submission. What the appellant is doing is to adduce evidence in the appellate court without following the procedures.

The respondent further stated that the issue of harassment of the appellant by the respondent was not raised as one of the grounds for appeal. The respondent further stated that execution is not harassment. The respondent executed his judgment and decree, and the appellant opted not to stay the execution or take the necessary steps to rescue the situation. The respondent urged this honourable court to dismiss the appeal with costs.

In rejoinder, he insisted that the land belonged to him and that the respondent had no documents to prove his ownership of the Disputed Land. The appellant denied that he acted on the respondent's behalf in purchasing the Disputed Land. The respondent failed to prove how the appellant's name appeared in the document issued by the Social Welfare Committee.

I have considered the grounds of appeal, the parties' written submissions and the evidence on records. The issues to decide are one, whether the DLHT erred in law and fact for failure to analyse effectively the evidence adduced by the parties during the trial; if this issue is answered in the affirmative, then two, whether the appellant is a rightful owner of the Disputed Property and third what reliefs are the parties entitled to.

In this appeal, this being the first appellate court, I have reconsidered and re-evaluated the entire evidence on record and arrived at my own conclusion.

Starting with the first issue, after analysing the submission of the parties, I am of the opinion that the DLHT did not effectively analyse the evidence of the appellant.

During the hearing, the appellant tendered a letter issued by the Social Welfare Committee of the Chilulumo Village Council on 29 June 2008, showing that the Disputed Land was allocated to the appellant, and he paid Tshs 5,000.00/=. He also produced witnesses DW2, who was the village chairman, and DW3, who was in the village council when the Disputed Property was acquired, supporting his claim. The DLHT disregarded this evidence.

Neither the respondent nor his witnesses tendered any document to prove the respondent's ownership of the Disputed Property. The respondent witnesses Kalistus Antony (**PW2**) stated that he was the Chilulumo village executive officer in 2008 when the respondent requested to be allocated land. Hija Bonifasi, Namlembe and the appellant represented the respondent. PW2 did not tender at the DLHT a copy of the village meeting minutes, which allocated the land to the respondent.

Also, Issa Bonifasi (**PW3**) also stated that he was a member of the respondent from 1997 to 2008, the Chilulumo village council member, and a secretary to the Social Welfare Committee. He stated that the land was allocated to the respondent but did not tender in court the registry book where the committee recorded that the land was allocated to the respondent. He further stated that the committee issues a document after allocating the land. But in this case, no document was issued to the

respondent. Francis Antony (**PW4**) also stated that he was a committee member. They received a letter from PW2 to survey the land and allocate it to the respondent. He did not tender in court a copy of the said letter.

In the typed proceedings of the DLHT, it is clear that the DLHT disregarded the evidence adduced by the appellant in reaching its decision. The appellant tendered the letter issued by the Social Welfare Committee (**Exhibit D1**), confirming that the committee surveyed the land allocated to the appellant. Also, DW2 and DW3 confirmed that the land was allocated to the appellant.

Turning to the second issue whether the appellant is a rightful owner of the Disputed Property, the evidence on the record favours the appellant compared to the respondent.

The proof of land ownership in our jurisprudence was discussed in various cases, the person who alleges must prove his case. In the instant appeal, the appellant is required to prove his case on the balance of probabilities. The Court of Appeal of Tanzania (the **CAT**) emphasized this in the case of ***Paulina Samson Ndawavya v Theresia Thomas Madaha, Civil Appeal No. 53 of 2017 (unreported)***, where the CAT held that:

"...It is equally elementary that since the dispute was in a 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... "

In ***Oliva Ames Sadatally v Stanbic Bank Tanzania Limited, Civil Appeal No. 84 of 2019 [Tanzlii 17th June 2022]***, the CAT cited the case of ***Mathias Erasto Manga v Ms. Simon Group (T) Limited, Civil Appeal No. 43 of 2013 (unreported)***. The CAT among other things stated:

" The yardstick rotproofing civil cases is the evidence available on record and whether it tilts the balance one way or the other... "

Based on the above authorities and having read the evidence of the appellant as a whole, it is clear that the appellant, in proving his case, tendered Exhibit D1, which proved that he bought the Disputed Property from the Chilulumo Village Council. The evidence of witnesses brought forward by the appellant is that the appellant is the lawful owner of the Disputed Property.

In determining the third issue, what reliefs are the parties entitled to. With regards to reliefs (a), (b), (c), (d), and (e), based on the above findings, it is clear that the appellant's prayers have merit.

I order general damages of Tshs. 4,000,000.00/= considering that the appellant's house was sold for execution of judgment of the DLHT.

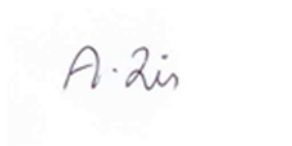
The case is decided in favour of the appellant, I proceed to declare and decree as follows:-

1. The appeal is allowed with costs.

2. The judgment and decision of the District Land and Housing Tribunal of Songwe in Land Application No. 36 of 2021 is quashed.
3. The appellant is the lawful owner of the Disputed Property;
4. The respondent is a trespasser.
5. The respondent, his agent, or any person acting or working on his behalf are evicted and retained from trespassing the Disputed Property.
6. The respondent to pay the appellant general damages of Tshs. 4,000,000.00/=
7. The respondent to bear the costs of this suit.

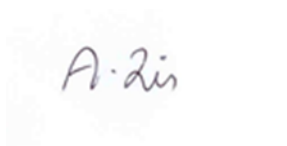
The right of appeal was explained.

DATED at MBEYA on this 21st day of November 2023.



**A. A. SINDA
JUDGE**

The Judgment is delivered on this 21st day of November 2023 in the presence of the appellant and the respondent, who appeared in person.



**A. A. SINDA
JUDGE**