

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(ARUSHA SUB-REGISTRY)**

**AT ARUSHA**

**LAND APPEAL NO. 71 OF 2022**

*(C/F Application No. 16 of 2022 in the District Land and Housing Tribunal  
for Kiteto at Kibaya)*

**MOHAMEDI JUMA ABDULRAHMANI..... APPELLANT**

**VERSUS**

**LENDUKAI LOIKUSARA MOLLEL..... RESPONDENT**

**JUDGMENT**

14/3/2024 & 4/4/2024

**KIWONDE, J.:**

The appellant, Mohamed Juma Abdulrahmani was aggrieved by the decision of the District Land and Housing Tribunal for Kiteto at Kibaya in Application No. 16 of 2022 delivered on 27<sup>th</sup> May 2022, and he has filed this appeal against the whole judgment and decree based on the following grounds:

1. That the trial tribunal erred in law and fact to declare the respondent as the lawful owner of the suit land.



2. That the trial tribunal erred in fact and in law to rely on the contradictory evidence of the respondent, consequently entered the judgment in favour of the respondent.
3. That the trial tribunal erred in fact to declare good title passed from Athumani Msandekwa in the absence of how the latter acquired such title to the ownership.
4. That the trial tribunal erred in law to rely on the exhibit D1 which was not endorsed and or verified by the relevant authority (Village Office of Njoro).
5. That the trial tribunal erred in law to rule that the appellant failed to prove his case notwithstanding the sufficient evidence on records.

The appellant prayed this court to allow the appeal with cost.

Brief facts of the case are that the appellant filed a suit at the trial tribunal against the respondent on the claim that the respondent encroached into seven (7) acres of his land among the 15 acres in the year 2021 located at Chang'ombe village, Njoro Ward, Kiteto District within Manyara Region. It was the appellant's further allegation that he is the lawful owner of the disputed land from 1992 when he was allocated the same by the Njoro Village Council. The appellant thus prayed before the trial tribunal for an

order declaring him the lawful owner of the disputed land, payment of general damages, permanent injunction against the respondent and cost of the suit.

On the other hand, the respondent contended that the disputed land belonged to him for he purchased it.

After a full trial, the trial tribunal decided the matter in favour of the respondent, thus, this appeal.

On 24<sup>th</sup> October 2023, the court ordered the appeal be argued by way of filing written submissions and only the counsel for the appellant filed them. The respondent did not, without any notice nor did he appear to court.

For the purpose of putting the records clear, the appellant abandoned the second ground of appeal.

In supporting his appeal, the appellant argued the first and third grounds of appeal together where he faulted the trial tribunal by declaring the respondent lawful owner in the absence of evidence as to how the said Athuman Msandekwa acquired good title over the suit land before selling it to the respondent.



On the fourth ground of appeal, the appellant argued that the trial tribunal relied on exhibit D1, the sale agreement between the respondent and one Athuman Msandekwa which was not endorsed and or verified by the authority. The appellant went on to submit that there is no any officer from Njoro Village who witnessed the sale agreement nor was there a seal to verify the authenticity of the same. According to him, had the document been genuine it would have been signed by either the Village Chairman or the Village Executive Officer. The appellant thus prayed exhibit D1 be discredited.

Submitting on the fifth ground of appeal, the appellant argued that he acquired the land in the year 1992 by clearing the bush, that is, the virgin land after he was allocated the same by the Village Council. The appellant argued that PW2 when testifying said Athuman Msandekwa was not allocated any land and even DW2 failed to show when her husband acquired the suit land.

From the written submissions and the trial tribunal's records, the main issue for determination is whether the appeal find merits or otherwise.

I opt to start with the fourth ground of appeal which challenges the genuiness of the exhibit D1, the sale agreement of the suit land. The appellant said the document was not endorsed by the authority such as

the Village Officer. But at the bottom of the document, it is apparent that the Village Chairman of Njoro village signed it and stamped dated 10<sup>th</sup> May 2005. Thus, this ground of appeal lacks merits.

As to the fifth ground of appeal, the trial tribunal found the appellant failed to prove his case. The evidence in record shows that the appellant testified that he was allocated the suit land by the Village Council in the year 1992, he cleared the virgin land. But at the trial, the appellant admitted that he had no any document to prove that he was allocated the land in dispute. It should be borne in mind that the appellant asserts that he was allocated 15 acres of land by the Village Council. It is not stated if the said authority could allocate him such area of land without issuing him with some documents. Even PW2, one Adamu Mbuchi who alleged to be among the members of the village council, did not state why the authority did not issue the appellant with necessary documents to authenticate his ownership. Also, PW3, Amina Ramadhani clearly said she did not know how the appellant acquired the suit land. This witness was of no help to establish ownership of the land by the appellant.

It is trite law under section 110 of the Evidence Act, Cap 6 (R. E 2022) that he who alleges bears a burden of proof and in cases of civil nature, the standard of proof is on the balance of probabilities. The appellant was



duty bound to establish that the said authority, the Village Council, actually allocated him the suit land. The officers concerned with the said authority were not called to testify on the allocation of suit land to the appellant. The witness, PW2 merely said he was sent by the chairman of the Village Council to allocate land to the appellant. He had nothing to prove the same. It is my firm view that the appellant failed to discharge this duty at the trial tribunal.

The respondent tendered the sale agreement which was admitted as exhibit D1 to prove that he acquired the land in dispute by purchasing it from one Athuman Msendekwa. The document shows that the respondent bought the land in dispute right from 10<sup>th</sup> May 2005. The same village authority witnessed the sale where the village chairman signed it and stamped/ sealed it. This documentary evidence proves how the respondent acquired the suit land.

It was argued that there was no evidence to show if Athuman Msendekwa had good title over the land in dispute for him to pass it to the respondent. Just as I have stated above, it is not the respondent who had the duty to prove that Athuman Msendekwa possessed good title over the land. The appellant had to prove that he was the lawful owner of the suit land. Failure to do so, I find and hold that the respondent is a *bona fide*



purchaser of the land in dispute. The trial tribunal, thus, was justified to declare that the respondent is the lawful owner of the suit land. The first, third and fifth grounds of appeal are devoid of merits.

Having said so above, this appeal lacks merit and, in that regard, I find no reason to fault the decision of the trial tribunal. The appeal is hereby dismissed.

No order as to cost since the appeal has been heard and determined *ex parte*.

**Dated** at **ARUSHA** this 4<sup>th</sup> April 2024.

  
**F.H. KIWONDE**

**JUDGE**

**04/04/2024**

Court: Judgment is delivered in chamber in the presence of the appellant, Janeth (RMA) but in the absence of the respondent this 4<sup>th</sup> April 2024 and the right of further appeal is explained.



  
**F.H. KIWONDE**

**JUDGE**

**04/04/2024**