

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB - REGISTRY OF SHINYANGA
AT SHINYANGA

LAND APPEAL NO. 5 OF 2022

MBONYA MBUTE (*Administrator*

for the estate of Late Mhandile Mbutu)**APPELLANT**

VERSUS

CHARLES LUJIGA.....**RESPONDENT**

[Appeal from the decision of the District Land and Housing Tribunal for Shinyanga.]

(Hon. P.L.S. Lekamoi.)

dated the 18th day of January, 2022

in

Misc. Land Application No. 57 of 2020

JUDGMENT

14th September, 2023 & 30th January, 2024.

S.M. KULITA, J.

On 28th December, 2020 the appellant herein instituted a Land Application Case No. 57 of 2020 at the District Land and Housing Tribunal for Shinyanga (DLHT) against the Respondent herein, over 90.05 acres of land located at Ilobashi village in Masengwa Ward within Shinyanga District. In the said application, the appellant claimed that, the disputed

land belonged to his late father one Mhandile Mbute who died interstate in 2002.

To the contrary, the respondent claimed to have inherited the said land from his father one Lujiga Masanja who died on 1998. He added that, his father too had inherited the same from his father (Respondent's Grandfather) one Bunza Masanja who had acquired it in 1954 and died in 1982. The case was heard and finally the respondent emerged the winner. That was 18th day of January, 2022.

That decision aggrieved the appellant, hence this appeal with seven grounds which can be summarized into 6 (six) as follows; **one**, the trial Chairman did not properly analyze the parties' evidence, **two**, the appellant's witnesses were not given chance to testify before the tribunal, **three**, the trial Chairman decided without the help of the assessors' advice, **four**, the trial Chairman erred to ignore the appellant's application No. 170 of 2021 which was for injunction against the respondent to build a house in the disputed land, **five**, the trial Chairman erred to ignore the appellant's letter dated 22nd October, 2021 which asked for him to recuse himself from entertaining this matter, and **sixth**, the trial Chairman erred for not agreeing to visit *locus in quo* to determine the actual size of the disputed land.

On 18th July, 2023 the matter was scheduled for hearing. Both parties appeared in person, unrepresented.

In hearing the appeal, the appellant just prayed for his grounds of appeal to be adopted as the submissions for his appeal. He added by praying for the appeal to be allowed.

In the reply thereto the respondent just like what the appellant had done, also prayed to adopt his reply to the petition of appeal as his submissions. He just added that, the appeal is devoid of merit, hence should be dismissed.

I have earnestly gone through the parties' pleadings, as well as the records in its entirety. In doing so, I have noticed the issue being, whether the appellant's appeal is meritorious. In resolving this issue, I will be determining the above listed grounds of appeal, one after the other.

Starting with the second ground, that the appellant's witnesses were not given a chance to testify. The trial tribunal's record at page 12 of the typed proceedings provides that, it is the appellant himself who addressed the tribunal, that he had closed his case. The appellant's case having been closed, it is when the respondent was given chance to bring his witnesses. On that account, this ground of appeal fails.

Concerning the third ground, that the trial Chairman decided the matter without the help of assessors, I have noted in the record that the typed proceedings of the trial tribunal, at page 16 shows that, the trial Chairman had been hearing the matter with the help of two assessors, namely Stima and Bipa. That help ceased after the retirement of one the assessor, Bipa. In that circumstance, under section 23 of the Land Cap 216 RE 2019 trial Chairman had to proceed with the case with the help of the remaining assessor, who was Stima. According to the record, this is the procedure that the Chairman followed, which is right.

However, as a means of summing up, during all hearing sessions, that assessor, Stima, is seen in the proceedings being asking questions to the witnesses who were testifying, and lastly provided his opinion for decision of the case. This is vivid on page 27 of the typed proceedings of the trial Tribunal. For that matter, this ground of appeal too fails.

Concerning the fourth ground of appeal that, the trial Chairman erred to ignore the appellant's application No. 170 of 2021 which sought for injunction of the respondent to build a house in the disputed land, on face of it, I find this ground meritless. The reason behind is that, the appeal at hand is against the Land Application No. 57 of 2020, not application No. 170 of 2021 mentioned by the applicant.

As this appeal is not against application No. 170 of 2021, it follows therefore that, had the appellant wanted to fault the tribunal for not injuncting the respondent, he would have done it by filing a separate appeal against the decision for the said application No. 170 of 2021, not through this Application No.5 of 2022. On that account, this ground of appeal also fails.

On the fifth ground that the trial Chairman erred to ignore the appellant's letter dated 22nd October, 2021 which asked him to recuse himself from entertaining his case, procedure is clear that, whenever the presiding Chairman is required by either party to recuse himself from entertaining a particular case, he/she should give ruling upon considering the complaints for him/her for to recuse. The record at page 19 of the typed proceedings, shows that the trial Chairman did consider the appellant's letter which wanted him to recuse himself, but upon finding that, there were no justifiable reasons for him so to do, he opted to continue with handling the case.

I also have got chance to go through the said letter authored by the appellant which sought for the trial Chairman to recuse. The same provides for the reasons that, his application for injunction was not granted by the trial chairman, and that the respondent has been going on

with building a house on the disputed land. The appellant also alleged in that said letter that his witnesses have been threatened by the respondent, thus failed to testify.

Under normal circumstances, such grounds are not sufficient enough to make the trial Chairman to recuse himself from the entertaining the case. They are mere suspicions or doubts that do not directly point to the involvement of the trial Chairman biasness. This ground too fails.

Concerning the sixth ground that the trial Chairman erred for not agreeing to visit *locus in quo* to determine the actual size of the disputed land; in my perusal over the whole proceedings of the tribunal I have not the Appellant praying for the tribunal to visit the scene. Mostly what I can see is that, the appellant has been leaving the court house even at the center of hearing of the case, while the case is going on. Even during the finishing of the case, the appellant is seen to have been absent in the court premises.

It is a practice that, visiting *locus in quo* is done at the end of hearing of the case upon the prayer by any or all the parties to the case. As long as the appellant was not there in court by that time, it follows therefore that, the appellant never got a chance to pray for it, as the proceedings show. For that matter, this ground of appeal fails.

Lastly is on the first ground that, the trial Chairman wrongly evaluated the evidence on record. Upon going through the proceedings I have found that, the appellant failed to prove his case at the required standard. This is for the reasons that, as the appellant is the one who instituted the matter, he ought to have stated in his testimony in-chief as to how he came into possession of the said land. He was also to state on the boundaries.

This duty was not done by the appellant till when he was cross-examined. In addition to that, in his testimony in-chief, the appellant just stated that, his aim for going to the tribunal was just for seeking for the respondent to tell him as to how he acquired the said land in dispute. This kind of procedure taken by the appellant, of testifying after he was cross examined at the trial court, raised doubts on his own side. The same shows that, the appellant wanted to hide those matters until when he was forced to say on them.

The evidence further reveals that, even the witness whom the appellant called to support his case during trial, said nothing in support of the appellant's right of ownership for the suit land. This too shows that, that even his witness was just forced by the Appellant himself to appear and testify before the court. That's why he refused to say anything.

To the contrary, the evidence of the respondent that he inherited the land in dispute from his father, who had inherited it from his (Respondent's) grandfather, makes sense. It was supported by two witnesses brought by the respondent. To the surprise, DW3, at page 25 of the tribunal's typed proceedings shows him to have testified that, he has married the appellant's daughter yet he was able to testify that, the land in dispute, belongs to the respondent.

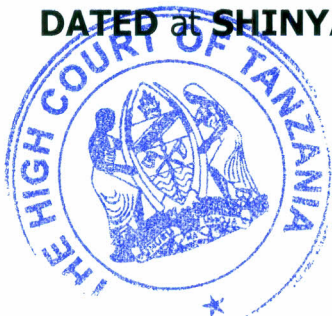
In civil cases like this, the law is clear that, the side with heavier evidence as compared to the other, should be declared a winner. With this evidence in record, and taking into consideration that all the appellant's grounds of appeal have failed, I am firm that, the trial tribunal was correct in finding that, the appellant had failed to prove his case.

On that account, I find it that, the appellant's appeal is unmeritorious, hence **dismissed**. Appellant to bear the costs.



S.M. KULITA
JUDGE
30/01/2024

DATED at SHINYANGA this 30th day of January, 2024.



S.M. KULITA
JUDGE
30/01/2024