

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOROGORO SUB REGISTRY)**

AT MOROGORO

LAND APPEAL NO. 1168 OF 2024

(ORIGINATING FROM DISTRICT LAND AND HOUSING TRIBUNAL FOR ULANGA AT MAHENGE IN LAND APPEAL
NO 03 OF 2023)

OMARI KIBANDIKILE APPELLANT

VERSUS

TWALIBU MBAMBA RESPONDENT

Date of Last Order:15.05.2024

Date of Judgement:31.05.2024

JUDGEMENT

MAGOIGA, J.

The appellant, **OMARI KIBANDIKILE** being aggrieved with the decision of the District Land and Housing Tribunal for Ulanga at Mehenge (trial Tribunal) now appeals to this Court armed with three grounds of appeal couched in the following language: -

- 1. That the trial Tribunal erred in law and fact by failure to properly assess and evaluate evidence adduced before it, thus, come into erroneous decision against the appellant who produced sale agreement to prove the ownership of the disputed land that is belonging to the appellant and sale agreement was admitted as exhibit P-1 before the trial Tribunal;*
- 2. That the trial Tribunal erred both in law and fact in pronouncing the judgement and decree in favour of the respondent without sufficient*

evidence which proves that the disputed land was given by the appellant's father on 23/09/2013 as there was no any witness appeared before the trial Tribunal to testify that she/he witnessed the act of the appellant's father gave the disputed land to the respondent in 2013;

- 3. That the trial Tribunal erred in law and fact for relying on the evidence adduced by the respondent side without considering the appellant's side evidence.*

The facts pertaining to this appeal as gathered from the pleadings in the trial Tribunal are not complicated. The appellant instituted Land Application No. 03 of 2023 against the respondent over a land measuring 11/4 acres allegedly bought from the late father of the respondent in 2015 for Tshs.200,000/-. Facts went on that, since then, the appellant went on using the land undisturbed until 2022 when the respondent unlawful entered into the disputed land alleging the disputed land was given to him by his late father way back on 23/09/2013. The respondent, thus alleged the sale, if any, between the appellant and his later father in 2015 was of no effect, for the late father had no saleable interest in the land after 23.09.2013.

The trial Tribunal heard parties on merits and eventually decided in favour of the respondent for reason that the late father had no saleable interest

to the land in dispute after creation of exhibit D1 on 23.09.2013, triggering the instant appeal on the grounds as stated above, hence, this judgement after hearing parties on merits.

When this appeal was called on for hearing, parties herein appeared in person and unrepresented ready for hearing.

The appellant brief to the point told the court that he has three grounds of appeal argued them generally faulting the trial Tribunal. The appellant, thus, argued that the trial Tribunal failed to analyze evidence on record and came into wrong conclusion. According to the appellant, the contents of **exhibit D1** was not genuine and was prepared by one person because handwriting is of one person with intention to take the land from him. The appellant told this court that the father of the respondent is dead and none of his relative has ever been appointed an administrator, respondent inclusive.

It was the strong submission of the appellant that had the trial Tribunal critically looked into the evidence on record, the evidence of the respondent was not worth proving his ownership and prayed that his appeal be allowed with costs.

On the other hand, the respondent strongly and generally opposed this appeal. According to the respondent, this appeal is without merits. The

respondent argued that during trial he cross examined PW2 who admitted that he was not present when **exhibit P1** was created.

The respondent went on arguing in opposing this appeal that, **exhibit P1** do not show who are his neighbours and equated it with a general paper with no details to consider at all. The respondent went on attacking the contents of **exhibit P1** that none witnessed it, and if any, was not called to testify.

On the above reasons, the respondent urged this court to dismiss this appeal with costs for want of merits and uphold the trial Tribunal decision. In rejoinder the appellant reiterates his earlier submissions and pointed out that in **exhibit D1**, nowhere the late father of the appellant signed to signify the grant of the land, hence, no grant can be affirmed without his signature. The appellant pressed for the appeal to be allowed with costs.

This marked the end of hearing of this hotly contested appeal.

This is first appeal, and it is trite law and practice that the role of first appellate court where there are allegations of failure to analyze evidence is to step into the shoes of the trial Court and analyze evidence, and if need be, arrive at its own conclusion. See the case **Martha Weja Vs. Attorney General [1982] TLR 35.**

Guided by the above principle, I will take my time to analyze evidence on record, in particular, the essence of **exhibits P1** and **D1** in this appeal for one reason that, the merits of this appeal hinges on these two exhibits. Nonetheless, the seller cum donor in this dispute was not called to testify because is no more since 2016.

However, having carefully read the record of appeal and testimony of the rivaling parties, I noted the following: **one**, exhibit D1 leave a lot to be desired in that while it was as correctly argued by the appellant, written by one person and even where SU2 is said to have written to authenticate the sale but plainly looking at it, the handwriting was written by one person. So, a mere stamping itself was not enough and DW2 did not say that he appended what was written down there. **Two**, no reason whatsoever was stated in **exhibit D1** nor in the testimony of DW1 why the late Rashid Mbamba was giving the disputed land to the respondent alone in exclusion of other children. One would expect the same to say he was given out of love and affection but that is missing. This had negative effect to the creation of **exhibit D1** in this case. **Three**, the testimony of DW2 was that he attended a family meeting but also failed to tell why the late Mbamba was giving the disputed land to his only one son in exclusion of others. **Four**, I have equally compared the handwriting in **exhibit P1** and in **exhibit D1** and observed that handwriting in these

exhibits differ and were not written by one and the same person, which is an indication that the handwriting in **exhibit D1** was not written by the late Rashid Mbamba. **Five,** I have equally read the testimony of DW1 who said that after being given the land in dispute he left and was living in Morogoro since 2013 and came back in 2017 when his father died and asked his mother who told him that his late father never sold the land in dispute. But even his allegations to be given by his father, the mother was not among the attendees. None of his siblings came to support his story. More so, the respondent story that he handed back the disputed land to his father was not supported by any evidence at all in this appeal. With the easy network communication all over the country, there is no way his brothers who stay in the same village could not communicate the information that the appellant has trespassed into the land.

Six, the arguments by the respondent that no boundaries were mentioned but I noted that in the pleading the appellant in his pleading mentioned the neighbours and was able to call one neighbour who told the court that even in his customary certificate his neighbour is the appellant and not him, hence, are wanting in this appeal.

In the totality of the above reasons, I find that looking critically and analyzing the evidence on record, is my considered opinion that, creation of **exhibit D1** with backdates did not defeat the lawful purchase by the

appellant as noted above. A mere date alone was not enough but looking the matter in critical mind one cannot fail to see that exhibit D1 has number of flaws to be genuine as rightly argued by the appellant.

On that note, I find merits in this appeal and allow it as prayed. Consequently, the judgement and orders of the trial Tribunal are hereby set aside and the appellant is declared lawful owner of the disputed plot comprising of 11/4 acres. The appellant shall have costs in this appeal and in the trial Tribunal.

It is so ordered.

Dated at Morogoro this 31st day of May, 2024.



A handwritten signature in blue ink, consisting of a series of vertical lines and a horizontal stroke, positioned above the printed name.

S.M. MAGOIGA
JUDGE
31.05.2024

COURT: Judgement delivered to day in chambers at Morogoro in the presence of the appellant and respondent who appeared in person and unrepresented.



A handwritten signature in blue ink, consisting of a series of vertical lines and a horizontal stroke, positioned above the printed name.

S.M. MAGOIGA
JUDGE
31.05.2024

COURT: Right of appeal fully explained.



A handwritten signature in blue ink, consisting of a series of vertical lines and a horizontal stroke, positioned above the printed name.

S.M. MAGOIGA
JUDGE
31.05.2024