

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA  
(IRINGA DISTRICT REGISTRY)**

**AT IRINGA**

**LAND CASE APPEAL NO. 1725 OF 2024**

(Originating from District Land and Housing Tribunal for Iringa at Iringa in  
Land Application NO. 67 of 2021)

**VICTORY YOTAM KIHAGA ..... APPELLANT**

***VERSUS***

**GIDION ILOMO .....RESPONDENT**

**JUDGMENT**

*Date of last Order: 24/06/2024  
Date of Judgment: 28/06/2024*

**LALTAIKA, J.**

The Appellant herein **VICTORY YOTAM KIHAGA** is dissatisfied with the decision of the District Land and Housing Tribunal for Iringa at Iringa in Land Application NO. 67 of 2021. He has appealed to this Court by way of a Memorandum of Appeal containing the following grounds:

- 1. That, the trial tribunal erred both in law and fact by holding that, disputed property belongs to the respondent herein despite the fact that no evidence was produced by the Respondent during the trial to suffice the bought the disputed Land from Appellant's Father one (Yotam Kihaga).*

2. *That, the trial chairman erred both in law and fact for its failure to evaluate whole evidence of the parties hence the tribunal reached unjust decision.*

When the appeal was called on for hearing on the 24th of June 2024, parties appeared in person, unrepresented. They requested to argue their appeal orally. To ensure that the court is furnished with the requisite information, a few minutes were provided to each party for some contextual and factual background related to the appeal. I choose to reproduce the said responses before moving on to the grounds of appeal.

The appellant stated that he is a 59-year-old resident of Mgera Street, Mkwawa Ward, within Iringa Municipality. He mentioned that although he currently lives in Ilala Area, he grew up in Mkwawa Ward where the suit land is located. The land in question is a 3-acre unplanned area in Mgera Street, and its estimated cost is approximately TZS 6,000,000. He recounted that his father gave him this land in 1990 when he was getting married, as a form of support to establish a new family. Victory cultivated the land until his father's death in 1995 and continued to live there with his family for 30 years without any disturbance. Occasionally, he would hire the land to other people, including the Respondent.

The appellant explained that the Respondent hired the land for three years: in 2015 for TZS 50,000, in 2018 for TZS 35,000, and did not hire it in 2016 and 2020. In 2020, he encountered strange people on the land who claimed to have been sent by the Respondent. When he informed them that he was not going to hire out the land that year, the Respondent became furious and claimed ownership of the land. The Respondent took him to the Village Chairman, Cyprian Lylo, who summoned them along with the members of the Mtaa Government: Sophia Mofuga, Alex Joseph, Francisco Mgaya, and Asnati Mgongolwa. They were ordered to bring witnesses, and Victory brought his brothers, Luka Yotam Kihaga and Augusto Yotam Kihaga, while the Respondent had no witnesses.

In the 2020/2021 season, the Appellant asserted, he cultivated the land, but the Respondent brought police officers, claiming that Victory had invaded the land. They were taken to the police station but were advised to go to the DLHT. Victory instituted a case at the DLHT, but the Respondent claimed the case was *res judicata*, and the chairman agreed. Victory appealed to the Court, and Judge Utamwa ordered a retrial for the DLHT to hear the evidence. The case was reheard, and the Respondent, along with the Chairman, went to the suit land before the case was decided in favor of

the Respondent. Victory disagreed with the judgment, calling it vague and objecting to the order to pay costs. He reiterated that his father had given him the land, which is why he is pursuing the appeal.

The Respondent stated that the Appellant's claims were entirely unfounded. He asserted that he had purchased the land from the Appellant's late father, Yotam Kihaga, in 1992 and had all the necessary documents to prove it. He used the farm continuously from 1992 to 2020 without inviting anyone else to use it, including the Appellant.

In 2020, while the Respondent was at his home in FRELIMO, the Appellant approached him and told him not to cultivate the farm that year, claiming that his now-deceased father had only given the land to the Respondent temporarily. Surprised by this, the Respondent went to the Mtaa Chairman, who summoned both the Appellant and the Respondent to hear their sides of the story. When they could not reach an agreement, the Chairman wrote a letter to the Ward Tribunal.

The Respondent mentioned that the Appellant did not appear before the Ward Tribunal, which then allowed the Respondent to proceed with farming. However, he found the Appellant and his brother on the farm,

insisting that the land belonged to them and threatening to attack him. Being alone, the Respondent left and reported the incident to the Ward the next morning, who then referred him to the DLHT. It was the Appellant's younger brother who appeared in the subsequent proceedings, and they lost the case. The Judge ordered a retrial, and on December 5, 2023, the DLHT decided in the Respondent's favour. The Appellant, dissatisfied with that decision, filed the current appeal.

With that rather detailed background, I now move to the rival submissions narrowed down to the grounds of appeal.

On the first ground, the Appellant stated that he believed the DLHT had treated him unfairly. He explained that he had mentioned receiving the land from his father upon getting married in 1990 and noted that his father passed away in 1995. He mentioned his brother, Lukas Yotam Kihaga, who testified that their father had given land to him as well, following their father's tradition. The Appellant stated that his witness provided oral evidence, and he also brought his younger brother, Augusto Yotam Kihaga, to testify. He mentioned that other relatives, including his mother, had already passed away. According to the Appellant, the DLHT chairman was biased, as even the assessors acknowledged and recorded that his evidence

was weighty and suggested that he should be awarded the land. The Appellant expressed dissatisfaction, asserting that the Respondent had not produced any documents and questioning the feasibility of doing so at that stage.

The Respondent countered the Appellant's claims, dismissing them as false and unjust. He asserted that it was unfair for the Appellant to make such accusations against the DLHT. The Respondent candidly stated that he had purchased the land from the Appellant's father and had presented evidence to that effect during the trial. He mentioned that the two witnesses present at the time of the land purchase had since passed away, leaving him without live witnesses at the DLHT. The Respondent clarified that his sole evidence consisted of the land purchase agreement from the Appellant's father. According to the Respondent, the DLHT reached a fair decision, concluding that he was the rightful owner of the land.

Regarding the second ground, the Appellant argued that the DLHT had failed to properly evaluate the evidence. He claimed that the DLHT unfairly placed the burden of proof solely on him, despite the Respondent's lack of witnesses and his statement that the original witnesses were deceased. The Appellant expressed surprise and dissatisfaction with the DLHT's handling of

the case, particularly regarding the lack of clarity in determining ownership and the imposition of costs.

The Respondent reiterated his position, emphasizing that the names of witnesses were documented in the land sale agreement. He recounted that the Appellant's lawyer had pressed him to provide specific names, to which he responded that due to the passage of time, he couldn't recall, but suggested referring to the land sale agreement for details. The Respondent noted that while the Appellant had legal representation, he himself appeared without a lawyer. He disputed the Appellant's claim that assessors had favoured him, maintaining that his case was clear-cut he purchased the land and used it continuously until 2020. He contested the Appellant's assertion that the land was larger than 3 acres.

**I have dispassionately considered** the rival submissions and keenly examined the trial tribunal's records. Apparently, the dispute centers around a piece of land located in Mgera Street, Mkwawa Ward, within Iringa Municipality. The Appellant claims entitlement to the land, asserting it was given to him by his late father in 1990, with continuous use and possession thereafter. The Respondent, on the other hand, contends that he purchased

the land from the Appellant's father in 1992 and has been in possession since then.

The Appellant's first ground of appeal challenges the fairness of the DLHT proceedings, alleging bias and unfair treatment. He asserts that his evidence, supported by witness testimony from his brother, was stronger and should have led to a decision in his favour. Furthermore, he criticizes the Respondent for failing to produce any documentary evidence to support his claim during the DLHT proceedings.

In response, the Respondent denies the allegations of unfairness and asserts that he presented the land sale agreement as evidence, despite the witnesses to the transaction being deceased. He contends that the DLHT evaluated the evidence impartially and concluded correctly that he is the rightful owner of the land.

Upon review, the Court finds that the DLHT acted within its jurisdiction and properly evaluated the evidence presented. The Appellant's contention of bias is unsupported by specific instances of procedural irregularities or prejudicial conduct on the part of the DLHT. The mere dissatisfaction with



the outcome does not establish grounds for overturning the tribunal's decision.

The second ground of appeal challenges the DLHT's handling of the burden of proof and its failure to decide conclusively on ownership. The Appellant argues that the DLHT unfairly placed the burden solely on him to prove ownership, while the Respondent, despite lacking witnesses, was favoured with a decision in his favour.

The Respondent maintains that he fulfilled his burden by presenting the land sale agreement, and the absence of witnesses was due to their demise over time. He argues that the DLHT's decision was clear and justified based on the evidence presented.

The Court notes that the DLHT's role was to evaluate the evidence before it and determine ownership based on the preponderance of evidence. While the Appellant disputes the tribunal's findings, there is no indication that the DLHT failed in its duty to assess the evidence or improperly placed the burden of proof. The decision to uphold the Respondent's claim was based on the evidence before the tribunal, which included the land sale agreement.

In the upshot, this Court finds no merit in the grounds of appeal raised by the Appellant. The DLHT acted judiciously in evaluating the evidence and reaching a decision. Therefore, the appeal is dismissed for lack of merit, and the decision of the District Land and Housing Tribunal dated 5th December 2023 is upheld.

It is so ordered.



Handwritten signature of E.I. Laltaika in blue ink.

**E.I. LALTAIKA  
JUDGE  
28.06.2024**

**Court**

This judgement is delivered under my hand and the seal of this court this 28<sup>th</sup> day of June 2024 in the presence of both parties who have appeared in person, unrepresented.



Handwritten signature of E.I. Laltaika in blue ink.

**E.I. LALTAIKA  
JUDGE  
28.06.2024**

**Court**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
28.06.2024**