

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

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL CASE NO. 17 OF 2023**

(From the decision of the District Land and Housing Tribunal of for Rukwa at Sumbawanga in  
Land Case No. 28 of 2020)

**JUMA EGIDIO ..... APPELLANT**

**VERSUS**

**PASKALIA CHIPUZI ..... RESPONDENT**

**JUDGMENT**

**MWENEMPAZI, J.**

The appellant is aggrieved by the decision of the District Land and Housing Tribunal for Rukwa (Hon. J.L. Lwezaura, Chairman) dated 31<sup>st</sup> May, 2022 which declared the respondent as the lawful owner of the dispute land and the appellant was ordered to leave vacant possession of the dispute land to the respondent. In general the application was granted with costs.

In this appeal the appellant has raised four grounds of appeal as follows: -

1. That the learned chairperson of the District Land and Housing Tribunal erred in law and fact by not considering that the respondent had no *locus standi* as the matter of land dispute was subject to probate.
2. That the Ward Tribunal erred in law and fact by not conserving (sic) the time of recovery of land as I have been cultivating in the plot above twelve years without any interference above twelve years.
3. That the evidence of the respondent was weaker compared to my evidence which was strong.
4. That the tribunal did not move and see the scenery of the disputed (sic) land.

He prays that the appeal be allowed and nullify the proceedings and judgment of the trial tribunal and cost of this suit be provided for.

In the District Land and Housing Tribunal, the respondent filed an application against the appellant (respondent in the trial tribunal) for trespassing into her land and construction of a trench. The respondent alleged that she was given the dispute land by her father in 1972. During hearing the appellant claimed that, he bought the dispute land from Raymund Chipuzi who, however denied to have sold the dispute land but another land. That was

confirmed also by SM2 James Msangawale. SM3 Gerald Jeremanko Chipuzi confirmed that the appellant went far to trespass into the land belonging to the respondent. In the testimony, SM3 testified (at page 9) that: -

*"mimi nilimuuzia eneo langu ambalo niligawiwa na mzazi wangu na baadaye nilimuuzia baba yake na mjibu maombi eneo langu nililopewa na baba yangu. Kaka yangu naye alimuuzia baba yake na mjibu maombi; baadaye mjibu maombi alivuka mipaka na kuingilia eneo la mleta maombi".*

This appeal was presented by way of written submission. In the written submission the appellant has submitted commencing with ground 2 of appeal which reads (as quoted in the written submission):

*"That the trial court erred in law by entertaining the case which was barred by the doctrine of res judicata".*

This ground was not raised in the memorandum of appeal and has just surfaced at the hearing. In my considered opinion, it should not take the precious time of the court as in reality, the appellant is abusing the court process. In the memorandum of appeal, the 2<sup>nd</sup> ground of appeal is on the

issue of time limitation for claims of land. The same thus is dismissed for want of merit in that it was not raised at the commencement of an appeal.

The appellant has also submitted the first ground of appeal that the trial court erred in law and fact in evaluating the evidence on ownership of the disputed land which was adduced by the parties hence reached to a wrong decision. That also was not the first ground of appeal. The 1<sup>st</sup> ground of appeal in the memorandum of appeal was on *locus standi*.

In the memorandum of appeal the complaint on the evaluation of the evidence has been raised on the third ground of appeal. He has submitted that the evidence he tendered in court proved to the balance of probability that he is the lawful owner of the dispute land, 2 acres. He acquired it from his father, the same was purchased from SM3.

He argued that the respondent failed to prove her case on the required standard. He points out that though the respondent alleged to have been given that land in 1972 but she does not know the size. He argues that his evidence is more probable than that of the respondent. He has cited the case of **Hemedi Saidi Vrs. Mohamed Mbilu [1984] TLR 133** where it was held: -



*"According to law both parties to a suit cannot lie, but the person whose evidence is hearier than that of the other is the one who must win".*

He prays the appeal to be allowed with costs.

The respondent has been represented by Mr. Fedrick Nyamoga, Advocate who prepared the written submission. In the written submission he has stated that the appellant has submitted on the grounds which were not raised in the memorandum of appeal. Since there was no any amendment to the memorandum of appeal, he has prayed that the appeal be dismissed in its entirety at this very beginning as per Rule 2 and 3 of Order XXXIX of the Civil Procedure Code, [Cap 33 R.E 2022]; that a party cannot argue on a ground of appeal which was not raised in the memorandum of appeal, unless he seeks permission and is allowed by the court.

In alternative, the respondent has submitted that the trial tribunal correctly evaluated the evidence on ownership of the disputed land which was adduced by the parties hence reached to a fair and just decision.

I have as well read the record, I do appreciate that the submission by the appellant was on grounds not raised in the memorandum of appeal. Order XXXIX Rule 2 of the Civil Procedure Code, [Cap 33 R.E 2022] provides that:-

*"The appellant shall not, except by leave of the court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this Rule.*

*Provided that, the court shall not rest its decision, on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground".*

In this appeal, the appellant submitted on grounds not raised in the memorandum of appeal and despite the fault by the appellant, I have read the evidence available; it is clear that the appellant trespassed into the land belonging to the respondent. For that, he has nothing to fault the trial tribunal in its decision.

Under the circumstances, the appeal is dismissed with costs.

It is ordered accordingly.

Dated and signed at Sumbawanga this 29<sup>th</sup> day of February, 2024.



**T.M. MWENEMPAZI**  
**JUDGE**

Judgment delivered via video conference to the parties whereby the respondent was at the Kalambo District Court and the appellant was absent.



**T.M. MWENEMPAZI**  
**JUDGE**  
**29/02/2024**