

**IN THE HIGH COURT OF TANZANIA**  
**(LAND DIVISION)**  
**AT DAR ES SALAAM**

**LAND APPEAL NO. 123 of 2017**

*(Originating from the Judgment of District land and Housing Tribunal for Kinondoni vide  
Land Application No. 416 of 2011]*

**MUSTAFA YUSUFU .....APPELLANT**

**VERSUS**

**ROGERS ABDI TEMU.....RESPONDENT**

*Date of Last Order: 10/08/2018*

*Date of Judgment: 24/08/2018*

**J U D G M E N T**

**MGONYA, J.**

The Appellant being aggrieved by the decision originating from District Land and Housing Tribunal for Kinondoni in vide **Land Application No. 416 of 2011** dated **18/5/2017**, appealed to this Honourable Court on the following grounds:

- 1. That, the trial Tribunal erred in law and fact by delivering Judgment in favour of the Respondent without taking into consideration that the Appellant is the lawful owner of the disputed land measuring 25 x***

***25 whereby the disputed house is within the said measurement.***

The Appellant prayed to this Honourable Court the following orders:-

- a) That this Appeal be allowed;***
- b) That the decision of the trial Tribunal be quashed and set aside;***
- c) That the Appellant be declared lawful owner of the disputed land.***
- d) Any other relief(s) this Honourable Court may deem fit for the interest of justice.***

In reply, the Respondent strongly challenged this ground of Appeal and prayed to Court to dismiss the same with costs.

The Appellant represented himself while the Respondent enjoyed the services of Mrs. William learned Counsel.

This Court proceed to order that this Appeal be disposed by way of written submission since the Appellant represented himself.

Supporting his Memorandum of Appeal. The Appellant submitted that, the trial Chairman erred when he did not bother to move the Tribunal and engage a surveyor who would have taken the measurements of the disputed land so as to avoid

contradiction; and the said disputed land were within the measurement of 25 x 25 but yet the Chairman declared the Respondent as the lawful owner.

Appellant further submitted that the Chairman relied on receipts to determine the ownership which was not the necessary documents to be relied upon. Further to that, the Appellant adduced loss report to prove that the Sale Agreement was lost yet it was not taken into consideration.

Further to that, the Appellant's vendor, the late Said Kikaula was never granted right to testify; after his death the Appellant requested the Chairman to use the minutes from Saranga Ward Tribunal whereby the deceased had given his testimony but the Chairman denied. Appellant alleged that the deceased testified to the effect that he sold the disputed land to the Appellant and not the Respondent.

The Appellant further submitted that, upon visiting of the disputed land, the Appellant clear answered all questions and showed his boundaries, unlike the Respondent who was represented by his wife who failed to show their boundaries despite of the claims that the Respondent previous had sent his wife to purchase the same on his behalf.

Therefore the Appellant prayed this Honourable Court be pleased to hear and entertain the Appeal on merits.

In rebuttal of what had been already submitted by the Appellant, the Respondent contended that the Chairman of the Tribunal was satisfied with the evidence adduced that the Appellant, DW3 and DW4 were witnesses in 1995 who signed on the Respondent's Sale Agreement. Further, on the side of the Appellant there was no evidence that had been adduced to support his claim.

Respondent submitted that the Appellant never bought the suit land but due to his hooliganic manner, he decided to distort the facts deliberately by stating that he brought the disputed land in 1995 without producing evidence before the trial.

Finally, the Respondent maintained and submitted that what he testified in the Tribunal with his witnesses was to prove his case against the Appellant and not otherwise; as well as that the Chairman and Tribunal Members/Assessors visited the suit place and after being satisfied, arrived to the just decision. From the same, Respondent submits that the ground has no merits.

On rejoinder the Appellant reiterate what he stated in his submission in chief.

In order to appreciate the gist of this Appeal, a brief background is important. It was alleged by the Appellant that he was the lawful owner of the disputed land situated at Kimara Suka since **1995**. The Appellant further contended that when he had shown his intention of renting his premises at the suit land, to raise his source of income the Respondent herein was not ready, hence this land dispute.

Before discussing the ground of Appeal, I see it wise to look on the trial Tribunal records to find out what had been transpired.

According to the evidence from the record, it was revealed that the Appellant is the only witness to his case who testified that he purchased the suit premises in **1995** from one **SAID ALLY KIKAULA (deceased)** for **Tshs. 380,000/=** and immediately after purchasing he started construction in 1995 and the same ended in 1997 on one side and proceeded to live therein; where he later continued with construction until 1999 when construction was completed.

Further, it was revealed that, the Respondent's wife purchased the suit premises for **Tshs. 210,000/=** from one SAIDI KIKAULA and the Sale Agreement was witnessed by one MUSTAFA YUSUPH, HAMIDU KIKAULA and ABBASI URIO.

Further to that the evidence of Respondent, the same was collaborated with the evidence of testimony of one HAMIDU KIKAULA the son of the late SAID ALLY KIKAULA who was previous the owner of the suit premises. It was revealed that the Appellant, MUSTAFA YUSUPH was given a piece of land at Kimara Temboni. This transaction was witnessed by FREDRICK NYONI, BWANA HAMIDU KIKAULA, ROGERS TEMU, and SAID KIKAULA AND ROGERS TEMU'S WIFE.

Record went further to reveal that Mr. Rogers Temu decided to give Appellant piece of Land as he was his close friend who lived with him for a long time.

It was testified by one Abbas H. Urio that he accompanied Mr. Rogers Temu on the day he went to purchase the suit premises in which Mrs. Rogers Temu was the purchaser of the suit premises while himself (Abbas H. Urio) and Mustapha Yusuph (the Appellant) were the witnesses to the said Sale Agreement; he further said that Mr. Said Kikaula and his son (Hamidu Kikaula) were the one who wrote the Sale Agreement.

Having gone through the grounds of Appeal raised and the entire record of this case, having also considered the rival

submissions of both parties it is clear that this Appeal is based on the weight of evidence.

I have already gone through the evidence as adduced by the parties at the trial Tribunal. I find that the evidence adduced by the Respondent is heavier than that of the Appellant in which the Respondent managed to bring before the Court some of his witnesses Fredrick Nyoni, Hamidu Kilaula (DW3) and Abbas H. Urio (DW4) whose in different occasions testified to the effect that they witnessed the purchase of the suit premises through the Sale Agreement dated 25/7/1995. From the above, the Respondent's evidence is heavier than that of the Appellant. This position was clearly stated in the case of ***HEMED SAID VS. HEMED MBILU (1984) TLR 113***. Where it was held that:-

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

It is the trial Tribunal record that the Appellant is among persons who witnessed the said Sale Agreement. The records further reveals that the Appellant was a close friend to the Respondent who was working at the Respondent's shop and the one who told the Respondent about the persons who sold the land

in dispute and the one who accompany Mrs. Rogers Temu to purchase the said land in dispute.

This being a case which is all about ownership which it based more in evidence, the trial Tribunal had an opportunity ascertain the allegations and assess the geographical situation and what was testified by the witnesses. In the case of ***ALI ABDALLAH RAJABU VS. SAADA ABDALLAH RAJABU & OTHERS (1994) TLR 132*** it was held that:-

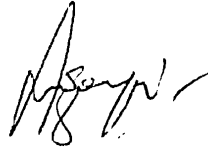
***"Where the decision of a court is wholly based on the credibility of the witnesses, then it is the trial court which is better placed to assess, their credibility than an Appellate court which merely ready the transcripts of the record."***

As it is evidenced from the above records and authorities, I find no justifiable reason to interfere with the findings and decision of the District Land and Housing Tribunal of Mwananyamala **in Land Application No. 416 of 2011**; and the said decision is accordingly is upheld.

In the upshot, **the Appeal is accordingly dismissed with costs.**



Right of Appeal Explained.

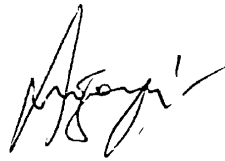


**L. E. MGONYA**

**JUDGE**

**24/8/2018**

**COURT:** Judgment delivered before Hon. S. Ding'ohi, Deputy Registrar in the presence of Appellant in absence of the Respondent and Ms. Monica on 24<sup>th</sup> August, 2018 in chamber No. 18.



**L. E. MGONYA**

**JUDGE**

**24/8/2018**