

**IN THE HIGH COURT OF TANZANIA  
(MWANZA REGISTRY)  
AT MWANZA**

**LAND APPEAL NO.21 OF 2017**

*(Arising from the decision of the District Land and Housing Tribunal of Mara District at Musoma in Land Case No. 139 of 2014)*

**MADUHU GAGI.....APPELLANT**

**VERSUS**

**LEONARD LUPIGASA.....RESPONDENT**

*Last order: 15/12/2017*

*Judgment: 09/03/2018*

**JUDGMENT**

**MAKARAMBA, J.:**

The appellant, **MADUHU GAGI**, is appealing against the Judgment and Decree of the District Land and Housing Tribunal for Mara at Musoma in Application **No. 139 of 2014** dated **24/02/2017** before Hon. Kaare, J.T. Esq, Chairman.

Briefly, in **2014** the Respondent, **LEONARD LUPIGASA**, brought an application **No. 139 of 2014** against the Appellant, **MADUHU GAGI**, before the District Land and Housing Tribunal for Mara at Musoma for orders that, the Appellant be declared to have breached the terms and conditions of the Sale Agreement and to be ordered to vacate the suit land, estimated to be half an acre, located at Mshikamano Street, Nyakato Ward within Musoma Municipality in Mara Region. The suit land contained a house foundation of five rooms. According to the Respondent, on **27/06/2014** the parties entered into and signed a Sale Agreement over

the suit land. The Appellant agreed to purchase the suit land at a price of **Tshs. 5,000,000/=**, which as per the Agreement, the Appellant ought to have paid on **21/07/2014**. However, the Appellant defaulted on the payment, and on **13/10/2014** the Respondent issued the Appellant with a 14 days' Notice to pay the agreed purchase price of **Tshs.5,000,000/=** plus General Damages to the tune of **Tshs.1,000,000/=**, which payment the Appellant refused to make. Consequently, the Respondent brought a suit against the Appellant before the Tribunal. The suit ended in favour of the Respondent. The Respondent was declared to be the lawful owner of the suit land and the Appellant was ordered to vacate the suit land and pay the costs of the application. It is this decision which the Appellant is dissatisfied with and hence the instant appeal the subject of this Judgment.

In this appeal, the appellant is contesting the decision of the Tribunal on the following grounds namely;

- 1. That, the District Land and Housing Tribunal at Musoma erred in law and fact when it failed to state the basis on which it had relied to pronounce Judgment in favour of the Respondent in a case which had not been proved to the required standard.*
- 2. That, the District Land and Housing Tribunal at Musoma erred in law and fact for failing to consider the evidence produced by one Peter Joseph Nkuyu Chairman at Mshikamano (Mtaa) who was attending as a witness in the Sale Land Agreement without showing any good reason.*

3. *That, the District Land and Housing Tribunal at Musoma erred in law and fact for its failure to evaluate the Respondent's evidence in which he failed to state the truth why he refused to call a Ward Executive Officer to attend and produce the evidence but follow the hearsay evidence from the Respondent.*
4. *That, the District Land and Housing Tribunal at Musoma erred in law and fact when it refused the evidence adduced by one Michael Bugumba, the neighbour and the one who attended the Sale Agreement on 18<sup>th</sup> day of June, 2009 which proved that the land in dispute was the property of the Appellant.*
5. *That, the trial Chairman of the District Land and Housing Tribunal at Musoma failed to analyzed evidence adduced before the Tribunal and therefore arrived at a wrong conclusion, to prove this allegation the trial Tribunal believes the evidence adduced by one Hamis Mhando, F.6665 who failed to prove the crime of forgery and who failed to produce any death certificate of the said Respondent's witness.*

The Appellant prays for Judgment and Orders against the Respondent as follows:-

- (i) *The Judgment and Orders of the lower Tribunal be quashed forthwith.*
- (ii) *That, the Appellant is a right owner of the suit land.*

(iii) *That, the Respondent be condemned to pay costs of this appeal.*

(iv) *Any other relief(s) this Court deemed just and fit to grant.*

In prosecuting this appeal, both parties appeared in person, and by their consent the appeal was disposed of by way of written submissions.

I propose to dispose of all the grounds of appeal in *seriatim*. The pertinent issue before the trial Tribunal was whether **MADUHU GAGI**, the Appellant herein, purchased the disputed land from **LEONARD LUPIGASA**, the Respondent herein. This being the case therefore it was pertinent for the Tribunal to find out whether there was any **Sale Agreement** between the parties. The parties are at a consensus that, there was a **Sale Agreement** between them. The only dispute was on the terms and the date on which the said Sale Agreement was concluded. The fact that each party was in possession of his own Sale Agreement is not in dispute. However rather strange and curious, the date, terms and conditions of the Sale Agreement each party had in possession differ markedly. On the fact of the differences in the date, terms and conditions in each of the Sale Agreement in possession of each party, I am at one with the observation by the Chairman of the trial Tribunal that, each one of the parties was in possession of an invalid Sale Agreement. It is for this reason that, this Court sitting as a first instance appellate court, has to carefully examine the contents and forms of the Sale Agreements each party had in possession so as to determine of the two Sale Agreements the

parties had in their possession, which one is valid for purposes of determining the rights of the parties in this appeal.

This being a first instance appellate Court it is perfectly within its powers to re-evaluate and reappraise the evidence adduced by the parties before the trial Tribunal, albeit in summary, which I shall undertake hereunder.

The Court record reveals that, the Respondent testifying as **PW1** before the trial Tribunal stated that, he had entered into an oral Sale Agreement with the Appellant on **10/10/2013**. The Appellant on his part, testifying as **DW1** stated before the trial Tribunal that, they, that is, the Appellant (**DW1**) and the Respondent (**PW1**) had executed a written Sale Agreement on **18/06/2009**. On this clearly contradictory evidence by the parties as to the dates each claim to be the date of the execution of the Sale Agreement each party had in possession, the trial Tribunal therefore had the unreserved duty of finding out as between the Appellant and the Respondent who was telling the truth about the date on which they allegedly entered into a Sale Agreement between them. On the evidence on record by the Respondent (**PW1**) and that of one **Khamis Mhando (PW3)**, a Police Officer with Force No. **F 6665** who investigated the Respondent's allegation that, the Sale Agreement in possession of the Appellant was forged, the trial Tribunal was satisfied, and arrived at a decision that, the Sale Agreement in possession of the Appellant was forged. The issue is whether on the evidence before the trial Tribunal its decision that the Sale Agreement in possession of the Appellant was forged was rightly arrived at.

The Court record shows that in establishing his case before the trial Tribunal, the Respondent called three (3) witnesses, namely; **Leonard Lupigasa**, the Respondent herein, who testified as **PW1**, **Masunga Leonard** (the Respondent's son) who testified as **PW2**, and **Khamis Mhando** (a Police Officer with No. F:6665) who testified as **PW3**. The defence (Appellant) also called three (3) witnesses namely; **Maduhu Gagi**, (the Appellant herein) who testified as **DW1**, **Peter Joseph Nkuyu**, the Mshikamano Street Chairman, who testified as **DW2**, and **Michael Bugunda**, the Appellant's neighbour, who testified as **DW3**.

Before the trial Tribunal, for the Respondent's case, it was the evidence by the Respondent (**PW1**) that, on **21/11/2014**, the Respondent brought an application before the District Land and Housing Tribunal for Mara at Musoma setting out his **claims** against the Appellant on the following facts; that, on **27/06/2014** the parties herein signed a **Land Sale Agreement** in which the Appellant agreed to buy the suit land for **Tshs.5,000,000/=**. The Appellant promised to pay the sale price by or on **21/07/2014**. On **21/07/2014** the Appellant failed to pay the Respondent the purchase price as promised. On the **13/10/2014** the Respondent issued the Appellant with a 14 days' Notice to pay the agreed purchase price of **Tshs.5,000,000/=** plus general damages for all inconveniences caused to him to the tune of **Tshs.10,000,000/=**. In his Reply to the Respondent's claims, the Appellant denied paying the same hence the suit which was before the trial Tribunal.

However, rather surprisingly and quite contrary to what the Respondent had stated in his Application duly filed before the trial Tribunal,

during the trial, the Respondent testifying as **PW1**, gave quite a different version of his story. Testifying as **PW1**, the Respondent stated that, he had entered into a Sale Agreement with the Appellant over the suit land on **10/10/2013**. Further, that it is when the Appellant promised to pay **Tshs.5,000,000/=** on the **05/05/2014**, which promise the Appellant failed to keep. Further that, the Appellant had requested for time so as to honour his promise to pay that amount on **27/06/2014**, which request the Respondent agreed to. **PW1** stated further that, on **27/06/2014** the Appellant also defaulted on the payment and in such circumstances, the Respondent refused to extend time unless the Appellant had committed himself in writing before any relevant authority. **PW1** stated further that he urged the Appellant to commit himself so in writing before the Ward Executive Officer (WEO) of Nyakato Ward within Musoma District. **PW1** stated further that the Ward Executive Officer issued a written Sale Agreement, which was admitted before the trial Tribunal as **Exhibit P1** in which the Appellant committed himself by promising to pay the purchase price on **21/07/2014**. **PW1** stated further that, despite the fact that the Appellant had committed himself in writing before the Ward Executive Officer to furnish payment on **21/07/2014**, the Appellant still defaulted. **PW1** stated further that he therefore decided to issue the Appellant with a fourteen (14) days' Notice to pay a sum of **Tshs.15,000,000/=** of which **Tshs. 5,000,000/=** was for the purchase price and **Tshs. 10,000,000/=** was for general damages. However, the Appellant still refused and hence the suit which was before the trial Tribunal.

It was the further testimony of **PW1** before the trial Tribunal that, after issuing the fourteen (14) days' Notice, he (PW1) came to discover that, the Appellant had forged a Sale Agreement dated **18/06/2009**, which the Appellant had tendered before the trial Tribunal and it was admitted in evidence as **Exhibit D1**. According to PW1, the Sale Agreement in possession of the Appellant was forged to show that, the Sale Agreement was for **Tshs. 2,300,000/=** and that the Appellant has already paid the purchase price, a fact which according to the Respondent (**PW1**) is not true. Having obtained a copy of the Sale Agreement (**Exhibit D1**) which was in possession of the Appellant, the Respondent (**PW1**) reported the incidence to the Police for investigation. Testifying as **PW3**, the Police Officer who was assigned to investigate the authenticity of the Sale Agreement (**Exhibit D1**) to find out whether it was forged stated that, he started his investigation by interrogating persons who witnessed the alleged forged Sale Agreement (**Exhibit D1**). **PW3** stated further that, while continuing with his investigation, he came to discover that, one of the persons who had witnessed the Sale Agreement had passed away. After having interrogated some of the witnesses who recognized the existence of such Sale Agreement, **PW3** asked to be supplied with the original copy of the Sale Agreement (**Exhibit D1**) for forensic investigation by Handwriting Expert. However, rather unfortunately, **PW3** was never supplied with the original copy of the Sale Agreement (**Exhibit D1**) he had requested. According to **PW3**, the investigation is still pending awaiting to be supplied with the original copy of the Sale Agreement (**Exhibit D1**). On the Court record, the evidence by **PW2** was to the effect that, there was



no Sale Agreement which had been concluded between the parties as the Appellant had failed to pay the agreed purchase price.

Testifying for the defence as **DW1**, the Appellant stated that, on the **18/06/2009** he entered into a Sale Agreement with the Respondent to purchase the suit land for value. **DW1** stated further that, the agreed purchase price was **Tshs.2,300,000/=** and that he paid that amount in cash on the date of the signing the Sale Agreement. **DW1** tendered in evidence the Sale Agreement dated **18/06/2009**, which was admitted in evidence as **Exhibit D1**. **DW1** stated further that, the Sale Agreement was signed by both parties and their respective witnesses. The Appellant brought before the Tribunal two witnesses, **DW2** and **DW3**, who witnessed the Sale Agreement (**Exhibit D1**). **DW2** being the Chairman of Mshikamano Street in Nyakato Ward-Musoma stated that, he (**DW2**) was the one who prepared the Sale Agreement (**Exhibit D1**) and caused both parties and their respective witnesses to sign it. **DW2** stated further that, the Appellant and the Respondent did sign the Sale Agreement (**Exhibit D1**) before him. **DW2** stated further that, the Sale Agreement was for the payment of **Tshs.2,300,000/=** and the Appellant paid the Respondent the whole amount in cash on the same date. **DW2** and **DW3** confirmed before the Tribunal that, the Sale Agreement (**Exhibit D1**) is genuine and not a forgery. **DW2** stated further that, he even remained with a copy of the Sale Agreement at his office for office record.

On the above summarized evidence by the parties before the trial Tribunal, which is in the Court record, it is the finding of this Court that, the Respondent was highly uncertain as to which was the date of the Sale

Agreement alleged by the Respondent to have been concluded between the parties. The facts as set out in the Application which the Respondent lodged before the trial Tribunal as to the date on which the alleged Sale Agreement between the parties was concluded, differ markedly from what the Respondent had testified before the trial Tribunal during the trial. The fact as to the date of the alleged Sale Agreement as set out in the Respondent's Application lodged before the trial Tribunal is that, the parties concluded the alleged Sale Agreement on **27/06/2014**, while during testifying before the trial Tribunal the Respondent (**DW1**) stated that, the alleged Sale Agreement was concluded on **10/10/2013**. This is why this Court finds that, the evidence by the Respondent creates confusion for having been contradictory and uncertain as to the date on which the alleged Sale Agreement was concluded between the parties. Worse still, the Respondent never brought before the trial Tribunal any person who might have witnessed the Sale Agreement which the Respondent alleged that the parties concluded, so as to clear any doubts as to the two different dates mentioned by the Respondent, the one stated in his claim (**27/06/2014**) and the other (**10/10/2013**) stated in his testimony before the trial Tribunal. As the Appellant rightly stated, the Respondent did not call the purported Ward Executive Officer who the Respondent alleges to have prepared the Sale Agreement (**Exhibit P1**) to testify before the trial Tribunal so as to clear the confusion on the date the Respondent claim having been the date on which the parties concluded the alleged Sale Agreement. I am of the firm view that, had the Ward Executive Officer, who in my considered opinion was a critical witness,

been called by the Respondent to testify he could probably have cleared any doubts as to the validity of the purported Sale Agreement (**Exhibit P1**). In such kind of situation, since the alleged Ward Executive Officer was such a critical witness in so far as the issue of the validity of the alleged Sale Agreement (**Exhibit P1**) is concerned, in my considered view, the trial Tribunal ought to have drawn an adverse inference against the Respondent's failure to call the alleged Ward Executive Officer as a witness in that, had he been called to testify he probably might have testified adversely against the Respondent as to the date of the conclusion of the Sale Agreement (**Exhibit P1**) between the parties.

The Court record shows that, as per the evidence of **PW3**, while conducting investigation in connection with the allegation that the purported Sale Agreement (**Exhibit P1**) was forged, met with the Ward Executive Officer and that having interrogated him, PW3 discovered that, the Ward Executive Officer had met with the parties on a friendly basis and not officially. If this is the case then, there are doubts if the purported Sale Agreement (**Exhibit P1**) was ever officially concluded before the Ward Executive Officer as it is being contended by the Respondent.

However, upon a careful examination of the Sale Agreement (**Exhibit P1**) on record, it has come to the light of this Court that, actually it is not even a Sale Agreement in respect of the suit land but a mere acknowledgment and a promise to pay a debt due to the tune of **Tshs. 5,000,000/=**. The contents of **Exhibit P1** further reveal that, the Appellant had admitted to be indebted to the Respondent and promised to furnish the Respondent the indebted amount due on **21/07/014**, and

further that upon default, legal action to be taken against the Appellant including surrendering the suit land in lieu of.

Clearly on the above facts, **Exhibit P1** cannot pass for a Sale Agreement with respect to the suit land but only an agreement to pay a debt due or a promissory note as is famously referred to in the financial markets. Unfortunately, the validity or otherwise of the purported Sale Agreement (**Exhibit P1**) was not an issue before the trial Tribunal. It is also not an issue before this Court in the instant appeal and therefore not a matter for determination by this Court.

The Court record shows that, the Appellant also tendered in evidence before the trial Tribunal a Sale Agreement, which was admitted as **Exhibit D1** alleged to have been signed by both parties. I have carefully examined the contents of **Exhibit D1** on record. It appears to me to concern the sale of the land in dispute. Before the trial Tribunal however, the Respondent was quite adamant that, **Exhibit D1** was forged and hence unauthentic or invalid. The Police Officer who investigated the matter, when testifying before the trial Tribunal as **PW3**, stated that, he could not manage to investigate the alleged forgery of **Exhibit D1** because he had failed to obtain the original copy of **Exhibit D1**, which according to **PW3** he is still awaiting to be supplied with its copy for further investigation.

Apart from **PW3**, two other witnesses namely, **Marco Bugumba** and **Peter J. Nkuyu** who are among the persons alleged to have witnessed the Sale Agreement (**Exhibit D1**), confirmed before the trial Tribunal that, the Sale Agreement (**Exhibit D1**) was genuine and that it was signed by both parties.

Furthermore, the Respondent challenged the Sale Agreement (**Exhibit D1**) that, it was invalid as it was witnessed and signed by dead persons. In his testimony before the trial Tribunal **PW3** stated that, in the course of investigating the allegations of forgery of **Exhibit D1**, he discovered that, one **Mohamed Kilima** being among the persons alleged to have signed the Sale Agreement (**Exhibit D1**) had passed away in **2013**. **PW3** stated further that, some of the people appearing on the Sale Agreement died in **1990**. However rather unfortunately, **PW3** could not mention the names of those people he claims to be appearing on **Exhibit D1** but who died in 1990. In so far as **Mohamed Kilima** is concerned, there is nothing fatal for him being a witness to the Sale Agreement (**Exhibit D1**) since it was signed by the parties and their witnesses including **Mohamed Kilima** in **2009**, at a time the late **Mohamed Kilima** was still alive. The fact that, **Mohamed Kilima** passed away after the Sale Agreement (**Exhibit D1**) had already been concluded and signed, cannot therefore be used to vitiate the validity of the Sale Agreement (**Exhibit D1**), to which he had ascribed his signature before his demise.

Upon a close scrutiny of the totality of the evidence before the trial Tribunal, this Court finds the scales of justice to have tilted more in favour of the Appellant than the Respondent. Since the parties are at consensus that, once upon a time they entered into a Sale Agreement in respect of the land in dispute as evident in **Exhibit D1** whose validity has been vindicated, this Court finds that, before the trial Tribunal the Appellant had, on a balance of probabilities, managed to prove his case against the Respondent. On the evidence on record, the Sale Agreement dated

**18/06/2009**, which was admitted in evidence before the trial Tribunal as **Exhibit D1** was perfectly valid as between the parties in respect of the suit land.

The pertinent issue here therefore, this Court having determined and found **Exhibit D1** to be a valid agreement between the parties, is whether the Appellant has paid the purchase price of **Tshs. 2,300,000/=** in full. It was the evidence of **DW2** and **DW3** before the trial Tribunal that, the purchase price of **Tshs. 2,300,000/=** for the purchase of the suit land had been fully paid by the Appellant on the same date of the signing of the Sale Agreement (**Exhibit D1**). And according to **DW1, DW2** and **DW3**, the Appellant paid the amount of **Tshs.2,300,000/=** being the purchase price for the disputed land in cash. In the circumstances, this Court finds that, the Appellant has already fully paid the purchase price for the suit land.

The evidence on record as re-evaluated and reappraised by this Court herein above, in the course of perusing the Court record, it has come to the light of this Court that, there are some discrepancies in the proceedings, which could render the trial before the trial Tribunal to be called to have been unfair. The record of the proceedings of the trial Tribunal reveal some quite disturbing features, one being that, on **11/04/2016** when one **Leonard Lupigasa**, the Respondent herein, was testifying as **PW1**, sought leave of the trial Tribunal to produce in evidence the Agreement dated **27/07/2014**, which he alleged was prepared by the Ward Executive Officer. However, the record reveals that the Honourable Chairman of the Tribunal did not bother to ask the Appellant or his

advocate if they had any objection on the prayer by **PW1** to tender in evidence such a document. The Appellant and his advocate were not afforded any opportunity to object or concede to the prayer to admit in evidence **Exhibit P1**. The Chairman of the Tribunal simply admitted in evidence the Agreement dated **27/06/2014** and marked it as **Exhibit P1** without affording to the Appellant the right to object or concede to the issue as to whether or not the said document was in violation of the provisions of section 173 of the *Evidence Act* [Cap.6 R.E. 2002]. This omission in my considered view was contrary to the cardinal principle in litigation that each party has the fundamental right to be heard on matters affecting his or her right. The failure by the trial Tribunal Chairman to accord the Appellant or his advocate the right to object to the admissibility in evidence **Exhibit P1** was highly prejudicial on the part of the Appellant and thus rendered the trial to be unfair in so far as the Appellant was concerned.

It has also come to the knowledge of this Court after a perusal of the record of the trial Tribunal that, on **21/07/2016** when the matter came before the Tribunal for hearing, it was the very day the Police Officer (**PW3**) was giving his evidence on the allegations by the Respondent that **Exhibit P1** was forged. It is also on record that one **Mr. Ngero**, learned Counsel for the Appellant, had lodged a letter before the trial Tribunal Chairman dated the **19<sup>th</sup> July, 2016** informing the Tribunal that, on the **21<sup>st</sup> July, 2016** when the case was scheduled for hearing, he will be attending to another matter at the High Court of Tanzania at Shinyanga before **Hon. Makani, J.**, in **Misc. Land Appeal No. 3/2016** between

**George Buturi** and **Zawadi Maige**. In the said letter, Mr. Ngero had prayed that, the case before the Tribunal be adjourned and fixed to another date preferably on **1<sup>st</sup> or 8<sup>th</sup> of August; 2016**. Rather unfortunately, and despite being informed by a way of a letter, the Tribunal Chairman elected to proceed with the hearing of the suit in the absence of Advocate Ngero merely on the ground that, Mr. Ngero had failed to attach the Cause List of the High Court of Tanzania at Shinyanga to prove that, there was such a case before **Hon. Makani, J.**, on the material date. Consequently, the Police Officer (**PW3**) was allowed to give his evidence without the benefit of the Appellant or his Advocate cross-examining him. In my considered view, since **PW3** was such a critical witness on the allegations of forgery leveled by the Respondent on the Appellant's piece of evidence, **Exhibit D1**, the Chairman of the Tribunal ought to have adjourned the matter to another date so as to afford the learned Advocate for the Respondent the opportunity to cross-examine **PW3**. An Advocate being an officer of the Court, there is no limit as to the modes through which he may communicate with a Court or Tribunal, and this may include but not limited to written communication. The presumption is that such communication is reflective of the correctness of what is being asserted therein unless proved otherwise, whereupon appropriate disciplinary measures could be taken against an Officer who may have lied to the Court or Tribunal. Since there was a prior communication by way of a letter by the learned Advocate for the Appellant addressed to the Chairman of the Tribunal, the Chairman of the Tribunal ought to have exercised his prudence and accord the learned



Counsel for the Appellant the benefit of doubt and adjourn the proceedings to another date. In the premise, the Appellant being represented by an Advocate was not accorded his right to cross-examine his adverse witness. This was clearly in contravention of section 147(1) of the *Tanzania Evidence Act* [Cap.6 R.E. 2002]. Furthermore, the right to representation enjoyed by the Appellant was trumped upon for the Appellant who was being represented by an advocate, has been denied the opportunity of his learned Advocate to fully and meaningfully represent him. This was highly prejudicial on the part of the Appellant such that justice on the part of the Appellant has clearly not been done.

On the procedural discrepancies and irregularities as pointed out above, which in my view go to the very root of the matter before the trial Tribunal, this would render the whole proceedings before the trial Tribunal incompetent and liable to be struck out and the matter to be ordered to be remitted before the trial Tribunal with an order to be heard afresh before the Tribunal. This Court has exercised its powers as a first instance appellate court to re-evaluate and reappraise the evidence of the trial Tribunal on record. Consequently it has come to light that the investigation on the alleged forgery of **Exhibit D1** conducted by PW3 has not been completed. Furthermore, this Court has made a finding that the Sale Agreement (**Exhibit P1**) purportedly prepared by the Ward Executive Officer is irrelevant to the matter in question. Under such circumstances, an order for retrial will not in my considered opinion serve any useful purposes but rather will unnecessarily delay the matter.

This Court has undertaken the trouble of comparing the signatures of the parties contained in **Exhibit D1** alleged to be a forged and the signatures in the pleadings by the parties. They appear to me to be similar. I have examined the signature of the Respondent as it appears in his Application lodged before the trial Tribunal. It looks quite similar to his signature appearing in **Exhibit D1**. I have also compared the signature by the Appellant as appearing in his Written Statement of Defence filed before the trial Tribunal. It looks similar to his signature appearing in **Exhibit D1**. While testifying before the trial Tribunal, the Street Chairman (**DW2**) stated that, the parties did sign the Sale Agreement (**Exhibit D1**) before him. On this similarity I have no flicker of doubt at all that, indeed the Sale Agreement (**Exhibit D1**) is valid. In the course of his investigation, **PW3** stated that he had interrogated the Street Chairman (**DW2**) and one **Marco Bugunda** being witnesses to **Exhibit D1** who recognized the existence **Exhibit D1** as a valid contract duly signed by both parties who are before this Court in the instant appeal. Logically, it may not go down well with reason as to how and why the Respondent allowed the Appellant to use the suit land for cultivation purposes for more than three (3) years if at all the Appellant had not paid anything to the Respondent by way of purchase price of the suit land. On this simple fact of life experience, this Court has no reason of disbelieving the evidence by DW1, DW2 and DW3 to the effect that, the Appellant had paid the Respondent the purchase price for the suit land in full.

It is for the foregoing reasons this Court finds this appeal with merits. Accordingly it is hereby allowed in its entirety with costs, which the Respondent shall pay for this appeal.

The Judgment and Decree by the *District Land and Housing Tribunal of Mara District at Musoma in Land Case No. 139 of 2014* dated **24/02/2017** before Hon. Kaare, J.T. Esq, Chairman, are hereby quashed and set aside.

The Appellant, **MADUHU GAGI**, is hereby declared to be the rightful owner of the suit land estimated to be half an acre, located at Mshikamano Street, Nyakato Ward within Musoma Municipality in Mara Region, and containing a house foundation of five rooms. It is so ordered.

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**R.V. MAKARAMBA**

**JUDGE**

**09/03/2018**