**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 271 OF 2019**

(Arising from Land Application No. 54 of 2016 in the District Land and Housing Tribunal for Kibaha District at Kibaha, by Hon. Jerome Njiwa, Chairman dated 9th November, 2018)

**MUHSIN RAMADHANI SALIM ..... APPELLANT**

**VERSUS**

**HOSSEIN HAJI ..... 1ST RESPONDENT**

**MSTILI HOSSEINI ..... 2ND RESPONDENT**

**JUDGMENT**

*Date of Last Order: 26/10/2021*
*Date of Judgment: 10/11/2021*

**A. MSAFIRI, J:**

In this appeal, one Muhsin Ramadhani Salim, the appellant, has filed this appeal having been aggrieved by the decision of Kibaha District Land and Housing Tribunal dated 09/11/2018. The source of the dispute is a piece of land located at Kibaramati area, Miono Village, Bagamoyo District. The appellant instituted Land Application No. 54 of 2016 at the trial Tribunal praying among others, a declaration that he is the rightful owner of that piece of land (herein as suit property). After the trial, the Tribunal entered judgment in favour of the respondents. The appellant was aggrieved hence he filed this appeal on the following grounds, thus:-

1. *That, the learned Chairman grossly erred in law in delivering judgment while improperly constituted.*
2. *That, the learned Chairman grossly erred in law and fact in denying the appellant a right to land basing on the discrepancy of the years on the appellant's testimony and the pleadings without considering the appellant's evidence on long possession and exhaustive development over the disputed land.*
3. *That, the learned Chairman grossly erred in law and fact in declaring the respondents lawful owners of the disputed land without considering the evidence which prove that the 1st Respondent had no better title to land and hence his agreement with the 2nd Respondent is void.*
4. *That, the learned Chairman erred in law and fact by his failure to consider and evaluate all the evidence on record properly, thereby arriving at the wrong decision against the weight of the available evidence in favour of the appellant.*

le prayed that this appeal be allowed with costs, and the judgment, findings nd orders of the District Land and Housing Tribunal be set aside.

he appeal was argued by way of written submissions whereby the ppellant's submission was drawn by advocate Frank Chundu and filed by he appellant himself. In response, the respondents' joint submission was lrawn by Advocate Maria Mtui and filed by the respondents in person.

laving read the submissions from both parties, and considered the Court ecords, the major issue is whether the appeal is meritorious. This can be

answered after the determination of the grounds of appeal which I will do separately.

On the first ground of appeal concerning the composition of the trial Tribunal, the appellant's submissions was that the trial Tribunal was improperly constituted. That the judgment on the matter was entered by the trial Chairman sitting with one assessor contrary to section 23 (1) and (2) of the Land Disputes Courts Act, Cap 216 R.E. 2019. In the reply, the respondents submitted that since they were not supplied yet with copies of the proceedings, they are not sure whether the claims of the appellant are true. And even if they are true, it was not the mistake of the respondents so they cannot be denied their rights.

Going through the proceedings during the trial, I have observed that the hearing commenced on 29/5/2018, the composition of the Tribunal was the Chairman and the assessors namely Mwesingo and Kihampa. On that day, PW1 and PW2 gave their testimonies and the applicant closed his case.

On 04/09/2018, the case came for defence hearing. There was one assessor namely Mwesingo. Before the start of the defence hearing, the trial Chairman informed the parties that since one assessor Mama Kihampa was indisposed, the hearing will proceed with only one assessor under Section 23 of the Land Disputes Court Act. The parties had no objection and the matter proceed on defence hearing. After the close of defence case, the assessor gave his opinion which is revealed/ attached to the proceedings and is reflected in the judgement.

Section 23(3) of the Land Disputes Act, allows the Chairman to continue with the proceedings when or both members of the Tribunal are absent. Therefore there was no any error committed by the trial Chairman either during the proceedings or in judgment delivery. I dismiss this ground of appeal.

On the second ground of appeal, the appellant submitted that, he acquired the suit land by cultivating a virgin land since 1950's and he has been developing the same since then. That the appellant's evidence was supported by Shabani Kazinyingi (PW2) who knew about the appellant's acquisition.

He stated that the trial Chairman erred to deny the appellant his right to land simply because of the discrepancy in the years of acquisition whereby in his pleadings he stated to acquire land in 1960's while in his oral testimony he said to have acquired the same in 1950. The appellant submitted further that being an adult of more than 70 years of age, he should not be tied closely with dates. To cement his arguments, he cited the cases of **Shihobe Seni & Another vs. Republic** (1992) TLR 333 and **Nassoro Uhadi vs. Musaa Karungi** (1982) TLR 302.

In reply, the respondents argued that the trial Tribunal arrived at its decision after having carefully exhausted the evidence given by both parties. That the appellant failed to prove as to when he temporarily authorized the 1st respondent's father to cultivate 3 acres of land, and there is no evidence on compensation he claims to make to the 1st respondent's father. The respondents stated that the evidence of PW2 was poor because he stated that he was a neighbour of the applicant since 1950's bordering his farm

with the appellant's farm. However, PW2 claims to have left the area from 1954 so he could not know about the ownership of the disputed area as well as its use.

Going through the evidence from the trial, the appellant testifying as PW1 stated that, he has right over the suit land (about 6 acres) as he has cleared it from the bush, and has occupied it for over 30 years now. That the 1st respondent trespassed and took about 1.5 acres and later in 2015 sold it to the 2nd respondent. That he cleared the bush and established a farm way back in 1950's. PW2 stated that, he know the appellant and the suit land. That he was bordered with the appellant since 1950. That in 1954 he left the farm and went to look for another new farm, and that he left the applicant in occupation of suit land.

In reply, the 1st respondent testifying as DW1, argued that the suit property belonged to his father Haji Kilo. After the death of his father in 2005, no person claimed any right over the farm, so he inherited the farm jointly with other heirs. That, they decided to sell some of the suit land about one quarter acres to the 2nd respondent when their sister got sick and they needed the money.

DW2 Shabani Ramadhani gave evidence in support of DW1. He stated that the applicant is their uncle, and that the applicant and the 1st respondent's father were brothers. That when 1st respondent's father died, the suit land was one of the properties identified and listed as the deceased properties. That the applicant used to farm in the suit land and was left to own part of

it but the suit land was never given to him. That in 2016, the applicant started to claim the suit land.

In this ground, the appellant is stating that the trial Chairman erred when he based his decision on discrepancy of the years in his pleadings and oral testimony instead of considering the appellant's evidence on long possession and exhaustive development over the land.

I have observed that each party of this suit claims to be the lawful owner of the suit land. The appellant is claiming possession of suit land from 1950's as per his oral evidence and since 1960 per his application before the Tribunal. He said he had been in continue use since then. He said he once gave 3 acres to 1st respondent's father on temporary basis to cultivate it. He brought his supposed neighbour PW2 to support his claim.

I have noted that the appellant is trying to establish the principle of adverse possession, that he has been using the said land uninterrupted for all those years. Going through the evidence on record, I have observed that there is no evidence from the appellant that he has been using the disputed land uninterrupted for all those years. The evidence of PW2 raised doubt to that because although he stated that he was a neighbour of the appellant, he left the area in 1954 to go look for another farm. So, PW2 is unaware of what happened to the suit land from 1954 when he left to 2018 when he came to testify before the Tribunal.

It is clear from the outset that the suit land is located at the village. The appellant stated that the same is in Miono Village in Bagamoyo District. Therefore, the land is governed by the Village Land Act, Cap 114 R.E. 2019.

According to Section 8(1) of the same act, the Village Council is responsible for the management of all village land. In proving his ownership, the appellant could have called a Village Council member or a village leader to come and testify before the Tribunal to the fact that he is the lawful owner of the suit land in absence of any document to prove so.

I am aware that the 1st respondent too did not produce any documentary evidence to prove his ownership through his inheritance from his late father, however, the appellant being the one who alleges the ownership, has a burden to prove so the burden cannot shift to the respondents.

Section 110 of the Evidence Act, Cap 6 R.E. 2019 provides that;

> *110 (1)" Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*
>
> *(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."*

From this evidence, I find that the trial Chairman was right that the appellant's evidence did not discharge his legal burden of proof. I also dismiss this ground of appeal.

The 3rd and 4th grounds are all based on the evaluation of evidence at the trial Tribunal and I have already found that the trial Chairman did evaluate the evidence which were adduced and was of the opinion that the appellant's evidence was not enough to prove his case, then I will

not labour on these grounds of appeal and I proceed to dismiss them as well.

For the above analysis, I find no reason to reverse or alter the findings and decision of the trial Tribunal and I hereby dismiss this appeal. Considering that the parties i.e. appellant and the 1st respondent are relatives, I make no order to costs. Right of appeal duly explained.

It is hereby ordered.


**A. MSAFIRI**

**JUDGE**

**10/11/2021**