

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

MISC. LAND APPEAL NO. 125 OF 2021

*(From Appeal Judgment of District Land and Housing Tribunal for Kibaha, in
Land Case Appeal No.31 of 2020, originating from the Ward Tribunal of
Mbwewe Ward in Application No.13 of 2019)*

SEDEKIA KALOLI..... APPELLANT

VERSUS

ALL RAJABU ATHUMANI.....RESPONDENT

J U D G M E N T

Date of Last Order: 01.08.2022

Date of Ruling: 29.08.2022

T. N. MWENEGOHA, J.

The appeal is based on the following grounds; -

- 1. That, Kibaha District Land and Housing tribunal erred in law and fact for failure to evaluate well the evidence on records hence caused injustice to the appellant.**
- 2. That, Kibaha District Land and Housing tribunal erred in law and fact in deciding in favour of the respondent disregarding the evidence of the appellant.**
- 3. That, Kibaha District Land and Housing tribunal erred in law and fact for deciding the case in respondent side hence failed to bring a strong witness to prove his ownership.**

4. That, Kibaha District Land and Housing tribunal erred in law and fact for basing on in respondent statement with no document in supporting his statement.

The appeal was heard by way of written submissions and both parties appeared in person. In this judgment, I will consolidate all four grounds of appeal and analyse them together. I do so in consideration of the fact that, all these grounds communicate one thing, that the 1st appellate tribunal, that is Kibaha District Land and Housing Tribunal failed to do a proper analysis and evaluation of evidence on record from the trial tribunal (Mbwewe Ward Tribunal), hence reached to the decision in favor of the respondent. Further, I will not reproduce the submissions of parties as we usually do, rather I prefer to take them on board in my discussion that follows hereunder.

As I have explained herein above, the issue worth of determination in this appeal is whether the 1st appellate tribunal failed to analyse or otherwise make a proper evaluation of the evidence on record.

In his submissions, the appellant has faulted the 1st appellate tribunal for failing to analyse properly the evidence regarding the ownership of the suit land to the appellant. That, his witnesses proved that, he in fact owns the suit land while on the other hand, the respondent failed to produce strong evidence or witnesses to prove that he in fact owns the land in dispute. The appellant cited the case of **Hemed Said vs. Mohamed Mbilu, (1984) TLR 113** and insisted that, his evidence was heavier than that of the respondent, therefore the 1st appellate tribunal was wrong to decide in favour of the respondent.

The respondent in his reply maintained that, the one with heavier evidence at the trial tribunal was the respondent, that is why he won the case. The same was the finding of the 1st appellate tribunal which upheld the decision of the trial tribunal. That, the records are clear that, the respondent obtained the suit land from the Village authority, the same was a forest which the respondent cleared it since 1995. He used it undisturbed until when the appellant appeared and the dispute began. The respondent cited the case of **Ally Abdallah Rajab versus Saada Abdallah Rajab (1994) TLR 132.**

I made a perusal of the records of the two lower tribunals. The trial Ward Tribunal gave the ownership of the suit land to the respondent, Ally Rajabu. They gave their reasoning for this, including the fact that the Respondent was residing at the place and was allocated the land way before the Applicant moved in to the area. That is in 1995 as opposed to 2010. The 1st appellate tribunal also agreed with these findings and upheld the decision of the Ward Tribunal on reasons that, the respondent was there on the suit land a long time undisturbed, since 1995, unlike the appellant.

That is what I also found after going through the evidence on record. That, the respondent was the 1st person to set foot in the land in question. the appellant's evidence in this matter was weak compered with that of the respondent. Therefore, the case of **Hemed Said** (supra) favours the respondent more than the appellant. In my opinion, the findings of the two lower tribunals were correct and I will not decide otherwise other than agreeing with them. That is to say, the evidence was well evaluated and properly analysed.

In the end, I dismiss the appeal and uphold the decision and orders of the 1st appellate tribunal. No order as to costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
29/08/2022