

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND APPEAL NO. 301 OF 2021

*(Arising from the Judgment and Decree of the District Land and Housing
Tribunal for Ilala District in Land Application No. 267 of 2018)*

OMARI RAMADHANI JAMBIA (As an administrator of
the late HASSAN ABDALLAH JAMBIA) **APPELLANT**

VERSUS

BARTHOLOMEW MICHAEL NEHATA **RESPONDENT**

JUDGMENT

Date of last Order: 27.10.2022

Date of Judgment: 31.10.2022

A.Z. MGEYEKWA, J

At the centre of controversy between the parties to this appeal is a parcel of land. The material background facts of the dispute are not difficult to comprehend. They go thus: the respondent lodged a complaint at the District Land and Housing Tribunal for Ilala in Land Application No. 267 of 2018 against the appellant and eight others. The source of the dispute is

a piece of land measuring 10 acres at Kole Street formally known as Mvuti Village. The respondent complained that he acquired the suit land from Mohamed Athumani Niachieni on 23rd April, 1989. He cleared the suit land and planted various crops and trees in 2016, the appellant claimed that he is the lawful owner of the suit land, therefore he sold pieces of land to 8 other people who were part of the case at the District Land and Housing Tribunal for Ilala.

In conclusion, the respondent urged the tribunal to declare him a lawful owner of the suit land and restrain the appellant and others to enter into the suit land and pay general damage to the tune of Tshs. 30,000,000/=.

On his side, the appellant denied all the claims against him. The appellant was the first Defendant he testified that in 2016 Hassan Abdallah Jambia (deceased) informed him that people have invaded his land and they claimed that the respondent allowed them to enter into the suit's land. He testified to the effect that the contract ended in 2017 and the appellant was notified that the contract came to an end. The District Land and Housing Tribunal determined the matter and decided in favour of the respondent.

Believing the decision of the District Land and Housing Tribunal for Ilala was not correct, the appellant lodged an amended Memorandum of Appeal containing six grounds as follows:-

1. *That the District Land and Housing Tribunal erred in law and fact for deciding in favor of the Respondent without considering that the Respondent had failed to prove that the disputed Land was given to him by Mohamedi Athumani Niacheni and later given the same Land by Kijiji cha Ujamaa Mvuti.*
2. *That the appellate Tribunal erred in law and fact by deciding in favour of the Respondent that he has been residing in the disputed land, while all the time the disputed land was occupied by the deceased since 1988.*
3. *That the District Land and Housing Tribunal erred in law and fact for deciding in favour of the Respondent without considering that after the death of Hassan Abdalah Jambia, the Respondent failed to sue Omari Ramadhani Jambia as an Administrator of the estate of Hassan Abdalah Jambia.*
4. *That the Chairman of the District Land and Housing Tribunal erred in law and fact by failing to discover that document of the Respondent shows the disputed land is situated NIDA MAGUGU which is different from the disputed area which is situated at Kidole Street.*
5. *That the learned Tribunal Chairman misdirected himself in fact and in law in failing to discover that in absence of evidence of the S/Mtaa NIDA MAGUGU it is not safe to rely on the Respondent documents.*

6. *That the decision of the District Land and Housing Tribunal was reached against the weak evidence of the Respondent compared to the strong evidence of the Appellant.*

When the matter was called for hearing on 21st June, 2022, the appellant appeared in person, unrepresented and the respondent enlisted the legal service of Ms. Agness Uiso, learned counsel. The Court acceded to the appellant's proposal to have the matter disposed of by way of written submissions. The appellant filed his submission in chief on 31st May 27th June, 2022. The respondent filed his reply on 4th July, 2022 and the respondent filed his rejoinder on 8th July, 2022. Both parties complied with the court order.

In his submission, the appellant opted to combine and argue the first, second, fifth, and sixth grounds together. The appellant contended that the trial tribunal erred in law and fact for deciding in favour of the respondent without considering that the respondent had failed to prove that the disputed land was given to him by Mohamed Athumani Niacheni and later he acquired the same from the Village of Mvuti. He claimed that in absence of evidence from the Street Government of Magugu Nida is not safe to rely on the respondent's document. He argued that the trial tribunal decision was based on the weak evidence of the respondent compared to the strong evidence of the appellant. He testified that DW1

in his testimony tendered a piece of documentary evidence including form No.4 and a document from the Village Government of Mvuti which shows that the appellant was allocated the suit land in 1988 thus he is the lawful owner of the suit land. He went on to submit that the respondent was on the suit's land from 1992 to 2016 and the appellant developed his land by building two houses which signifies the presence of the owner of the land.

He submitted that DW2, Abdallah Said was among the members of the allocation committee, and DW3, Neno Eneza Mshana, ten cell leader of Mvuti testified that the suit land is the property of the late Hassani Abdualah Jambia and he was entrusted to supervise it and he stated that PW2 was never a ten cell leader of Mvuti. He claimed that the respondent did not prove that the suit land is situated at Magugu Nida which is different from the suit land situated at Kidole, Mvuti. The appellant went on to submit that DW2 evidence was heavier compared to the evidence of PW1 since DW4 was the Chairman of Mvuti Village from 1986 to 1994.

On the third ground, he contended that the District Land and Housing Tribunal erred in law and fact in deciding in favour of the respondent without considering that after the death of Hassan Abudalah Jambia, the respondent failed to sue Omari Ramadhani Jambia as an administrator of the estate. He added that Chairman Bigambo ordered the respondent to

sue the appellant as an administrator but he did not do so and the Chairman ordered a hearing of the case before amending the application.

Arguing for the four ground, the appellant complained that the Chairman of the trial tribunal erred in law and fact by failing to discover that the document of the respondent shows that the suit land is situated at Magugu Nida which is different from the suit land but the Chairman in his Judgment stated that currently is Kidole Mvuti. He stressed that the appellant is the owner of the suit land located at Kidole Mvuti Village. He added that the appellant in the application stated that he was given by Mvuti Village while in his testimony he testified that the Kijiji cha Ujamaa cha Mvuti blessed the allocation in 1992 after being given by the late Mohamed Athumani Niacheni.

He stated that it is trite law that inconsistencies in evidence entitle a Court to reject such kind of evidence. To support his submission he cited the case of **Emmanuel Abrahamu Manyoro v Paniel Ole Saitabau** (1987) TLR 47. He added that the respondent was duty-bound to call the members who were present when Mvuti Village allocated him the suit land. He added that failure to call material witnesses the Court can draw an inference that if they could have been called then they could give evidence contrary to the respondent's interest. Fortifying his submission, he cited the case of **Hemed Said v Mohamed Mbilu** (1984) TLR 113.

On the strength of the above submission, the appellant urged this court to allow the appeal with costs.

In his submission against the appeal, the respondent's counsel began by raising a point of law concerning the memorandum of appeal. He argued that the appellant has filed an amended Memorandum of Appeal without attaching copies of the judgment and decree of the decision contrary to Order XXXIX of Civil procedure Code Cap.33. He valiantly submitted that the Memorandum of Appeal should not be maintained by this Court.

On the first ground, the learned counsel submitted that the trial tribunal decision was sound and reasoned. Ms. Agness contended that the Chairman considered the weight of the respondent's case and proof that the suit land was given to him by Mohamed Athuman Niacheni and later given the same land by Kijiji cha Ujamaa Mvuti. She submitted that it is trite law that whoever alleges has a burden of proof and the standard of proof in civil cases is on the balance of probabilities. To support her submission she cited section 110 of the Evidence Act Cap. 6 [R.E 2019].

The counsel went on to submit that on pages 3 to 4 of the tribunal judgment it shows that the respondent tendered a document (Exh.P1)

proving that the suit land was given to him by one Mohamed Athumani Niacheni and later in 1992 was blessed and allocated to him by Mvuti Ujamaa Village. To support his testimony the respondent tendered exhibit P2 and the appellant did not raise any objection, hence he cannot say that the respondent has failed to prove his case.

She went on to submit that the appellant and his counsel had a chance to cross-examine and challenge the admissibility of the said document during the trial, otherwise it implies the acceptance of the truth of witness evidence. To buttress her contention she cited the cases of **Damian Ruhele v R**, Criminal Appeal No. 501 of 2007, **Nyerere Nyague v R**, Criminal Appeal No. 67 of 2010 (unreported), and **Bomu Mohamedi v Hamisi Amri**, Civil Appeal No. 99 of 2018 CAT at Tanga (all unreported).

Submitting on the second ground, the respondent's counsel came out forcefully and argued that there is nowhere in the proceedings nor in the judgment where the respondent has been residing in the suit land. She went on to submit that the tribunal on page 3 stated that the respondent has owned the disputed land since 1989 as proved by exhibit P1 and later in 1992 such allocation was blessed and granted to him by Mvuti Ujamaa Village. The counsel went on to submit that the evidence of the appellant was disregarded by the trial tribunal for the reasons stated on pages 11 to 12 of the Judgment. She went on to submit that since the appellant has

failed to prove his case on the required standard of the law with respect to the suit land and in absence of a sale agreement then he has failed to show that the property was under his possession. It was her submission that this ground is raised out of context and the same must fail.

On the third ground, she submitted that it is well noted that the appellant sued the right person since the matter was filed in 2018 and Hassan Abdallah Jambia in person filed the witness statement of defence. she added that it can be evidenced in the proceedings of the tribunal that Hassan Abdallah Jambia had approved several times during the trial proceedings. The learned counsel went on to submit that the appellant was given a chance to file an amended written statement of defence hence the appellant rightly stepped into the shoes of the deceased as required under Order XXII Rule 4 (2) of the Civil Procedure Code Cap.33.

Submitting on the fourth ground, the learned counsel for the respondent contended that the respondent tendered exhibits such as a letter from the Street Government of Kidole (Exh.P3) to prove his ownership of land. She added that the respondent acknowledged that the suit land is situated at Kidole and belongs to him. She added that exhibit P1 shows that Mohamed Athuman Niachieni gave the respondent suit land in 1989 located at Magugu in Mvuti Ujamaa Village. He added that Magugu is an area within Kidole Street and in 1989, the area was a forest which is why

the respondent until 2016 received letters from Street of Kidole requiring him to clear the bush which shows that he was known to be the sole legal owner of the suit land. The learned counsel for the respondent argued that since the appellant had a chance to cross-examine the respondent during trial but he did not do so thus he chose not to exhaust his opportunity to do so. To buttres her contention, Ms. Agness cited the case of **Nyerere Nyague** (supra).

Submitting on the fifth ground, the learned counsel for the respondent argued that the law does not set any requirement on the number of people or on the category of people who are to be called as witnesses. She added that it is settled position that the appellate Court should be cautious before deciding the fact that the trial court had an opportunity to observe the demeanour of the witnesses in giving their testimonies. To support her submission she cited section 143 of the Evidence Act, Cap. 6.

As to the 6th ground, the respondent contended that it is trite principle of the law that the person whose evidence is heavier than the other party is the one who must win. To bolster her position she cited the case of **Hemedi Said** (supra). The counsel submitted that the Chairman in his judgment stated reasons for his decision thus he complied with the law. She added that the Chairman doubted the authenticity of exhibit D2 because it was typed by the computer while in 1988 the village authorities

in Tanzania had no computer technology to facilitate the preparations of a document. Ms. Agness insisted that the respondent has discharged his burden of proof as required under the Evidence Act hence the tribunal decided in his favour.

On the strength of the above submission, the learned counsel for the respondent beckoned upon this court to dismiss the appeal with costs for want of merit.

In his rejoinder, the appellant reiterated his submission in chief. Stressing on the point of ownership of land, the appellant claimed that the respondent has failed to prove his ownership. He urged this court not to consider the submission of the respondent that the appellant filed the Memorandum of Appeal without annexing the copies of the Judgment and Decree. He submitted that the copies were already been attached to the first Memorandum of Appeal. He insisted that the appellant's evidence is stronger and he proved that he is the owner of the suit land. Ending, the appellant urged this court to allow the appeal and set aside the proceedings, judgment, and Decree of the District Land and Housing Tribunal for Ilala with costs.

Having summarized the submissions and arguments by the appellant and the learned counsel for the respondent, I am now in the position to determine the grounds of appeal before me. In my determination, I will

consolidate the first, second, and sixth grounds because they are intertwined. Equally related are the fourth and fifth grounds which we shall also determine together. Except for the third ground will be argued separately in the order they appear.

On the first, second, and sixth grounds, the grounds are related to evidence on record. Having analysed the evidence on record, I have found that both parties produced documentary evidence to ascertain their ownership over the suit land. It is in the court record that the appellant and respondent both of them claimed ownership over the suit land.

The appellant is complaining that the respondent has failed to prove that Mohamed Athuman Niacheni gave him the suit land and later the Kijiji cha Ujamaa of Mvuti gave it to him. Reading the evidence on record it shows that the respondent testified to the effect that he acquired the suit land in 1989 given by Mohamed Athuman Niacheni and to substantiate his testimony he tendered a letter and the appellant had no objection to its admissibility and finally the same was admitted as exhibit P1.

Exhibit P1 proves that Mohamed Athuman Niacheni gave the respondent the suit land. PW1 in his evidence stated clearly that after obtaining the suit land in 1992, he requested approval of the Kijiji cha Ujamaa of Mvuti and they issued him with the approval letter titled' *Kibali*

cha Kutumia / Kumiliki Ardhi makisio ya ekari 10 tu Kijijini Mvuti' (Exh.P2).

Therefore I do find that the appellant's claims are unfounded, therefore the evidence of the respondent was strong enough to enable the trial tribunal to find that he has proved his case.

With respect to the fourth and fifth grounds, the main complaint of the appellant is that the respondent's document shows that the suit land is situated at Nida Magugu which is different from the area where the suit land is situated at Kidole Street and the appellant had no objection to its admissibility and finally the same was admitted as exhibit P1.

Additionally, PW1 testified that he was given the suit land in 1989 (Exh.P1) in Magugu Nida. The appellant claims that the suit land is not located at Magugu Nida instead it is located at Kidole Street. In his testimony, PW1 did not differentiate the area of Magugu Nida and Kidole Street. However, during cross-examination, the appellant neither his counsel asked PW1 any question related to the names of the Village. Therefore, I am in accord with the submission made by Ms. Agness that the appellant's claim is an afterthought. As long as, the Village of Mvuti approved the usage of the suit land measuring 10 acres the same suffice to prove that the suit land belonged to the respondent.

The respondent in his testimony banked a lot on the purported sale of agreement (Exh. D1), however, as rightly stated by the Chairman the purported exhibit raises eyebrows because the same is generated from a computer in 1988 while in those years specifically in rural areas the technology was not advanced. Therefore, I find the tribunal's findings were correct. In a situation where one party has to produce documentary proof to ascertain his ownership, then the circumstance of the case, facts and evidence including the documentary evidence lead the Court to determine the matter in favour of the party who tendered those cogent documents. Compared to a party who depends on the fact and evidence without having any cogent documentary evidence to support his case. Therefore, as rightly decided by the trial Chairman the respondent's evidence was heavier compared to the respondent's evidence.

As to the 3rd ground the appellant claimed that the tribunal failed to consider the fact that the respondent failed to sue Omar Ramadhani Jambia the administrator of the estate of Hassan Jambia. Reading the records it shows that Bathlomew Michael Nehata on 14th August, 2018 lodged a Land Application No. 267 of 2018 against Hassan Abdallah and others. On 3rd September, 2018 Hassan Abdallah filed a Written Statement of Defence. Then on 24th May, 2019, Bathlomew Michael Nehata filed an amended Application and on 18th November, 2019

Hassan Jambia filed a Written Statement of Defence to the amended Application. Therefore, the suit was not lodged against a dead person. As per the District Land and Housing Tribunal proceedings it shows that on 29th October, 2019 Omari Ramdhani Jambi informed the tribunal that he was appointed to administer the estate of the late Hassan Abdallah Jambi. To substantiate his submission he tendered Form No. IV which shows that Hassan Abdallah Jambia passed away on 1st April, 2019 when the matter was already been lodged at the District Land and Housing Tribunal.

It is trite principle of law that a court record being a serious document should not be lightly impeached as there is always a presumption that a court record represents accurately what happened. In the case of **Halfani Sudi v Abieza Chichili** [1998] TLR 527, the court underscored the importance of the court not lightly impeach its records as quoted hereunder:-

"A Court record is a serious document; it should not be lightly Impeached."

Applying the above authority in the matter at hand is obvious that this ground crumbles as nothing viable warranting faulting the District Land and Housing Tribunal decision.

In the upshot, I find nowhere to fault the finding of the District Land and Housing Tribunal for Ilala. I, therefore, proceed to dismiss the appeal without costs.

Order accordingly.

Dated at Dar es Salaam this date 31st October, 2022.

 A.Z. MGEYEKWA
JUDGE
31.10.2022

Judgment was delivered on 31st October, 2022 in the presence of the appellant and Ms. Agnes Luiso, learned counsel for the respondent.

 A.Z. MGEYEKWA
JUDGE
31.10.2022

Right to appeal fully explained.