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

LAND APPEAL CASE NO. 97 OF 2021

(Originating from land application No. 264 of 2016 the decision from the District Land and Housing Tribunal for Temeke District at Temeke)

EDWIN PAUL MHEDE ..... 1ST APPELLANT
MSTAFA HARUNA KIGUFA ..... 2ND APPELLANT

VERSUS

SHOSE K. NGOWO (*Administrator of the estate of*
CONSTANSA S. NGOWO) ..... RESPONDENT

Date of last Order: 22/07/2022
Date of Judgment: 01/09/2022

JUDGMENT

I. ARUFANI, J

This judgment is for the appeal arising from the decision made in Application No. 264 of 2016 filed in the District Land and Housing Tribunal for Temeke District at Temeke (hereinafter referred as the tribunal) by the Respondent Shose K. Ngowo (Administratix of the estate of the late Constansa S. Ngowo) against the appellants, Edwin Paul Mhede and Mstafa Haluna Kigufa together with other three persons who are not parties in this appeal.

The respondent claimed for unregistered parcel of land measuring five acres situated at Kisarawe II Ward within the then Municipality of

Temeke which after Division of Temeke District it is now within Kigamboni Municipality she alleged was trespassed by the appellants and their fellow persons who are not parties in this appeal. The respondents disputed the said claim and after hearing of the matter, the tribunal found the appellants and their fellows had trespassed the land of the respondent and decided the matter in favour of the respondent. The appellants were aggrieved by the decision of the tribunal and filed in this court their petition of appeal containing the following grounds of appeal: -

(1) *That, the honorable Chairman of the District Land and Housing Tribunal grossly erred both in law and facts when held that the second appellant had abandoned his farm which he was allocated in 1991 by Kizito Huonjwa Ujamaa Village without any proof being adduced.*

(2) *That, the Honorable Chairman of the District Land and Housing Tribunal grossly erred in law and facts when he erroneously relied on un reliable evidence of PW1, PW2 and exhibit P5 to declare the respondent as the one who was lawfully allocated the land in 2004 by Chekeni Village the authority which it never allocated land to the second appellant.*

(3) *That the Honourable Chairman of the District Land and Housing Tribunal erred both in law and facts when ignored the testimony of the second respondent (sic) (DW1) and Omari Hamza Buchu (DW7) who served as*

a village Chairman when the second respondent was given the Land in dispute.

During hearing of the appeal, the appellants were represented by Mr. Raphael David, learned advocate and the respondent was represented by Mr. Raymond Wawa, learned advocate. The counsel for the parties prayed and allowed by the court to argue the appeal by way of written submissions.

The counsel for the appellants stated in relation to the first ground of appeal that, the second appellant got the land in dispute measuring five acres on 30th January, 1991 and continued to utilize the same uninterruptedly until 8th January, 2012 when he sold the same to the first appellant. He argued that, the Local Government of Mkamba Street within Kisarawe II Ward was not a land authority with a mandate to allocate land situated at Kizito Huonjwa Ujamaa Village to the respondent.

He submitted that, what was done by the Local Government of Mkamba Street to allocate the land in dispute to the respondent was illegal. He submitted further that it was wrong for the tribunal to rely on document issued on 29th December, 2004 which allocated the land in dispute to the late Constansa S. Ngowo which was a different authority from the one allocated the land in dispute to the second appellant. He

based on the stated reason to pray the court to find the respondent failed to prove her claims on balance of probability.

He argued in relation to the second ground of appeal that, the burden of proof as provided under section 110 of the Evidence Act, Cap 6 R.E 2019 always lies on the one who alleges. He argued that, Michael Sangijo (PW2) said he was the Chairman of the Village which allocated the land measuring ten acres to the late Constansa S. Ngowo from 1999 to 2004. He stated that, PW2 failed to tender before the tribunal any village minutes to show the land in dispute was allocated to the late Constansa S. Ngowo. He argued that, PW2 failed to inform the tribunal if he was the leader of Kizito Huonjwa Ujamaa village which allocated the land in dispute to the respondent.

He stated in relation to the third ground of appeal that, Omari Hamza Buchu (DW7) stated he served as a Chairman of Kizito Huonjwa Ujamaa Village from 1982 to 1991 and he was involved when the second appellant was allocated five acres of land. He argued that, the tribunal Chairman stated at page 5 of the judgment of the tribunal that the second appellant abandoned the land in dispute that is why the Street Local Government re-allocated the land to the late Constansa S. Ngowo.

He submitted that, in the light of what has been argued in the first ground of appeal the chairman of the tribunal relied on assumption to

differ with the opinion of the assessors sat with him in the trial of the matter. He prayed the appeal be allowed, the judgment and decree of the trial tribunal be reversed and the first appellant be declared is the owner of the disputed five acres of the land. He also prays the respondent be condemned to pay costs of the appeal and that of the tribunal.

In reply the counsel for the respondent premised his submission by inviting the court to be satisfied if it has jurisdiction to entertain the appeal at hand. Firstly, he challenged the pleadings filed in the tribunal by the appellants by arguing they were nullity and ought to be expunged from the record of the tribunal for offending the law. Secondly, he stated the second appellant who was fifth respondent in the matter he never filed written statement of defence (henceforth, WSD) at the tribunal. He stated that, those issues ousted jurisdiction of this court to entertain the appeal.

He argued that, it is undisputed fact that the WSD of the first appellant who was fourth respondent in the application before the tribunal was verified and filed in the tribunal by one Mika Remijus Wandao under power of attorney donated to him by the first appellant. He stated when the mentioned attorney testified before the tribunal as DW5 he didn't tender before the tribunal the power of attorney donated to him by the first appellant.

He submitted that, as the mentioned attorney stated when he was testifying before the tribunal that the first appellant was present within the country then he had no power to draw and file pleadings before the tribunal on behalf of the first appellant. He submitted that makes the appeal before the court to be a nullity as the person appealing was legally not a party in the application which was before the tribunal.

He argued in relation to the second point that, the second appellant did not file WSD in the tribunal and that being the position he did not contest the application at the trial. He argued that, the appellants were throughout of the matter being represented by advocate John Mponela. He argued that, on 23rd July, 2019 he prayed to amend the application so as to substitute the name of Constansa S. Ngowo who had donated power of attorney to his wife, Shose K. Ngowo to represent him in the matter as the mentioned Constansa K. Ngowo had passed on and his wife Shose S. Ngowo had been appointed to administer the estate of the late Constansa S. Ngowo.

He stated that, the prayer was granted and after filing the amended application in the tribunal he served its copy to the counsel for the respondents. He argued that, the counsel for the respondents filed in the tribunal only the WSD of the fourth respondent who is the first appellant in the present appeal without filing WSD for the rest of the respondents

in the matter. He argued that, on 19th March, 2019 the counsel for the respondents prayed to amend the WSD of the fourth respondent to include the first, second, third and fifth respondents. He submitted that, the counsel for the respondent in the present appeal resisted the said prayer because no good reason was assigned for failure to file the WSD for 150 days but the prayer was granted by the tribunal.

He stated that, Rule 7 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN No. 174 of 2003 (henceforth, GN No. 174 of 2003) provides that, the mentioned respondents ought to have filed their WSD within 21 days. He went on arguing that Rule 7 (3) of the GN No. 174 of 2003 states the Chairman may, on good cause shown by any party to the proceedings, extend the time within which to file the WSD but such extension shall not exceed 14 days.

He contended that, the order of the tribunal was not complied with because instead of amending the WSD of the fourth respondent who is the first appellant in the present appeal, the counsel for the respondents filed in the tribunal a separate joint WSD of the first, second, third and fifth respondents. He argued that, the said joint WSD of the stated respondents was filed in the tribunal after passing 160 days which shows the tribunal had no jurisdiction to grant the order requested after passing the stated period of time.

He submitted that, Rule 1 of Order VIII of the CPC also provides that, written statement of defence must be filed within 21 days and Rule 3 of the same provision of the law provides for modality for making an application for extension of time which was not complied with at all by the counsel for the respondent in the matter which was before the tribunal. He referred the court to the cases of **National Bank of Commerce Limited V. Partners Construction Co. Ltd**, Civil Appeal No. 34 of 2003, CAT at DSM (unreported) and **Tanzania Ports Authority V. Mohamed R. Mohamed**, Civil Appeal No. 80 of 1999, CAT at DSM (unreported) where Order VIII Rule 3 of the CPC was interpreted and the consequences of failure to comply with the cited provision of the law was stated. He based on the above stated reasons to pray the court to find it has no jurisdiction to entertain the present appeal for originating from improperly filed pleadings and urged the court to dismiss the appeal with costs.

He argued in relation to the first ground of appeal that, there was no issue of conflict of boundaries of the villages. He argued the village leadership and the Local Government leadership testified and all exhibits were received by the tribunal. He argued that, the tribunal's chairman was right in his finding that the second appellant abandoned the land allocated to him which had a condition of developing the same within one year. He

stated the evidence from the appellants' witnesses showed the land was not being used and they were required to clear the same.

He stated the appellants own witnesses were artificial as the tribunal visited the land in dispute and find a foundation demolished by the first appellant. He submitted that, the letter purporting to have been used to transfer the land in dispute to the first appellant was actually a manufactured one as it lacked consideration for that offer contrary to section 10 of the Law of Contract Act, Cap 345 R. E 2019. He stated it did not specify the location of the land given to the second appellant and there was no boundaries and measurement.

He submitted that, it was the duty of the second appellant as provided under section 110 of the Evidence Act to prove the land could easily be identify in terms of location boundaries and neighbours. He referred the court to the case **Obed Mtei V. Rukia Omari** [1989] TLR 111 where it was stated in surveying the land, third party interest should be observed. He stated the appellants failed to prove the land belonged to them and stated as correctly founded by the tribunal the appellants were trespassers to the land in dispute.

Arguing the second ground of appeal the counsel for the respondent stated that, there was nothing meaningful demonstrated by the appellants that was violated by the tribunal. He stated there is no faulted law that

was cited. He stated the exhibits in respect of ownership of the land in dispute by the respondent were tendered and recorded by the tribunal. He submitted that, the chairman of the tribunal was right to declare respondent is a lawful owner of the land in dispute basing on the evidence and exhibits tendered by the respondent and her witnesses.

He submitted that, the application was not contested as the first appellant was not legally and properly represented by the person donated power of attorney as the alleged power of attorney was not tendered before the tribunal as exhibit. He stated further that, from 1999 to 2004 is about 20 years since the witness left the office and the law does not bind him to keep public documents for his own to be produced to the court or tribunal as exhibit 20 years later.

With regards to the third ground of appeal the counsel for the respondent submitted that, the tribunal's chairman was right in his finding as DW1 never proved he was holding such position and he never demonstrated the procedure of the village to allocate a land. He stated PW2 said in his testimony that he heard of this dispute in 2012 as the respondent complained to him and he advised the respondent to go to the Street Chairman. He argued that, PW2 said he knows invaders of peoples' land for long time and mentioned their names including the second appellant.

He stated those invaders snatched peoples' land and sell them to other people and they have caused so many disputes. He argued that, although it was alleged in the petition of appeal that the tribunal erred in law and facts but is very unfortunate those laws and facts were never demonstrated and the submission is only reproducing facts but also lacked analysis. He invited the court to dismiss the appeal with costs as it has no basis.

The appellants' counsel filed in the court a rejoinder in relation to the new points raised in the submission of the counsel for the respondent and stated they were neither raised before the tribunal nor subject matter of this appeal. He stated if the respondent had those points in mind, she was required to move the tribunal to struck out the appellants WSD so that she could have prayed to proceed ex parte to prove her case against the appellants. He argued that, it is not true that the court has no jurisdiction to entertain the appeal because section 38 (1) of the Land Disputes Courts Act allows appeal of this nature to be filed in the High Court.

As for the issue of the chairman to allow the appellants to file their WSD after passing 150 days in disregard of Regulation 7 (1) of the GN No. 174 of 2003, he submitted that the respondent is labouring under ignorance of the oxygen principle provided under section 3A and 3B of

the CPC which is applicable in the tribunal to resolve disputes. He argued that, GN No. 174 of 2003 has no lacuna which requires to be filled by using Order VIII Rule 1 of the CPC.

As for the submission relating to the grounds of appeal the counsel for the appellant reiterated what he argued in his submission in chief. At the end he prayed the appeal be allowed and the first appellant be declared lawful owner of the disputed five acres of the land and the respondent be condemned to pay costs in this appeal and the tribunal.

Having keenly considered the submissions filed in this court by the counsel for the parties and after going through the record of the matter the court has found it is required to determine whether this court has jurisdiction to entertain this appeal and whether the appeal filed in this court by the appellants deserve to be allowed. Although the issue of jurisdiction of this court to entertain the present appeal was raised in the submission of the counsel for the respondent but the court has found is bound to entertain and determine the same.

That is because as stated in the case of **Tanzania Revenue Authority V. Tango Transport Company Limited**, Civil Appeal No. 84 of 2009 (unreported), jurisdiction is the bedrock on which the court's authority and competency to entertain and decide matters rests. The court has also found that, as stated in the case of **Michael Lessani**

Kweka V. John Eliafye, [1997] TLR 152 the question of jurisdiction of a court or tribunal to entertain a matter may be canvassed at any stage of a case even on appeal by being raised by the parties or by the court or tribunal suo moto as it goes to the substance of a trial.

While being guided by the above stated position of the law the court has found proper to start with the first limb of the issue of jurisdiction of the court to entertain the instant appeal. The court has found the counsel for the respondent stated that, the first appellant in the appeal at hand who was the fourth respondent in the matter when it was before the tribunal he was not properly represented in the matter. He argued that, Mika Remjius Wandao who represented the first appellant at the tribunal had no right of representing him in the matter under power of attorney as he stated in his testimony that the first appellant was within the country.

The court has found it is true that the circumstances under which special power of Attorney can be given to an agent to represent the donor in a case were stated in the case of **Peter M. Msungu & Others V. Managing Director of District of Sengerema District & 3 Others**, Civil Case No. 1 of 2008, HC at Mwanza (unreported) to include where the donor is out of jurisdiction of the court or where the donor cannot reach

the court because of being incapacitated by reasons like serious sickness, old age or mentally sick.

The court has found it is also true that, when the mentioned attorney was giving his testimony on behalf of the first appellant he was cross examined by the counsel for the respondent and stated in his testimony that the first appellant was within the country and he was working as a Commissioner for TRA. However, the court has found the stated testimony was not enough to establish the mentioned attorney would have no power to represent the first appellant in the matter under power of attorney, verified his pleadings and filed them in the tribunal on behalf of the first appellant.

The court has come to the stated finding after seeing that, it is not stated anywhere in the testimony of the said attorney that when the pleadings of the first appellant were being verified and filed in the tribunal by the mentioned attorney, the first appellant was within the country. It is also not stated anywhere whether the first appellant was in a position of being able to file his pleadings and appear in the tribunal himself when his WSD was filed in the tribunal so that it can be said the first appellant could have not given his attorney a power of representing him in the matter.

To the contrary the court has found the mentioned attorney stated in is testimony that, he was given power of attorney to represent the first appellant in the matter on 25th September, 2015 when the first appellant was in Japan which is one of the circumstances stated in the case of **Peter M. Shungu** (supra) upon which a person can donate a power of attorney to another person to represent him in a case under power of attorney. He also stated the first appellant was appointed to the post of Commissioner of TRA one year before the mentioned attorney adduced his testimony before the tribunal on 10th November, 2020 which shows when the WSD of the first appellant was filed in the tribunal on 12th September, 2019 the first appellant was not within the country.

The court has found the mentioned attorney stated categorically at paragraph 1 of the WSD of the first appellant that he was representing the fourth respondent (first appellant in the present matter) under power of attorney donated to him by the first appellant. The court has also found that, the mentioned attorney stated at the verification clause of the WSD of the first appellant that, he verified what were stated in the WSD of the first appellant on his behalf. However, as rightly argued by the counsel for the respondent, verification clause of the WDS of the first appellant shows it was signed by the first appellant as a fourth respondent.

The court has found that, although that is an irregularity but it is not an irregularity which can make the court to find the first appellant did not file WSD at the tribunal and is making the court to lack jurisdiction of entertaining the present appeal as argued by the counsel for the respondent. The court has come to the stated view after seeing that, as it was clearly stated in the WSD filed in the tribunal that it was verified by the attorney for the first appellant on behalf of the first appellant then it ought to have been taken the person signed the same was the stated attorney and not the first appellant who was fourth respondent in the matter when it was before the tribunal.

The court has also found it should not be detained by the stated defect which as rightly argued by the counsel for the appellants it was not raised when the matter was before the tribunal and it has not been stated the tribunal failed to determine the same. To the view of this court if that defect was raised before the tribunal the right step which would have been taken by the tribunal would have been to order the WSD of the first appellant to be amended so as to show who really verified the same.

The above view of this court is getting support from the case of **Usangu Logistics (T) Ltd V. Tanzania National Road Agency & Two Others,** [2008] TLR 389 where it was stated a defect in verification clause of a WSD is not a defect which can attract the sanction of striking

out the WSD but it is a defect which can be cured by way of amendment. As the stated defect was not raised at the tribunal and the court has not been told the appellant was prejudiced by the stated defect the court has found it cannot be taken it affected the WSD filed in the tribunal by the attorney for the first appellant to the extent making him to lack right of appealing to this court against the impugned decision of the tribunal.

The court has also found the counsel for the appellant argued the WSD of the second appellant and other persons who were respondents in the application filed before the tribunal was improperly filed in the tribunal and was filed out of time. The court has found the counsel for the respondent stated that, the counsel for the appellants prayed before the tribunal to amend the WSD of the fourth respondent so as to join the rest of the respondents in the WSD of the fourth respondent who one of them was the second appellant in the present appeal but he filed a separate WSD for the said respondents.

The court has found the stated argument is not supported by the record of the matter because the record of the tribunal shows the counsel for the appellants prayed to amend the WSD and the first, second, third and fifth respondents be allowed to file their WSD out of time. To be more precise the record of the tribunal shows the wording of the prayer for the counsel for the respondents were as follows: -

*"**Mponela John**: Your honour, we pray to amend the WSD and allow the 1st, 2nd, 3rd and 5th resp. to file WSD out of time."*

The prayer by the counsel for the respondents was granted by the tribunal and wording of the order of the tribunal reads as follows: -

*"**Tribunal**: Since the main application was amended, it is my view that, the prayer by Mr. John Mponela be granted and avail him an opportunity to present amended WSD and WSD for the 1st, 2nd, 3rd and 5th respondents out of time."*

From the wording of the above two quoted excerpts, it is crystal clear that there were two prayers which one was to amend the WSD and the second prayer was to allow the WSD of the mentioned respondents to be filed in the tribunal out of time. The court has found the record of the matter shows that, the tribunal granted the prayer of the counsel for the appellants to amend the WSD and allowed the WSD of the afore mentioned respondents to be filed in the tribunal out of time.

Under that circumstances the court has been of the view that, although it was not stated it was whose WSD was supposed to be amended and one may take it was the WSD of the fourth respondent as it was the only WSD which had already been filed in the tribunal but there was a clear prayer and order of allowing the WSD of the first, second, third and fifth respondents to be filed in the tribunal out of time.

The question as to why if the WSD which was sought to be amended is the WSD of the fourth respondent why it was not amended, it is the view of this court that, the stated question was supposed to be raised and determined by the tribunal and not by this court. The court has found as the order allowed the WSD of the mentioned respondents to be filed in the tribunal out of time and the WSD of the mentioned respondents was filed in the tribunal it cannot be said the second appellant did not file his WSD in the matter when it was before the tribunal.

The court has found the counsel for the respondent stated further that, the joint WSD of the mentioned respondents was filed in the tribunal in contravention of the laws as it was filed after the elapse of 160 days while it ought to have been filed in the tribunal within 21 days from the date of service. The court has gone through the provisions of Rule 7 (1) (a) and (3) of the GN No. 174 of 2003 together with Order VIII Rules 1 and 3 of the Civil Procedure Code which the counsel for the respondent argued were contravened but find the counsel for the respondent has misconstrued applicability of the referred provisions of the law.

The court has come to the stated finding after seeing the cited provisions of the law are governing filing of WSD in the court or tribunal at the initial stage of filing pleadings in the court or tribunal. To the view of this court, it is not applicable in a situation where parties have already

filed their pleadings in the court or tribunal and the plaintiff or applicant has prayed to amend his or her pleadings as it happened in the matter at hand.

It is the view of this court that, as amendment of pleadings filed in the tribunal is governed by Regulation 16 which does not provides for the time frame as to when a reply to an amended pleading shall be filed in the tribunal the limitation of time for filing a WSD to an amended application cannot to be governed by Regulation 7 of the GN No. 174 of 2003 cited to the court by the counsel for the respondent. The court has also found filing of the said WSD of the mentioned respondents in the tribunal cannot be governed by Order VIII Rule 1 of the Civil Procedure Code as that provision is governing filing of the WSD in a matter at the initial stage of the suit and not where the pleadings have already been filed in the court and the plaintiff prayed to amend his plaint as it happened in the instant matter.

To the view of this court the tribunal was supposed to use its powers like the one provided under Regulation 22 (d) of the GN No. 174 of 2003 which empowers the tribunal to determine interlocutory applications like the one made by the counsel for the respondents who sought for an extension of time to lodge in the tribunal a WSD of the mentioned respondents to an amended application. The issue of delay of about 160

days to file the WSD of the mentioned respondents in the tribunal was an issue within the discretion of the tribunal to determine whether there was good or reasonable cause for granting the prayer for the mentioned respondents to lodge their WSD in the tribunal after passing the stated period of time.

Since it has not been stated anywhere in the submission of the counsel for the respondent as to how the respondent in the present appeal was prejudiced by the order of allowing the second appellant and his fellow respondents to lodge their WSD in the tribunal after the elapse of the stated period of time, the court has failed to see why it should find the WSD of the second appellant and his fellow respondents was supposed to be expunged from the record of the tribunal as submitted by the counsel for the respondent. In the premises the court has found all points of law raised by the counsel for the respondent in his written submission to establish the appellants did not file their WSD in the matter and the court has no jurisdiction to entertain the present appeal are devoid of merit and they are hereby overruled in their entirety.

Back to the merit of the appeal, the court has found in relation to the first ground of appeal that, as rightly argued by the counsel for the appellant it is true that the tribunal stated at page 19 of its decision that, it appeared the second appellant abandoned the farm he was allocated in

1991 by Kizito Huonjwa Ujamaa Village and caused the farm to became a bush that is why the farm was reallocated to the respondent. The court has found that, although the tribunal stated the second appellant abandoned the land in dispute after being allocated to him but there is no any scintilla evidence in the record of the tribunal showing the second appellant abandoned the land allocated to him so as to cause the land to be reallocated to the respondent.

The court has found neither the respondent who testified as PW1 nor her witness Michael Sangijo who testified as PW2 and said he was the Chairman of the village which reallocated the land in dispute to the respondent in 2004 said the land in dispute was reallocated to the respondent after being found it had been abandoned by the second appellant. To the contrary the court has found the record of the tribunal shows when the second appellant was testifying before the tribunal, he stated in his evidence clearly that, after being allocated the land in dispute he developed the same by planting cassava. It was also stated by the counsel for the appellants in his submission that, the second appellant was using the land in dispute uninterruptedly until 8th January, 2012 when he sold the same to the first appellant.

Even if it will be said the second appellant failed to develop the land in dispute as required by the Village Authority which allocated the land to

him and required him to develop the land within one year but before reallocating the said land to another person the Village Authority which reallocated the land in dispute to the respondent ought to have informed the second appellant, he had failed to develop the land allocated to him and the land was being reallocated to another person and give him a chance of answering why the land allocated to him should not be reallocated to another person.

It is the view of this court that, after a land being allocated to a person it should not be reallocated to another person without following the required procedures of reallocating the land allocated to the previous person. To do so will be a source of unnecessary conflicts and disputes to the people and will make ownership and use of the land in our country uncertain. The above view of this court is getting support from the case of **Nyamhanga Ng'arare V. Kemange Village Council & Two Others,** [2012] TLR 280 where it was stated that: -

> *"The Village Council had no right and power to allocate or reallocate land to a villager which was in possession of another villager without the consent of that villager.*
> *A village Council which allocates land which is already under development and in the possession of another person would not only bring lawlessness and anarchy to the villagers but would also retard the development of the villagers."*

The court has also found that, although it is true as argued by the counsel for the respondent that there was no dispute of boundaries of the villages but the court has found the village authority which allocated the land to the second appellant and the village authority which allocated the land to the respondent were two different village authorities. While the second appellant stated he was allocated the land in dispute by Kizito Huonjwa Ujamaa Village the respondent stated they were allocated the land in dispute by Chekeni Village. The court has been of the view that, even if there was changes of administration of the area where the land in dispute is located but as rightly argued by the counsel for the appellants the said new administrative authority had no power to reallocated the land which had already been allocated to the second appellant by Kizito Huonjwa Ujamaa Village to the respondent without following the proper procedures of reallocating the land which had already been allocated to second appellant by the previous village authority.

The court has considered the argument by the counsel for the respondent that the appellants' witnesses were artificial and the further argument that the letter purported to have been used to transfer the land in dispute to the first appellant is contravening section 10 of the Law of Contract Act. The court has failed to understand why the counsel for the respondent has argued the appellant's witnesses were artificial while each

of them testified on what he knows about the dispute which was before the tribunal.

As for the argument relating to contravention of section 10 of the Law of Contract Act the court has found that, the issue in dispute was not about validity of the sale agreement entered between the first and second appellants. The issue was about reallocation of the land already allocated to the second appellant to the respondent. Therefore, it is the view of this court that the issue of violation of section 10 of the Law of Contract Act is irrelevant in the matter at hand.

Since the tribunal found there was no dispute that the land stated was allocated to the second appellant is the same land which was reallocated to the respondent the court has failed to see how it can be said the appellants failed to prove the land in dispute was belonging to the second appellant and the second appellant sold the said land to the first appellant. In the premises the court has found the first ground of appeal deserve to be answered in affirmative that, the chairman of the tribunal erred in law and in fact in finding the land in dispute was properly reallocated to the respondent as the second appellant abandoned the same while there was no any evidence adduced before the tribunal to support the stated finding.

Coming to the second ground of appeal, the court has found it states that, the chairman of the tribunal erred in relying on the evidence of PW1, PW2 and exhibits P5 to declare the respondent is a lawful owner of the land in dispute on ground that the land was lawfully allocated to the respondent by Chekeni Village. The court has found that, as already stated in the first ground of appeal reallocation of the land in dispute to the respondent by Chekeni Village was done without following the required procedures. That being the position of the matter there is no way it can be said the chairman of the tribunal was right to rely on the evidence of PW1, PW2 and exhibits P5 to find the respondent was lawful owner of the land in dispute.

The court has considered the argument by the counsel for the respondent that the application by the respondent was not contested because the first appellant was not properly represented in the matter by the donee of power of attorney as the power of attorney donated to the donee was not tendered as exhibit at the tribunal. The court has found that, although it is true that the power of attorney donated to the attorney for the first appellant was not tendered at the tribunal as evidence but it is annexed in the written statement of defence of the first appellant filed at the tribunal.

Although, it is true that a document annexed in a pleading does not become evidence in court until when it is tendered in court as evidence but the court has found that, as the power of attorney donated to Mika Remijus Wandao to represent the first appellant in the matter was annexed to the written statement of defence of the first appellant filed in the tribunal and the mentioned attorney appeared in the tribunal throughout the proceedings of the matter to represent the first appellant it cannot be said the application of the respondent was not contested.

It is the view of this court that, if it would have been true that the application was not contested the tribunal would have been required to entered judgment on admission in favour of the respondent or it would have been required to proceed to hear and determine the application ex parte against all respondents. In lieu thereof, the tribunal continued to receive evidence from both sides and at the end it decided the matter on merit. Under that circumstances the court has found the argument by the counsel for the respondent that the application of the respondent was not contested is without merit.

As for the third ground of appeal it states the tribunal erred when it ignored the testimony of second appellant who testified as DW1 and Omari Hamza Buchu who testified as DW7. The court has found the tribunal's Chairman ignored the evidence of the said witnesses after

forming an opinion that the second appellant had abandoned the land in dispute and caused the same to be reallocated to the respondent. As the court has already found reallocation of the land in dispute from the second appellant to the respondent was not lawful then the tribunal erred in ignoring the evidence of the said witnesses which established the land was under lawful ownership of the second appellant and it was lawfully transferred to the first appellant by the second appellant.

The court has found the counsel for the respondent argued the second appellant was mentioned by Michael Sangijo who testified as PW2 as one of the invaders of the peoples' land at their area. The court has found the said evidence of character of the second appellant did not establish the second appellant invaded the land of the respondent. To the contrary the court has found the evidence on record as adduced by second appellant himself and supported by DW7 shows the second appellant was allocated the land in dispute by Kizito Huonjwa Ujamaa Village and it is not that he invaded the same.

It is in the light of all that I have stated hereinabove the court has found the tribunal's chairman erred in declaring the respondent is the lawful owner of the land in dispute. Consequently, the appeal filed in this court by the appellants is hereby allowed and the judgment and decree of the tribunal is accordingly reversed. The first appellant is declared

lawful owner of the land in dispute which is five acres of the land and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 1th day of September, 2022

I. Arufani

JUDGE

01/09/2022

Court:

Judgment delivered today 1st day of September, 2022 in the presence of Mr. John Mponela, advocate for the appellants and in the presence of Mr. Raymond Wawa, advocate for the respondent. Right of appeal to the Court of Appeal is fully explained.

I. Arufani

JUDGE

01/09/2022