

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL NO. 10 OF 2021**

(C/O Application No. 5/2020 District Land and Housing Tribunal for Katavi)

(Gregory K. Rugalema, Chairperson)

**TABU MAYOMBI BHAYA ..... APPELLANT**

**VERSUS**

**MSAFIRI FALE KIDAWAYA ..... RESPONDENT**

Date: 25/03 & 29/04/2022

**JUDGMENT**

**NKWABI, J.:**

This is an appeal against a unanimous decision of the District Land and Housing Tribunal for Katavi which sat at Mlele presided over by Gregory K. Rugalema, Learned District Land and Housing Tribunal Chairman. The decision was in favour of the respondent.

The respondent in this appeal, instituted an application in the trial tribunal. He sought among other reliefs for an order that the applicant is the lawful owner of the suit land which has thirteen portions as was indicted in the

application. He claimed exclusive ownership of the suit land against all the respondents.

In their joint reply to the application, the respondents in the trial tribunal, through the services of Mr. Sindamenya, learned advocate, maintained that their late brother Malugu Mayobi Bhaya until his death did not dispose his land by sale to anybody, else they could have been informed of the sale. They also said that the applicant was deceiving by forging documents to get access to their deceased brother's land.

Horribly as it could be, the respondents in the trial tribunal, prayed for the dismissal of the application and ***the land in dispute be declared the Respondents' property*** among other reliefs. This is because, though the respondent in this appeal was clear that he had purchase the land from the deceased one Malugu Mayombi Bhaya and the appellant being among the respondents in the trial tribunal indicated the piece of land was the property of the deceased, none of them defended the claim armed with letters of administration. Despite the allegation by the appellant, the respondents in the trial tribunal claimed for ownership of pieces of land.

I will start with the 5<sup>th</sup> ground of appeal in respect of the alleged bias on the part of the Chairman of the trial tribunal. It is trite law that parties are bound by their pleadings. The bringing into evidence of the alleged letters of administration was intended to take the other party by surprise because a copy of it was not attached to the reply to the application. None of the respondents in the trial tribunal had pleaded that he/she was administrator of the estate of Malugu. Even the claim that the trial tribunal ought to have taken judicial notice of the alleged letters of administration is under section 59 of the Evidence Act, is not backed by the very provision of the law. I dismiss that claim.

All I can say the appellant and his colleagues are mere bullies. Further one cannot benefit from one's own wrong. They tried to bully the respondent by claiming that they own the piece of land in dispute. If anything, that the respondent had infringed the rights of the deceased or that the piece of land was their property, they ought to have filed an application in the competent court or tribunal for the declaration that they are the owners of the pieces

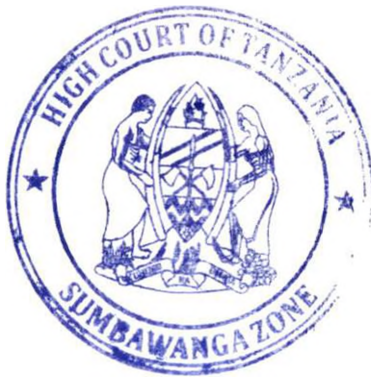
of land or that the piece of land was the property of the deceased. They ought not to have violated the right of the respondent of quiet and peaceful occupation of the piece of land. This court cannot assist them on their claim. Because, they categorically claimed that the piece of land was the property of the deceased, how come they prayed the trial tribunal to declare that the piece of land was their property. In essence, the appellant and his colleagues had no power to sue or claim any relief in respect of the land. But of course, the respondent being a person who was in occupation of the land had the power to protect his interest against any individual who trespasses on the land he verily believed it was his property including the appellant and his colleagues.

The appellant cannot benefit from his own wrong of violating the rights of the respondent to have peaceful occupation of the land, the land which was not his property. So, the prayer for being declared owner of the piece of land, to me, seems was a nightmare on the part of the appellant. How could the trial tribunal entertain their defence and grant their prayer to be declared owner of the piece of land while themselves in their pleading said the piece of land was not their property?

That said, the appeal is dismissed with costs for want in merits. This court cannot grant the prayers the appellant prayed in the reply to the application that was filed in the trial tribunal for the reasons that the land is not his property and he did not plead that he was administrator of the estate of the deceased.

It is so ordered.

**DATED** at **SUMBAWANGA** this 29<sup>th</sup> day of April, 2022



**J. F. NKWABI**  
**JUDGE**