

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

LAND APPEAL NO.273 OF 2021

*(Arising from Land Application No.4 of 2021 of the District Land and Housing
Tribunal for Mafia)*

**SHABANI HAJI.....APPELLANT
VERSUS**

BUTIAMA LODGE COMPANY..... RESPONDENT

J U D G M E N T

*Date of Last Order:19.06.2022
Date of Judgment:28.06.2022*

T. N. MWENEGOHA, J.

The case at hand has its roots from the District Land and Housing Tribunal of Mafia District, here in after called the trial tribunal, vide Land Application No. 04 of 2021. The decision was in favour of the respondent, hence the instant appeal was preferred based on the following grounds;-

- 1. That, the trial tribunal erred in fact and law for deciding the case without considering the confusion on the testimony of the respondent about which is the dispute between parties on ownership and trespass to land in dispute;**
- 2. That, the trial tribunal of Mafia erred in law and fact by entering judgment against appellant without considering the appellant's evidence that the respondent trespassed to appellant's land;**

- 3. That, the trial tribunal erred in law and fact by entering judgment in favour of the respondent basing on the sale agreement which does not specify the boundaries of the land dispute; and**
- 4. That, the trial tribunal erred in law and in fact by deciding the matter in favour of respondent by holding that the appellant did not file the case since 2015 when the respondent trespassed to the appellant's land without considering the limitation of time in filling land cases.**

The appeal was heard orally. The appellant appeared in person, while George Timoth represented the respondent.

In his submissions the appellant generally faulted the trial tribunal for not doing justice to him. That, the trial tribunal failed to know whether the case before it was about boundaries or land grabbing by the respondent who was declared to be the lawful owner of the suit land. Further that, the trial tribunal did not consider his testimony and also refused to hear the testimony of the appellant's witness and his defense that the suit land belongs to him as was bought by his grandfather in 1960. That, the sale agreement tendered by the respondent is defective but still the trial tribunal decided in favour of the respondent.

In reply, the respondent maintained that, the trial tribunal decided correctly based on the issues framed during the trial. Further, the testimony of the appellant who was the respondent at the trial tribunal were considered. Also, the sale agreement was found to be valid, free from any defects. The same was self-explanatory and proved that the respondent is the lawful owner of the suit land.

In his rejoinder, the appellant reiterated his submissions in chief.

I have gone through the records of the trial tribunal and considered the grounds of appeal together with the submissions of the parties in this appeal. I'm thus ready to decide the merit or otherwise of the instant appeal.

Either, this being a first appellate court as far as the dispute at hand is concerned, I'm entitled to review the evidence on record to satisfy myself on the correctness of the findings by the trial District Land and Housing Tribunal of Mafia. This position was taken in the case of **Standard Chartered Bank Tanzania Limited vs. National oil Tanzania Limited and Another, Civil Appeal No. 98 of 2008, Court of Appeal of Tanzania at Dar Es Salaam (unreported)**.

My findings after going through the whole case file from the trial tribunal are that, the appeal is devoid of merits. As the appellant argued all grounds together, I will also determine them together. Either, his submissions failed to show where the trial tribunal made an error in deciding the case before it. It appears to me that, the appellant is the one who was not aware of what the dispute was all about.

The issues raised before the trial tribunal are clear that the dispute was on ownership of the land in question and not on boundaries. The application also shows that the appellant was sued for invading the land in dispute. According to paragraph (xi) of the application, it was stated that the respondent, now appellant claimed that the suit land is his. Hence the dispute arose between the two. That paragraph communicates that the dispute between the parties was about ownership of the suit land.

Regarding the consideration of the appellant's testimony, the same was well considered. Also, the appellant was afforded the full right to be heard including to produce his witnesses. Therefore, it is a misconception on his part to claim that his testimony was disregarded and his witnesses were denied the chance to testify before the trial tribunal. Above all, the trial tribunal applied well the principle of balance of probability and decided in favour of the respondent, as stated in the case of **Hemed Said versus Mohamed Mbilu, (1984), TLR 113**, that; -

"Both parties to the suit cannot tie, but a person whose evidence is heavier than that of the other is the one who must win".

With aforesaid, i see no need to fault the decision of the Trial Tribunal. The appeal is hereby dismissed with costs.

Right of appeal explained.




T. N. MWENEGOHA
JUDGE
28/06/2022