

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 24 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Kibaha at Kibaha in Land Appeal No. 61 of 2020 Hon. Mbuga-Chairperson)

HAMADI RAJABU ALLY..... APPELLANT

VERSUS

MUHIDINI HAJOKWA MCHINJA.....RESPONDENT

28/7/2022 & 11/8/2022

JUDGMENT

A. MSAFIRI, J.

In this appeal the above named appellant was aggrieved with the decision of the District Land and Housing Tribunal for Kibaha at Kibaha (the DLHT), exercising its appellate jurisdiction over Land Matter No. 1 of 2020 of Talawanda Ward Tribunal (the trial Tribunal).

A brief background is apposite. Before the trial Tribunal the above named appellant instituted Land Matter No. 01 of 2020 against the respondent alleging him to have trespassed on his land measuring about 1.25 acres situated at Lukenge Msigi in Talawanda Ward (the disputed

Alls.

land). It was alleged before the trial Tribunal that the respondent had trespassed on the disputed land and claimed to be his property.

After hearing the parties, the trial Tribunal decided in favour of the respondent herein and he was declared as the lawful owner of the disputed land. The appellant was aggrieved with the decision of the trial Tribunal hence he lodged Land Appeal No. 61 of 2020 before the DLHT in which he raised a total of three grounds of appeal.

Essentially the appellant's complaint before the DLHT was that the trial Tribunal did not analyze the evidence on record adduced by both parties therefore failed to determine the matter on basis of weight of evidence as adduced by both parties.

After hearing the appeal, the DLHT dismissed it for lack of merits. The appellant was aggrieved with the decision of the DLHT sitting on the first appeal hence he preferred the present appeal with **four (4)** grounds of appeal as follows;

- 1. That the trial chairperson erred in law and facts by ignoring the issue of evidence adduced by the appellant witnesses from Talawanda Ward Tribunal.* *Atts.*

2. *That the trial chairperson erred in law and facts by ignoring the facts that JOACHIM PASKARI PAKIA the member of Talawanda Ward Tribunal had an interest of the disputed property because he sat to decide the matter on which the same matter arose the conflict between the appellant and JOACHIMU PASKARI PAKIA.*
3. *That the trial chairperson erred in law and facts by ignoring the facts that the respondent was the one who mediated the same dispute when the appellant conflicted with Joachimu Paskari Pakia and after mediation succeeded the respondent signed the document as an evidence that the dispute resolved(sic).*
4. *That the trial chairperson erred in law and facts by ignoring the fact that the procedure and the judgment of Talawanda Ward Tribunal had bias when they decided the dispute.*

Before this Court, the appellant prayed this appeal be allowed and the decision of the DLHT be quashed and set aside.

On 21/6/2022 this Court ordered the appeal to be disposed of by way of written submissions. Both parties appeared in person they had no legal representation. *Atts-*

Submitting on the first ground of appeal the appellant contended that before the trial Tribunal there was ample evidence to establish that he is a lawful owner of the disputed land as he used to cultivate the same. The appellant contended further that he acquired the disputed land from his grandfather who is the respondent's father and problem started when his grandfather who was the original owner passed away.

On reply on first ground of the appeal, the respondent contended that both the trial Tribunal and the DLHT analyzed the evidence on record and arrived at conclusion that the appellant failed to prove his claims that he is the lawful owner of the disputed land.

In determining the first ground of appeal in which the appellant faults both the trial Tribunal and the DLHT for not declaring him as a lawful owner of the disputed land while there was sufficient evidence, I have gone through the records of the trial Tribunal in which the appellant claimed that he acquired the disputed land from his grandfather namely Muhode Mchinja. It is on record that the appellant testified before the trial Tribunal that there were no witnesses at the time he was given the disputed land. *Atle.*

It is discerned from the record further that when the appellant was responding a question posed by the member of the trial Tribunal as to whether the appellant had any proof that he was given the disputed land, the appellant replied that there was a will. The said will was never tendered as evidence before the trial Tribunal. Hence the appellant being a claimant before the trial Tribunal was duty bound to prove his claims. In absence of any document and witnesses who witnessed the appellant being given the disputed land as well as the purported will as claimed by the appellant, the trial Tribunal was justified in its findings that the appellant failed to prove that he is the lawful owner of the disputed land. Hence the DLHT was correct in upholding the trial Tribunal's findings on this aspect.

Accordingly the 1st ground of appeal is without merits and I hereby dismissed it.

The appellant consolidated grounds two and three of appeal. He contended that one Joachim Paskari and the respondent had interest on the disputed land. He contended that on 11th July 2019 there was mediation between the appellant and one Joachim Paskari and an agreement to the effect was reached between them. The appellant

Attk.

submitted that when the matter was instituted before the trial Tribunal the said Joachim Paskari Pakia was one of the members who presided over the matter. It is the appellant's contention that it was wrong for the said Joachim Paskari Pakia to preside over the matter which he had mediated before. The appellant contended further that the principle of natural justice was not observed from the beginning.

On reply the respondent contended that the said Joachim Paskari Pakia had no interest on the disputed land and the appellant failed to prove this allegation.

The appellant did not file any rejoinder submission.

In dealing with grounds 2 and 3 of the appeal, it is not in dispute that the said Joachim Paskari Pakia was one of the members who presided over the matter. The appellant was required to raise this complaint before the trial Tribunal that one of its members had interest over the disputed land. I have gone through the trial Tribunal's record and I could not see where the appellant raised this complaint. Moreover, there was no proof tendered by the appellant before the trial Tribunal regarding the purported mediation agreement witnessed by the said Joachim Paskari. Hence the DLHT was *Ally*.

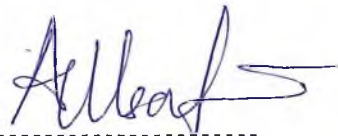
right in rejecting this complaint. Consequently the 2nd and 3rd grounds of appeal are without merits and are hereby dismissed.

The appellant did not say anything on the fourth ground of appeal, I could not see how the trial Tribunal was biased in its decision. Hence it is tantamount that the appellant abandoned the fourth ground of appeal as he did not say anything on it.

Basing on the herein above analysis and reasoning, I hold that the appeal lacks merits and it is hereby dismissed in its entirety. Given the fact that the parties are relatives, I will make no order as to costs.

It is so ordered.




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A. MSAFIRI,
JUDGE
11/8/2022