THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND APPEAL NO 231 of 2023

(Originating from the judgment and proceeding of the District Land and Housing Tribunal of Kibaha in Land Application No. 28 of 2018 dated 4th May, 2023)

MARTIN JONAS MMARY ..... APPELANT

VERSUS

STEVEN JOSEPH MUSHI ..... 1ST RESPONDENT

ADAM IDD MWINYIPEMBE ..... 2ND RESPONDENT

MRISHO KONDO ..... 3RD RESPONDENT

IDD TAMIMU MTAWA ..... 4TH RESPONDENT

ABU MOHAMED SHABANI ..... 5TH RESPONDENT

Date of last Order: 09/11/2023
Date of judgment: 14/12/2023

JUDGMENT

I. ARUFANI, J

The Appellant named hereinabove was dissatisfied and aggrieved by the judgment, proceedings and decree of the Kibaha District Land and Housing Tribunal (hereinafter referred as the tribunal) delivered in Land Application No. 28 of 2018 dated 04th day of May 2023 and he has decided to appeal to this court against the whole judgment and proceedings of the tribunal basing on the following grounds: -

1. *That chairperson erred both in law and fact in deciding the matter without considering the evidence tendered and or by basing his decision on hearsay evidence without proof.*
2. *That chairperson was wrong in law and fact by admitting Exhibit D1 to evidence while knowing too well that no stamp duty was stamped paid as required by the law.*
3. *That the chairperson was wrong and misdirected himself by blaming the appellant for not calling the 2nd, 3rd, 4th and 5th respondents as witnesses while knowing too well that there was an order of the trial tribunal to proceed ex parte against them.*
4. *That the chairperson biased in deciding in favour of the 1st respondent without visiting locus in quo as requested by both parties and as was in orders of the trial tribunal.*
5. *That the chairperson erred in law and fact by his failure to record out the opinion of the tribunal assessors in the proceedings and by ignoring and overlooking the whole assessors' opinion without provide a good and clear reason in the said judgment.*
6. *That the chairperson erred in law and fact by failure to decide the 2nd issue as was framed at the commencement of the hearing.*
7. *That the chairperson was biased in his failure to decide on whether there was a legal agreement between the appellant and the 2nd, 3rd and 4th respondents.*

When the appeal came for hearing the appellant was represented by Mr. Frank Mtuta, learned advocate and the first respondent was

represented by Mr. Nimrodi Msemwa, learned advocate. As for the rest of the respondents, hearing of the appeal proceeded ex parte against them after dully being served and failed to appear in the court. For speed disposal of the appeal the court ordered the appeal be argued by way of written submissions and I commend the counsel for the parties for filing their written submissions in the court within the time given by the court.

The counsel for the appellant argued all grounds of appeal in chronological order. He stated in relation to the first ground of appeal that, during hearing of the testimony of the appellant which was recorded at pages 22 to 23, the appellant tendered three sale agreements of purchasing the land in dispute dated 28/07/2013 which were between the appellant and the second, third and fourth respondents and they were admitted in the matter as exhibit KM1 Collectively.

He stated the minutes of Kidomole Village Meeting addressing the appellant as a lawful owner of 49 acres of land which included the land in dispute was admitted in the case as exhibit KM2. He argued that, the stated evidence of the appellant (who testified as SM1) was supported by the evidence of Said Hemed (SM2) and Talic Sud who testified as (SM3) that he was the lawful owner of the land in dispute. He submitted that, to hold that the first respondent is the lawful owner of the land in dispute

was totally failure and error to consider the weight of evidence adduced on the part of the appellant at the tribunal. He submitted further that, on balance of probability the evidence adduced by the appellant at the tribunal proved the appellant is the lawful owner of the land in dispute contrary to the decision arrived by the chairperson of the tribunal.

He stated in relation to the second ground of appeal that, it was an error for the tribunal's chairperson to admit exhibit D1 as evidence in the matter while knowing there is no stamp duty which was paid as required by the law. To support his argument, he cited in his submission section 47 (1) of the Stamp Duty Act Cap 189 R.E 2019 which states sale agreement is one of the documents requiring stamp duty to be paid before being admitted in a case as evidence.

As for the third ground of appeal the counsel for the appellant stated that, it was wrong and the tribunal's chairperson misdirected himself by blaming the appellant for not calling the second, third, fourth and fifth respondents as witnesses on his side while knowing that the matter proceeded ex parte against the mentioned respondents. He argued that, there was no need of blaming the appellant for not calling the mentioned respondents because the evidence adduced by the appellant and

supported by his witnesses who testified as SM2 and SM3 proved the appellant is the lawful owner of the land in dispute.

With regards to the fourth ground of appeal, the counsel for the appellant argued that, on 26th January, 2023 the chairperson ordered the tribunal would have visited the locus in quo on 8th March, 2023. However, due to the problem of infrastructures and the rain the chairperson found it was difficult to visit the locus in quo. He stated after the chairman stated the case had become backlog, he fixed the matter to come for receiving opinion of the assessors.

He submitted that, failure to visit the land in dispute was an error because it was prayed by the parties and granted by the tribunal. To bolster his submission, he cited in his submission the case of **Athuman Kungubaya & Another V. PSRC & Another**, Misc. Civil Appeal No. 9 of 2001 HC at DSM (unreported) where it was stated courts order should be complied with for the betterment of administration of justice. He argued that, the chairperson was biased by deciding the matter in favour of the first respondent while there was no justifiable reason for not visiting the land in dispute.

He argued in relation to the fifth ground of appeal that, the chairperson erred in law and fact by his failure to record out the opinion

of the assessors of the tribunal in the proceedings and by ignoring the whole opinion of the assessors without providing a good and clear reason in the judgment of the tribunal. He argued that, the opinion of the assessors is reflected in the judgment of the tribunal while the same are not reflected in the proceedings of the tribunal. He argued that, if the opinion of the assessors is not in the proceedings, who brought them in the judgment.

Coming to the sixth ground of appeal the counsel for the appellant argued that, the chairperson erred in law and fact by failure to decide the second issue which was framed at the commencement of hearing of the matter. He submitted that, the second issue framed before hearing of the matter commenced was whether there were lawful sale agreements between the appellant and the second to fourth respondents. He argued that, the stated issue was not addressed anywhere in the judgment of the tribunal. He submitted that the stated issue was very paramount in determination of the matter as it is on how the appellant acquired the land in dispute. He stated failure to determine the stated issue caused miscarriage of justice on the part of the appellant.

As for the seventh ground of appeal the counsel for the appellant argued that, there is no reason stated to show why the chairperson failed

to address whether there were lawful agreements between the appellant and the second, third and fourth respondents. He argued that, failure of the chairperson to address the stated issue caused miscarriage of justice on the part of the appellant. He based on the above submission to pray the appeal be allowed and the appellant be granted other relief sought in the petition of appeal.

In his reply the counsel for the first respondent stated in relation to the first ground of appeal that, the appellant contended that the chairperson erred in basing on hearsay evidence without proof and submitted that is a mere statement without any legal backup. He argued the evidence tendered before the tribunal was primarily based on testimony and exhibits tendered by the first respondent and his witnesses. He stated there is nowhere on the part of the submission of appellant pointed out the hearsay evidence the chairperson based in determine the application.

He stated the first ground of appeal has no any evidential or legal support. He cited in his submission section 110 of the Evidence Act, Cap 6 R.E 2019 which provides that, whoever desire any court to give judgment as any legal rights or liability dependent on the existence of facts which he asserts must prove those facts exist. He subrnitted the

appellant has failed to show how the chairperson used hearsay evidence to reach to unjust decision. He submitted further that the stated omission shows clearly that the appellant has no proof of his allegations.

He argued in relation to the second ground of appeal that, the argument that the chairperson admitted exhibit D1 without being stamped with stamp duty is an afterthought as it was supposed to be raised during trial of the matter at the tribunal. He stated that, it should be noted that the stamp duty does not affect validity of the contract and supported his argument with the case of **Hadija Ally V. George Masunga Msingi**, Civil Appeal No.384 of 2019 where the Court of Appeal stated that, the issue which was not raised at the trail court cannot be raised before the Court of Appeal.

Going to the third ground of appeal the counsel for the first respondent argued that, the case was brought by the appellant and he was the one to decide who to sue, and who to call. He submitted that, the appellant's failure to call the second to fifth respondents as material witness entitled the chairperson to draw a negative inference to the appellant's case and it can be concluded that he fraudulently bought a land from wrong owners. To support his submission, he cited in his submission the case of **Augustine Ayishashe V. Sabiha Omari Juma**,

Civil Appeal No. 353 of 2019 (unreported) where the Court of Appeal stated that, failure to call as a witness a principal person involved in a transaction who is in a position to give first account of the matters of controversy, legitimize draw of adverse inference against the person failed to call such a person.

As for the fourth ground of appeal the counsel for the appellant argued that, there is no requirement that the chairperson must have visited the land in dispute. He stated visit of the land in dispute is necessary when the dispute is on boundaries and not ownership of land as it in the case at hand. He stated the appellant has failed to convince the court how failure to visit the land in dispute lead into biased decision. He stated the case of **Athuman Kungubaya** (supra) cited in the submission of the counsel for the appellant is distinguishable to the case at hand.

He argued in relation to the fifth ground of appeal that, the chairperson considered the opinion of the assessors and gave reason as to why he decided to depart from their opinion. He stated the law allows the chairperson of the tribunal to depart from the opinion of the assessors and they are not bound by the opinion of the assessors. He cited in his submission the case of **Hemed Said V. Mohamed Mbilu**, [1984] TLR

113 where it was stated a person whose evidence is heavier than the other party must win the case. He submitted that the evidence of the first respondent was heavier and credible than that of the appellant that is why he won the case.

As for the sixth ground of appeal which states the chairman failed to determine the second issue framed in the matter the counsel for the first respondent stated that, the stated ground of appeal is similar to the seventh ground of appeal. He argued that, the matter before the tribunal was about whether the appellant was the rightful owner of the 20 acres of the land in dispute. He submitted that, by taking into consideration that the second to fifth respondents were not in the tribunal, that signifies the appellant failed to prove his ownership to the land in dispute.

He argued that, the stated ground of appeal has no relevance to the first respondent. In his conclusion the counsel for the first respondent stated that, the chairperson was correct in deciding the matter in favour of the first respondent as the appellant failed to prove he is the owner of the land in dispute. He stated the first respondent is entitled to own the land in dispute as he acquired the same after following the required proper procedure of acquiring the same from the proper owner.

In his rejoinder the counsel for the appellant reiterated what he stated in his submission in chief in all grounds of appeal and added in the first ground of appeal that, the evidence of the appellant was heavier than that of the first respondent. He argued that even section 110 of the Evidence Act supports the evidence adduced by the appellant that the chairperson based on hearsay because deciding the matter in favour of the first respondent was not justified.

Coming to the issue of lack of stamp duty on the sale agreement admitted in the case as exhibit D1 the counsel for the appellant submitted that, if at all the stamp duty does not affect the validity of the contract there is no need of having Stamp Duty Act, their standing is that since the same is not stamped it is an irregularity. He stated in relation to the fourth ground of appeal that the order to visit the land in dispute was not vacated hence failure to visit the land in dispute is an irregularity which caused miscarriage of justice on the part of the appellant. At the end he reiterated his prayer that the appeal be allowed and the decision of the tribunal be set aside as prayed in the petition of appeal.

Having keenly considered the rival submissions filed in the court by both sides and after going through the records of the tribunal the court has found in determine this appeal it will be proper to deal with each

ground of appeal separately as argued by the counsel for the parties. I will start with the first ground of appeal which states the chairman of the tribunal erred both in law and facts in deciding the matter without considering the evidence tendered and or by basing his decision on hearsay evidence without proof.

After going through the evidence adduced before the tribunal, the court has found it is true as argued by the counsel for the appellant that the appellant said to have bought the land in disputed from the second, third and fourth respondents. His evidence was supported by the sale agreements entered by the appellant and the mentioned respondents on 28th July, 2013 which were admitted in the case as exhibit KM1 collectively. He also tendered before the tribunal Minutes of the Village Council Meeting which authorized the appellant to survey the land he bought from the mentioned respondents and the stated minutes of the Village Council Meeting was admitted in the case as exhibit KM2.

The court has found that, although the counsel for the appellant argued the chairperson of the tribunal failed to consider the weight of the evidence of the appellant and based the decision of the tribunal on hearsay evidence without proof but as rightly argued by the counsel for the first respondent, the counsel for the appellant did not disclose which hearsay evidence was relied upon by the chairperson of the tribunal to

determine the matter in favour of the first respondent without proof. To the contrary the court has found the chairperson of the tribunal categorically analysed and evaluated the evidence adduced before the tribunal as can be seeing from pages 3 to 5 of the judgment of the tribunal and come to a conclusion that the lawful owner of the land in dispute was the first respondent.

The court has come to the above stated finding after seeing the chairperson of the tribunal stated in the judgment of the tribunal that, although the second, third and fourth respondents who were vendors of the land in dispute to the appellant were joined in the matter before the tribunal as parties and they filed their joint written statement of defence in the matter but they didn't appear before the tribunal to defend themselves against the claims of the appellant and that caused the tribunal to order hearing of the matter to proceed ex parte against them.

That means the evidence adduced before the tribunal by the appellant to prove his claim was his own evidence which was supported by exhibits KM1 and KM2 together with the evidence of Said Hemed (SM2) who found the land bought by the appellant and Talic Sudi (SM3) who witnessed the appellant buying the land from the second, third and fourth respondents. The court has found the mentioned witnesses did not say

how the vendors sold the land in dispute to the appellant acquired the land in dispute.

To the contrary the court has found the evidence adduced before the tribunal by the first respondent shows the first respondent said to have bought the land in dispute from Salum Said Kifigo on 4/8/2013. The stated evidence of the first respondent was supported by the evidence of the seller of the land in dispute to him who testified before the tribunal as SU2 and stated he sold the land in dispute to the first respondent. SU2 said he was allocated the land he sold to the first respondent by the Kidomole Village Council and his evidence was supported by the evidence of Ramadhani Mohamed who testified before the tribunal as SU3 and said he was the chairman of Kidomole Village Government from 2004 to 2019. SU3 said they allocated the land in dispute to SU2 in 2010.

That being the evidence adduced before the tribunal and after seeing the chairperson stated categorically in the judgment of the tribunal that the evidence of the appellant had not shown how the persons sold the land in dispute to him acquired the land they sold to him, and after seeing SU2 who sold the land in dispute to the first respondent shows how he acquired the land he sold to the first respondent, the court has failed to see how it can be said the chairperson of the tribunal decided the matter without considering the evidence tendered before the tribunal

and or he based his decision on hearsay evidence without proof as alleged by the counsel for the appellant.

As demonstrated hereinabove the court has found the chairperson decided the matter after considering the evidence adduced before the tribunal by both sides in its wholistic and there is nothing showing the chairperson based on any hearsay evidence to decide the matter. In the premises the court has found the appellant has failed to substantiate the allegations contained in the first ground of appeal, hence the first ground of appeal is hereby found it is devoid of merit.

Coming to the second ground of appeal which states the chairperson of the tribunal erred in admitting exhibit D1 in the matter as evidence while knowing no stamp duty was paid as required by the law the court has found it is true that exhibit D1 which is the sale agreement entered between the first respondent and Salumu Said Kifigo was not stamped to show stamp duty was paid as required by the law. The court has also found it is true as provided under section 47 (1) of the Stamp Duty Act, Cap 189 R.E 2019 that an instrument required to be paid stamp duty should not be admitted as evidence in a case if the required stamp duty has not been paid.

However, the court has found the argument that, the sale agreement entered between the first respondent and Salum Said Kifigo in

respect of the land in dispute which was admitted in the case as exhibit D1 was not paid stamp duty was not raised at the tribunal when the stated exhibit was being admitted in the matter as evidence. The court has found as rightly argued by the counsel for the first respondent to raise the stated issue in this court which is sitting as an appellate court is an afterthought as that argument was supposed to be raised when the tribunal was admitting the stated instrument as evidence in the matter.

The stated finding is getting support from the case of **Hadija Ally** (supra) cited in the submission of the counsel for the first respondent where it was stated a matter or an issue which was not raised formally before the trial court cannot be raised at the appellate court as a ground of appeal. Although the issue raised in the second ground of appeal is an issue of law which can be raised at an appellate stage but the issue of challenging a document admitted in a case without being paid stamp duty was considered by the Court of Appeal in the case of **Elibariki Mboya V. Amina Abeid**, Civil Appeal No. 54 of 1996, CAT at Arusha (unreported) and stated that: -

> *"Non-stamping of the instrument did not in law constitute a basis for faulting the decision of the court."*

The court has found the Court of Appeal reached to the above finding after considering the wording of section 73 of the Civil Procedure Code,

1966 which its wording is similar to the wording of section 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 which states as follows: -

> *No decision or order of a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice.*

The Court of Appeal stated the remedy for the stated irregularity is for the party who tendered the stated instrument to be ordered to pay the required duty plus penalty if any and not to reverse or alter the decision of the tribunal. In the premises the court has found the second ground of appeal is devoid of merit.

As for the third ground of appeal the court has found the appellant stated the chairperson was wrong and misdirected himself by blaming the appellant for not calling the second, third, fourth and fifth respondents as his witnesses while knowing there was an order of the tribunal to proceed ex parte against them. After going through the record of the tribunal the court has found it is true that the tribunal ordered hearing of the matter to proceed ex parte against the mentioned respondents and the chairperson stated in the judgment of the tribunal that, the appellant did

not say why he didn't call the second, third and fourth respondents who sold the land in dispute to him to testify how they acquired the land they sold to the appellant.

The court has failed to see any misdirection committed by the chairperson in arriving to the stated finding after seeing it is a requirement of the law as provided under section 110 of the Evidence Act that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. The burden of proof as stated under section 111 of the same law is stated to have lied to a person who would fail if no evidence at all is given on either side.

Since in the light of the position of the law provided in the above cited provisions of the law it was the duty of the appellant to prove his allegation that he is the owner of the land in dispute and the evidence to prove the stated fact required the evidence of the second, third and fourth respondents to testify how they acquired the land they sold to the appellant, the court has failed to see how it can be said the chairperson state in the judgment of the tribunal that the appellant failed to call the stated respondents as his witness to support his testimony.

The court has also found that, although it is true that the tribunal ordered hearing of the case to proceed ex parte against the second, third,

fourth and fifth respondents but that could have not been taken it exonerated the appellant from the duty of bringing his material witnesses to the tribunal to prove his claims before the tribunal. Since the stated respondents were material witnesses in establishing the claims of the appellant and were not called to testify before the tribunal and it was not said why the appellant did not call them, the court has found it cannot be said the chairman of the tribunal was wrong or misdirected himself in stating the appellant failed to call the mentioned witnesses. In the premises the court has found this ground is equally devoid of merit.

As for the fourth ground of appeal which states the chairperson was biased in deciding the matter in favour of the first respondent without visiting the land in dispute, the court has found it is true that, the parties prayed and the tribunal granted the order of visiting the land in dispute. However, the court has found it is not true that the chairperson did not give reason as to why the tribunal cancelled the order of visiting the land in dispute. The court has found the chairperson of the tribunal stated at page 49 of the typed proceedings of the tribunal that, it was difficult to visit the land in dispute because of the infrastructure problem and rain which made transport of visiting the land in dispute difficult.

Therefore, to argue the chairperson of the tribunal did not give reason for cancelling the order of visiting the land in dispute is not true

as it is not supported by the record of the matter. To the contrary the court has found the reason for cancelling visit of the land in dispute was given by the chairperson of the tribunal. It is also the finding of this court that, as rightly argued by the counsel for the first respondent and stated in the case of **Nizar M. H.** (supra) it is only on exception circumstances that the court or tribunal is required to inspect a locus in quo, as by doing so a court or tribunal may unconsciously take on the role of a witness rather than adjudicator.

The court has been of the view that, as the dispute between the parties was over land measuring 20 acres which the appellant alleged is the lawful owner after buying the same from the second, third and fourth respondents and the first respondent is alleging is the lawful owner after buying the same from Salum Said Kifigo the court has found there was nothing stated could have prevented the tribunal to decide the stated dispute if it would have not visited the land in dispute. The court has found in deciding the matter the tribunal was supposed to be governed by the position of the law stated in the case of **Said Hemed** (supra) that a party whose evidence is heavier than the other must win the case.

The court has found the essence of visiting a land in dispute was made clear by the Court of Appeal in the case of **Avit Thadeus Massawe V. Isidory Assenga**, Civil Appeal No. 6 of 2017, CAT at Arusha

(unreported) where the Court of Appeal cited the position of the law stated in a persuasive Nigerian case of **Akosile V. Adeye** (2011) 17 NWLR (Pt. 1276) p. 263 which summarized the essence of visiting a land in dispute as follows: -

> *"The essence of a visit to locus in quo in land matters includes location of the disputed land, the extent, boundaries and boundary neighbor, and physical features on the land. The purpose is to enable the Court see objects and places referred to in evidence physically and to clear doubts arising from conflicting evidence if any about physical objects on the land and boundaries."*

Since it has not been stated there was any doubt or conflicting evidence about the location of the land in dispute or its boundaries or there was a need of seeing the objects referred in evidence adduced before the tribunal, the court has found there is nothing which can make it to find the chairperson was biased in deciding the matter in favour of the first respondent without visiting the land in dispute. In the circumstances the court has found the fourth ground of appeal cannot allowed.

With regards to the fifth ground of appeal the court has found it states the chairperson erred in law and fact by failure to record the opinion of the assessors of the tribunal in the proceedings of the tribunal and

overlooking the opinion given by the assessors without giving in the judgment the good and clear reason for doing so. After considering the rival submissions from both sides and after going through the record of the matter the court has found the appellant and his counsel have not stated which provision of the law requires the opinion of the assessors of the tribunal to be recorded in the proceedings of the tribunal.

The court has found the requirement of the law as provided under Regulation 19 (2) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 is that the assessors are required to give their opinion in writing and read the same before the tribunal. There is nowhere stated the opinion of assessors is required to be recorded in the proceedings of the tribunal. The court has found the assessors gave their opinion in writing and filed them in the record of the tribunal. The court has also found the proceedings of the tribunal shows at its page 51 that the opinions of the assessors were read before the tribunal.

That being the position of the matter the court has failed to see any merit in the argument by the counsel for the appellant that the opinion of the assessors was supposed to be recorded in the proceedings of the tribunal. The above stated finding of this court is being bolstered by the position of the law stated by the Court of Appeal in the case of **Edina Adam Kibona V. Absolom Swebe (Sheli)**, Civil Appeal No. 286 of

2017, CAT at Mbeya, (unreported) where it was stated the opinion of the assessors is supposed to be in writing and given before the tribunal in the presence of the parties and not that it is required to be recorded in the proceedings of the tribunal.

As for the argument that the chairperson ignored or overlooked the whole opinion of the assessors without providing a good and clear reason in the judgment of the tribunal the court has found it is not true that the chairperson did not provide a good and clear reason for departing from the opinions of the assessors. To the contrary the court has found the chairperson stated at page 5 of the judgment of the tribunal that he was departing from the opinions of the assessors because of the reasons stated in the judgment and continue to state in the judgment why he arrived to the impugned decision of the tribunal. The stated finding caused the court to find the fifth ground of appeal is not meritorious.

Going to the sixth ground of appeal the court has found it is stated the chairperson erred in law and fact by his failure to decide the second issue framed at the commencement of hearing of the matter. The court has found as it was for the first and third issues framed for determination in the matter, the judgment of the tribunal does not show the chairperson stated expressly that he was determining the second issue framed in the

matter. To the contrary the court has found the chairperson dealt generally with all issue in the judgment of the tribunal.

The court has found that, the answer to the second issue which was requiring the tribunal to decide whether the sale agreements between the second to fourth respondents were lawful can be found at page 5 of the judgment of the tribunal where it was stated as follows: -

> *"Katika maelezo ya ushahidi wa mleta maombi sijaona ni namna gani wauzaji wa ardhi kwa mleta maombi walivyoipata ardhi hiyo.*
> *Ni bahati mbaya pia kwamba wajibu maombi wa pili, tatu na nne ambao ndo waliuza eneo la ardhi ya ukubwa wa eka 49 kwa SM1 hawakufika kutoa ushahidi mbele ya baraza achilia mbali utetezi wao wa maandishi."*

The personal literal meaning of the above excerpt is that the chairperson was stating he had not seen in the evidence given by the appellant how the vendors of the land in dispute to him acquired the stated land. It is also stated it is very unfortunate that the second, third and fourth respondents who sold the land measuring 49 acres to the appelant did not appear in the tribunal to give their evidence before the tribunal despite the fact that they filed their written statement of defence in the matter.

To the view of this court the above quoted excerpt shows the second issue was determined by the chairperson of the tribunal in the impugned judgment. The court has arrived to the above stated finding after seeing it has not been stated by the appellant and his counsel that there was any evidence which would have moved the chairperson to arrive to a different finding in relation to the second issue than the one quoted hereinabove. In the premises the court has found there is nothing substantial to move the court to find the sixth ground of appeal deserve to be sustained.

As for the seventh ground of appeal the court has found the finding made in the sixth ground of appeal is also covering the same. Therefore, there is no need of indulging in dealing with the same. In the light of all what have been stated hereinabove the court has found the appellant has failed to establish all the grounds of appeal he has brought to this court. Consequently, the appeal of the appellant is hereby dismissed in its entirety for being devoid of merit and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 14th day of December, 2023.

I. Arufani
JUDGE
14/12/2023

Court:

Judgment delivered today 14th day of December, 2023 in the presence of Mr. Brian Kinabo, learned advocate for the appellant and in the presence of Mr. Nimrod Msemwa, learned advocate for the first respondent. The judgment has been delivered in the absence of the rest of the respondents and right of appeal to the Court of Appeal is fully explained.

I. Arufani
JUDGE
14/12/2023