IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

LAND APPEAL NO. 37 OF 2022

(Arising Civil Case No. 19 of 2020 and Appeal No. 4 of 2021 of the District Land and Housing Tribunal for Muleba at Muleba)

ANTONY KALOLI.....APPLICANT

VERSUS

FREDERICK IBRAHIM.....RESPONDENT

JUDGMENT

30/09/2022 & 31/10/2022
E. L. NGIGWANA, J.

This is a second appeal. It traces its original from the decision of the Ward Tribunal to wit; Rulanda Ward Tribunal at Muleba in Civil Case No. 19 of 2020 whereby the appellant Anthony Karoli sued the respondent Fredrick Ibrahimu for encroachment into the land he alleged to have inherited from his late father namely; Karoli.

On the other hand, the respondent alleged that the disputed land was entrusted to a ten-cell leader one Emmanuel Buberwa, (now deceased) by his mother Victoria Karoli before her death, and in 1974, the said land was handed over to him by the late Emmanuel Buberwa. He further alleged that he enjoyed the land peacefully from 1974 to 2020 when the appellant emerged claiming ownership of the same.

After a full trial, the Chairman and members who sat with him at the trial unanimously decided in favour of the Respondent herein. Aggrieved by the decision of the trial tribunal, the appellant appealed to the District Land

and Housing Tribunal for Muleba at Muleba vide Land Appeal No. 04 of 2021.

After hearing the appeal, the District Land and Housing Tribunal upheld the decision of the Ward Tribunal. Still aggrieved, the appellant appealed to this court. His Petition of Appeal contains four (4) grounds of appeal which *can conveniently be paraphrased as follows;*

1. *That, the DLHT erred in law and facts to rely on one witness for the respondent, the witness who is the son of the respondent hence, had an interest to serve.*
2. *That, the DLHT erred in law and facts for considering the four grounds only while the appellant raised nine grounds of appeal.*
3. *That, the DLHT erred in law to rely on section 15 of Cap. 206 which was not applicable in land matters.*
4. *That, the DLHT erred in law and fact for not holding that the land in dispute is a clan land.*

Wherefore, the appellant is praying that this appeal be allowed with costs by setting aside the concurrent judgments of the lower courts and declaring him as the lawful owner of the disputed land.

At the hearing of this appeal, the parties appeared in person, unrepresented. Upon taking the floor, the appellant made a brief general submission that the disputed land is a clan land but the DLHT did not consider that fact. He added that, in the Ward Tribunal, his evidence was strong as compared to that of the respondent therefore; the matter ought to have been decided in his favour.

On his side, the respondent submitted that this appeal is devoid of merits. He added that he owned the land since 1974. He ended up his brief submission praying that this appeal be dismissed with costs by upholding the concurrent decisions of the lower tribunals.

Having carefully examined the grounds of appeal, oral submissions by parties and the records of the lower tribunals, the issue for determination is whether this appeal is meritorious.

This being a second appellate court, I would like to state the role of the second appellate court. The role of the second appellate court is to determine matters of law only unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See **Godwin Yoronimo versus Leornardina Vedasto**, (PC) Civil Appeal No. 04 of 2022 HC- Bukoba (unreported).

In the instant matter, the appellant's complaint on the first ground is that, the DLHT addressed four grounds of appeal only. However the records of the DLHT revealed that during the hearing of this appeal, the appellant argued the 1st, 2nd, 3rd and 4th grounds of appeal only. The guidance on how to address the grounds of appeal was given by the Court of Appeal of Tanzania in the case of **Malmo Motagekonsult AB Tanzania Branch versus Margret Gama**, Civil Appeal No. 86 of 2001 where it was held among other things that;

"The appellate court is however, expected to address the grounds of appeal before it. Even, then it does not have to deal seriatim with the

grounds as listed in the memorandum of appeal. It may, if convenient, address the grounds generally on the decisive ground of appeal only or discuss each ground separately."

In the case of **Revocatus Mugisha versus The Republic,** Criminal Appeal No.200 of 2020 CAT (Unreported) the Court of Appeal had this to say;

"It is our considered view that although the appellate court is not obliged to consider all grounds of appeal, it is supposed to resolve all complaints raised in the appeal, separately or jointly as it will deem just."

As earlier stated, the judgment of the DLHT revealed that the grounds of appeal were nine, but the appellant argued the 1st , 2nd 3rd and 4th grounds of appeal only, but since he did not abandon the rest of the grounds of appeal, all grounds were addressed generally and not each ground separately, by the DLHT.

Reading all the grounds of appeal presented before the DLHT which I find no need to reproduce them here, the 1st, 2nd, 4th, 5th, 7th, 8th and 9th touches the question of evidence while the 3rd and 6th grounds touches the status of a land occupied by a person without interference for the period that exceeds twelve (12) years and were all addressed by the DLHT.

The DLHT considered the standard of proof in civil cases which is on the balance of probabilities. See section 3 (2) (b) of the Evidence Act Cap. 6 R:E 2022 and the case of **Berellia Karangirangi versus Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017 CAT (Unreported). It is common knowledge that there can hardly be equal evidence to both

parties in a civil case but only a party with heavier evidence is the one who must win. See **Mohamed Said versus Mohamed Mbilu** [1984] TLR 113. The DLHT discharged its duty as a first appellate court by re-assessing and re-evaluating the evidence adduced in the trial tribunal and found that the appellant's evidence was so weak as compared to that of the respondent. The respondent testified that he owned the disputed land since 1974, the evidence which was supported by the evidence of his son who is over 36 years old and had been there since childhood until now. In part of judgment of the trial tribunal, the tribunal reasoned as follows;

"Mdaiwa Ndugu Fredrick Ibrahimu ameonekana kushinda shauri hili kwa sababu maelezo yake aliyoyatoa barazani wajumbe wameridhika nayo. Baraza lilipotembelea eneo (shamba) la mgogoro Baadhi ya wanakitongoji Katongo, wazee ambao wanajua mwanzo wa shamba hilo kuwa lilikuwa la marehemu Victoria Karoli ambaye ni mama wa Fredrick Ibrahimu nao wamethibitishia baraza kuwa shamba hilo ni la mdaiwa Fredrick Ibrahimu. Kama shamba hilo alikua hakugawiwa mdaiwa Fredirck Ibrahimu na Balozi wa Kanda Marehemu Emmanuel Buberwa shamba hilo alilokuwa ameachiwa na marehemu Victoria Karoli kwa kulitunza tu, kwa nini ndugu zake na Fredrick Ibrahimu muda huo wa miaka 46 hawakuweza kudai urithi wa mama yao kutoka kwenye shamba hilo?. Hivyo shamba hilo ni mali ya Mdaiwa Fredrick Ibrahimu."

The DLHT agreed with the reasoning of the trial tribunal after it has re-assessed the evidence of both parties. The appellant did not prove that the said land ever owned by his father, namely Karoli and how the same came into his possession. He did not object that the disputed land had been in possession of the respondent for over 46 years.

In the instant appeal, the appellant's complaint on the first ground is that the DLHT did consider the evidence of the respondent's witness who had an interest to serve.

It is worth noting that it is not the law that whenever relatives testify to any event they should not be believed unless there is also evidence of a non-relative corroborating their story. In the case **of P. Taray versus Republic,** Criminal Appeal No.216 of 1994 the court of Appeal had this to say;

"We wish to say at the outset that it is of course, not the law that whenever relatives testify to any event they should not be believed unless there is also evidence of a non-relative corroborating their story. While the possibility that relatives may choose to team up and untruthfully promote a certain version of event must be borne in mind, the evidence of each of them must be considered on merit, as should also the totality of the story told by them. The veracity of their story must be considered and gauged judiciously just like the evidence of the non-relatives..."

In the instant case, the evidence of the respondents son was considered by the lower tribunals on merit, and nothing indicating that the respondent and his son chose to team up to mislead the court to fabricate the disputed land was owned by the respondent for over 46 years, since that fact was not even disputed by the appellant. When the trial tribunal visited the locus in quo, it was confirmed by neighbours and villagers that the land was occupied and owned by the respondent. In that premise, the first and 2nd grounds of appeal are devoid of merit, hence dismissed.

On the 3rd ground, the appellant's complaint is on the finding of the DLHT that the trial tribunal was right to consider the opinion of the neighbors and villagers who were found at the locus in quo, but did not appear in the tribunal to testify. It should be noted that the law relaxes the rules of evidence and produce in proceedings before Ward Tribunals. Section 15 (1) of the Ward Tribunal Act cap. 206 R: E 2002 provides that;

"The Tribunal shall not be bound by any rules of evidence or procedure applicable to any court."

Sub-section (2) of section 15 of the same Act provides that;

"A tribunal shall, subject to the provisions of this Act, regulate its own procedure."

Reading the here in above provisions it is apparent that a Ward Tribunal is exempted from being bound by the rules of evidence or procedure applicable in any court. The provisions allow the Ward Tribunal to regulate its own proceedings subject to the Ward Tribunal Act.

However, the fact that the tribunal is not bound by any rules of evidence or procedure applicable in any court, does not mean that such exemption is absolute. If the procedure adopted by the tribunal is contrary to the proper administration of justice, it cannot be allowed to stand. Section 16 of the Ward Tribunal Act, [Cap 206 R.E 2002] is to the effect that; notwithstanding the provision of section 15, a tribunal shall, in all proceedings seek to do justice to the parties. See **Abdala Ramadhani versus Joyce Balige,** Land Appeal No.46 of 2022 HC–Bukoba (Unreported).

In the matter at hand, the record of the trial tribunal show that when the tribunal visited the locus inquo, the tribunal regulated its own procedure where the Hamlet and Village members (24) were involved and their attendance was recorded, and the sketch map of the disputed land was drawn and both formed part of the tribunal records. Seven (7) Hamlet members gave their opinion, and the opinion of each member was recorded and formed part of the court record. Since the law allows the Ward Tribunal to regulate its own proceedings, and since the proceedings adopted by the trial tribunal at the locus in quo occasioned no miscarriage of justice, the 3rd ground of appeal is also dismissed for want of merit.

On the 4th ground, the appellant's complaint is that the DLHT did not consider that the land in dispute is a clan land. Upon perusal of the trial court record and the record of the 1st appellate tribunal, I found that the issue that the disputed land is a clan land was not raised in the trial tribunal or in the DLHT as a ground of appeal. The law prohibits matters of fact to be raised at the appellate stage. See the case of **Silas Daud versus Leonard Ndono,** Civil Appeal No. 9 of 2022 HC-Mwanza. With regard to matters of law, the law is firmly settled to the effect that they can be raised at any stage, including second appeal.

Since the issue as to whether the disputed land is a clan land or otherwise, is a matter of fact, it cannot be raised at this stage thus, it is bound to fail. Being guided by the herein above position of the law, the 4th ground of appeal is hereby dismissed.

All said, I find no iota of merit in this appeal. Consequently, the same is hereby dismissed. The findings of the lower tribunals are hereby upheld. It is so ordered.

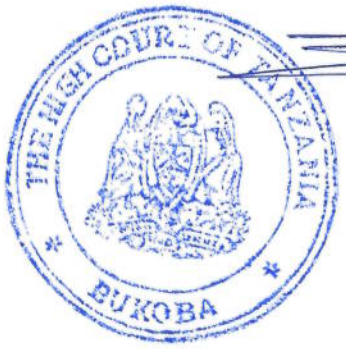
Dated at Bukoba this 31st day of October, 2022.

E.L. NGIGWANA

JUDGE

31/10/2022

Judgment delivered this 31st day of October, 2022 in the presence of the both parties in person, Hon. E.M. Kamaleki, Judges' Law Assistant and Ms.Sophia Fimbo, B/C.



E.L. NGIGWANA

JUDGE

31/10 /2022