

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**MISCELLANEOUS LAND APPEAL No. 39 OF 2020**

**(Arising from the decision of the DLHT of Chato at Chato in Land Appeal  
No. 19 of 2020 and originating from the decision of the Muganza Ward  
Tribunal in Application No.4 of 2020)**

**BUTERA ISAYA.....APPELLANT**

**VERSUS**

**FAUSTINE SIMEO.....RESPONDENT**

**JUDGMENT**

23<sup>rd</sup> February, & 22<sup>nd</sup> April, 2021.

**TIGANGA, J**

The present appeal traces its origin from the judgment and decree of the District Land and Housing Tribunal for Chato, at Chato in Land Appeal No. 19 of 2020, in which the appellant unsuccessfully appealed against the decision of the trial Ward Tribunal of Muganza in Land Dispute No. 04 of 2020. He so appealed after he was not satisfied with its decision and that of the ward tribunal.

It appears from the records that, the appellant had initially instituted a case against the respondent herein for trespass on his land located at Rutunguru village which case was however decided in his



disfavour by the Ward Tribunal. He also failed in the District Land and Housing Tribunal. Having failed in both tribunals, is now before this court seeking to challenge the decisions of the tribunals below, where he is advancing the following grounds of appeal;

1. That the tribunal chairperson erred in law and in fact by declaring the respondent herein as the owner of the disputed piece of land allegedly acquiring the title by purchase based on uncorroborated and contradictory documentary evidence to that effect.
2. The tribunal chairman erred in law and misdirected herself when she delved into speculations and extraneous matters on the ward tribunal's judgment whereby the quorum on the composition of assessors was not proper.
3. That the tribunal chairperson further erred in law and in fact by not considering the fact that the ward tribunal did not properly evaluate the evidence before the same.
4. That the tribunal chairman erred in law and misdirected herself when she delved into unsubstantiated and extraneous matters not supported by evidence on record thus arriving at a wrong decision.

The appellant prays for the orders as follows;



1. This appeal be allowed, the judgment and decree of the District Land and Housing Tribunal for Chato in Land Appeal No. 19 of 2020 be nullified and set aside,
2. The appellant be declared the legal owner/occupier of the disputed piece of land,
3. This honourable court be pleased to condemn the respondent herein to bear costs of this appeal and that of the tribunals below.
4. Any other order(s) or/and relief(s) as this honourable may deem fit to grant.

On the date when this appeal was called for hearing, the appellant appeared in person and unrepresented whereas the respondent was represented by the learned counsel, Miss Makoba.

Arguing in support of his appeal, the appellant stated that his complaint is on the failure of the chairperson to doubt the contradictory evidence of the respondent who owns the land up to this moment.

On the second ground, he stated that looking at the judgment; it is clear that on the date the judgment was pronounced the members were not present making the decision to be not of the members who heard the case. He claimed that the ward tribunal is required to sit with at least four members.

Arguing on the 3<sup>rd</sup> and 4<sup>th</sup> grounds collectively, the appellant claimed that the appellate tribunal believed the evidence recorded by the trial tribunal which was not explained enough to bring home the proper meaning and were full of contradictions. He further argued on the exhibits tendered before the ward tribunal that they were not related with the disputed plot therefore they were un procedurally admitted. He prayed for the decisions of both tribunals to be reversed as they were reached at without following proper law and procedure.

Replying to what was submitted by the appellant, the counsel for the respondent submitted with regards to the first ground of appeal that, passing through the evidence in the trial tribunal, one will see clearly the respondent's testimony on how he came into possession of the disputed land, when he stated that he bought the same from the appellant after the appellant had failed to pay the loan, so they agreed that the debt be settled by the said sale of the said land the sale agreement which was witnessed by the street chairman. She further explained that the sale agreement was tendered and admitted as exhibit and was not objected.

Submitting on the second ground of appeal, counsel stated that, it is a new ground which had not been raised in the first appellate tribunal



therefore cannot be raised at this stage. However, she submitted strongly that the quorum was met by the trial tribunal as stipulated under section 11 of the Land Disputes Courts Act [Cap 216 R.E 2019] which requires a tribunal to be constituted with at least four members and not more than eight members, and that two of them must be women. She submitted that in this case there were four members' two men and two women thus the trial tribunal was properly constituted.

On the third and fourth grounds, the counsel submitted that, the grounds are also new as they were not raised on first appeal. However, she contended that exhibits were properly tendered and procedurally admitted. She lastly prayed for the appeal to be dismissed with costs.

The appellant made a short rejoinder stating that, regarding cross examination; he was under police and prison custody for Criminal Case No. 326 of 2016.

On the second ground of appeal he stated that he raised that complaint in the appellate tribunal. He stated further that at the ward tribunal the respondent failed to identify the borders of neither the disputed land nor his neighbours.

On the issue of the number of members, in the tribunal, he contended that the tribunal was composed with three members who

heard the case. He finally prayed to this court to follow the law so that each party can get its rights.

That marked the end of each party's submissions, following that closure of submissions, I have gone through the said submissions and in the outset, I think it is important to point out that the appellant has raised some grounds (2, 3 and 4) which he did not raise in the first appeal. This is because before the appellate District Land and Housing Tribunal, the complaints in all three grounds were built on the admission and reliance on what the appellant was referred to as a fake sale agreement with a forged signature of the appellant on the fact that there was no such agreement. The other complaint is lack of evidence on consistent of exact debt compared to the respondent forged sale agreement, on the disputed land. He never complained of the quorum or the improper composition of members before the trial tribunal, neither did he complain on the improper evaluation of evidence before the ward tribunal or the reliance of unsubstantiated and extraneous matters not supported by evidence before the trial court arriving on a wrong decision. As such the said grounds are new before this court.

It is trite law that, the grounds of appeal not raised in the first appellate court cannot be raised in the second appellate court. In

**Bihani Nyankongo & Another vs Republic**, Criminal Appeal No. 182 of 2011 (unreported), the Court of Appel of Tanzania held that;

*"The court has on several occasions held that a ground of appeal not raised in first appeal cannot be raised in a second appeal"*

What can be gathered from the quote above is that the second appellate court is only limited to hearing matters that were raised heard and determined in the first appellate court. Matters that were not pleaded and decided in the first appellate court are not to be entertained.

However, looking at the second ground, which raises an issue of the improper composition of the trial tribunal, it is clear that it involves a point of law which is illegality of the decision of the trial tribunal thus, I find it sensible to consider it. The appellant's claim is that the quorum of trial tribunal was not proper. The respondent's counsel however was of the strongest view that the quorum was proper in that there were four members.

The Black's Law Dictionary, 9<sup>th</sup> Edition defines the term quorum to mean;

*"the minimum number of members who must be present for a deliberative assembly to legally transact business".*

The quorum of the tribunal is governed by the Ward Tribunals Act [Cap 206 R.E 2019] whereby under section 4(3) it has been provided that;

*"The quorum at a sitting of a tribunal shall be one half of the total number of members"*

Now if the law proves for the composition of the ward tribunal, that the maximum number of members should be eight (see section 11 of the Land Disputes Courts Act [Cap 216 R.E 2019]) and looking at the judgment of the trial tribunal it is clear that the quorum was met as there were four members thus the requirement of the minimum number of members under section 4(3) above was met. The ground therefore lacks merits. It is dismissed for that reason.

As the rest of the grounds, that is the third and second grounds were not raised during the first appeal, and are on points of facts, they are on the authority of **Bihani Nyankongo & Another vs Republic**, (supra) dismissed for being un procedurally raised.

Now back to the first ground of appeal in which the appellant complains that the tribunal was wrong to declare the respondent as the

owner of the disputed plot basing on uncorroborated and contradictory evidence. On that, I will straight away state that, I am in agreement with what was submitted by the counsel for the respondent that the evidence presented before the trial tribunal was not contradictory at all. This is because the respondent gave his evidence that he bought the disputed piece of land from the appellant as a way to settle some amount of money the appellant owed him.

To prove that, the respondent tendered the sale agreement between him and the appellant, this was admitted without any objection. He also called witnesses who all testified before the tribunal on how the disputed piece of land came to be possessed by the respondent. The evidence of one **Daudi Mazoya** who testified for the appellant and that of **Paschal Majige** who testified for the respondent and who at the time the alleged sale was conducted was the village chairman; all prove that the appellant sold the disputed plot to the respondent. The law as articulated in the decision of **Hemedi Said vs Mohamed Mbilu** [1984] TLR 113 in which it was held that,

*"According to law both parties to the suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win"*

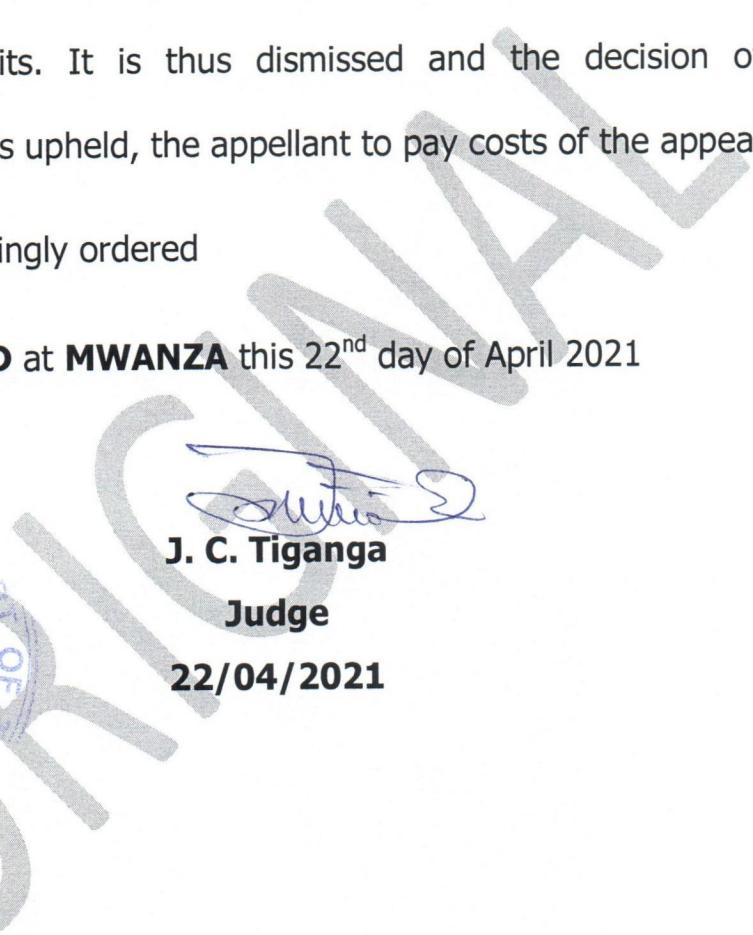


Therefore looking at the evidence of two parties, there is no dispute that, as between the two, the evidence by the respondent is heavier than that of the appellant. Under that principle, this ground also fails for the reasons given for lack of merits.

Basing on the discussion above, it is instructive to find that this appeal lacks merits. It is thus dismissed and the decision of the appellate tribunal is upheld, the appellant to pay costs of the appeal.

It is accordingly ordered

**DATED** at **MWANZA** this 22<sup>nd</sup> day of April 2021



J. C. Tiganga  
Judge

**22/04/2021**

