

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL NO. 17 OF 2022

MAKOMANGO LUZUGILA APPELLANT

(The Administrator of the Estate of the Late Luzugila Makomango)

VERSUS

JULIUS TUNGU.....RESPONDENT

JUDGMENT

Last order on 30/11/2022

Judgment date 30/01/2022

MASSAM, J

The appellant herein, had brought this appeal seeking to challenge the decision of the District Land and Housing Tribunal of Kahama (herein DLHT) on its decision delivered on 28/02/2022. The said decision dismissed his application due to the defectiveness of the Special

power of Attorneys and other shortfalls as seen in the impugned judgment.

Aggrieved with the said decision he appealed to this court armed with 11 grounds of appeal as appeared on the petition of appeal. Starting with the 1st ground of appeal the appellant argued that the exhibit submitted by the appellant was enough to prove that the disputed land belongs to Makomango Luzugila as he owns it since 1960 to 2016.

On the 2nd ground of appeal, the appellant told the court that the assessors at the tribunal was of the view that the land belongs to the appellant herein but the Chairman went against their opinion without adducing sufficient reasons of doing so.

Coming to the 3rd ground of appeal, the appellant told the court that the respondent did not submit sale agreement when he was told to do so by the tribunal so, he failed to prove that he gave the money to the appellant. He stated further that the respondent submitted a handing over agreement which was not signed in some of the names and he even admitted that he forged the said document when he was asked by Hon. Chairman. It was his further submission that, the respondent is aware that the Late Luzugula had 18 children and yet

agreed to buy it from three children only without having proof of the consent of other children that they were selling on behalf of others too.

At the end he prayed that the respondent to be evicted from the disputed land and pay compensation for cutting trees at the tune of Tshs. 10,000,000/=.

In replying to what was submitted by the appellant, Mr Kamkolwe on the 1st ground replied that the appellant did not understand the order of the tribunal as it struck out the application and did not order retrial therefore, the appellant was supposed to file a new application and complaining about retrial orders.

As for the 2nd ground of appeal, counsel for the respondent told the court that Hon. Chairman had powers to divert from the opinion of assessors and he did so by giving reasons as evidenced in page 5 of the trial court judgment.

Coming to the 3rd ground of appeal, Mr Kamkolwe replied that the handling over agreement proved that there was a sale agreement and the money was handed over to Monji Luzugila as supported with the evidence of Charles Mpina, Gervas Wandela, Thomas Kalole and Daudi Wissu. As for the different of size of the disputed land it was the contradictions between the witnesses and the written statement of

defence. More to that, he added that Hon. Chairman did not determine the appeal on merit rather than dismissing it following the irregularities seen on the Ward Tribunal's proceedings. He prayed for the appeal to be dismissed so that the appellant can file a fresh application.

In his brief rejoinder apart from reiterating what has already submitted, the appellant added that, there was no errors on his application at the trial court since the issue of counsel's name on the Power of Attorney was already amended during the trial. He prayed for the appeal to be allowed with costs and for him to be appointed as the legal owner of the disputed property instead of ordering a fresh trial.

Having revisited the submission made by both parties and the records, the issue for determination is **whether the trial tribunal was justifiable in its decision which dismissed the application due to the defects found in the special Power of Attorney and the application as a whole.**

Upon reading the impugned judgment, this court noted that after summarizing the submission of the parties and the opinion of the wise assessors Hon. Chairperson had the following views and I will quote for easy of reference;

