

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IRINGA SUB REGISTRY)
AT IRINGA**

LAND APPEAL NO. 3 OF 2022

*(Original Application No. 159/2019 of the District Land and Housing Tribunal of Iringa
before Hon. A.J. Majengo, Chairperson)*

RAMADHAN MTETE **APPELLANT**

VERSUS

MUDRICK H. MTETE (As administrator

Of the Estate **of Hassan Mtete**) **RESPONDENT**

JUDGMENT

4th May & 15th June, 2023

I.C. MUGETA, J:

At the District Land and Housing Tribunal for Iringa (DLHT), the appellant instituted a suit against the respondent for a declaration that the suit land belongs to him. The DLHT dismissed his application and declared the respondent as the legal owner of the suit land. Dissatisfied with the DLHT's decision he filed his appeal based on three grounds, namely:-

- 1. That the trial tribunal erred both in law and fact in deciding the case against the weight of evidence adduced before it by the appellant which clearly and irresistibly showed that the land in dispute belonged to the appellant.*



2. *That the trial chairman erred both in law and fact by entertaining issues not in dispute regarding the ownership of the land in dispute rather entertaining matters not in dispute.*
3. *That the trial tribunal erred both in law and fact by wholly entertaining the case based on hearsay evidence.*

The appeal was disposed of by way of filing written submissions. The appellant was duly represented by Suleiman Kaganda, learned advocate whereas the respondent enjoyed legal representation by Joyce Francis, learned advocate.

In supporting the 1st ground of the appeal, the appellant's advocate submitted that the Chairman wrongly evaluated the evidence and reached an erroneous decision that the land in dispute belongs to the respondent. In his view, the appellant's evidence was heavier than that of the respondent as the appellant had testified that he was in possession of the land since 1984. He faulted the Chairman in failing to give reasons for his decision which invalidates that judgment as it was held in **Lutter Symphorian Nelson v. The Attorney General and Others**, Civil Appeal No. 24 of 1999 Court of Appeal – Dar es Salaam (unreported).

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On the 2nd ground, he contended that the tribunal Chairperson did not discuss the issues framed but rather directed his mind on the contradictions in the respondent's evidence. The submissions of the learned counsel on the 3rd ground lacks clarity for failure to point out the hearsay evidence relied upon by the Chairman.

The respondent's counsel opposed the appeal. On the 1st ground she argued that the Chairman correctly analyzed the evidence and reached a correct decision. In her view, the respondent's evidence was heavier as he proved his acquisition of the suit land by allocation. She cited the case of **Hemed Said v. Mohamed Mbilu** (1984) TLR 113 to support her contention that a party whose evidence is heavier compared to the other is entitled to win.

Regarding the 2nd ground, she argued that the trial tribunal discussed the issues framed and the allegation that the judgment did not contain reasons is misconceived. She argued that the impugned judgment complied with the requirements in the **Lutter Symphorian Nelson** case (supra). On the complaint about hearsay evidence, she argued that there was no any hearsay evidence during trial. In her view, the case was decided on the basis of credibility of witnesses. She cited the case of **Omari Kipira v. Fatuma Nassoro**, Misc. Land Appeal No. 9 of 2018,

High Court Land Division – Dar es Salaam (unreported) to caution this court to desist interfering with the decision of the trial tribunal which is founded on credibility of witnesses. There was no rejoinder from the appellant.

The facts of the case are that the appellant claims to have been given the suit land by the village council in 1983. Thereafter he fell sick and stopped to use the land up to 2010 when he noticed the respondent's invasion. The respondent has the same claim. His side of the story is that he was allocated the land by the village council in 1993. Unlike the appellant he is supported by DW2 who was a member of the committee which allocated the land to him. The respondent's son (DW3) testified on how they have been using the land since 2000.

In disposing of the appeal, I will discuss the 1st and 3rd ground jointly. The complaint in these grounds is on evaluation and nature of the evidence. The appellant testified that he was allocated the land by the village authority in 1983 and he used it for cultivation of millet. In 1987 he fell sick and stopped using the land to 2010 when he noticed the invasion by the respondent. His story is supported by PW2's evidence. To the contrary the evidence of the appellant regarding the invasion he testified

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further that the land was trespassed by the respondent in 1993 by cultivating rice.

It is my view that besides the contradiction between the appellant and PW2 on the time of the invasion, the respondent proved how he has been in continuous possession and use of the land since 1993. This is supported by DW3 who testified that he has been using the farm for rice cultivation since 2000.

The tribunal believed the respondent's story. As submitted by counsel for the respondent, the decision in this case is dependent on credibility of witnesses. The tribunal found the allegation of the appellant that the respondent invaded the land in 2010 improbable considering the evidence of the respondent that he was allocated the land in 1993. In my view, it is this allocation which PW2 referred to as invasion. I have no reason to fault the trial tribunal. The fact that he was allocated the land has been proved by a member of the allocation committee (DW2). On his part, the appellant is unsupported in his claim to be allocated the land by the village authority. Regarding hearsay evidence, I have not found any such evidence on record. Even the appellant's counsel failed to point out one in his written submissions. The third and first grounds of appeal has no merits.



The complaint in the 2nd ground is on the Chairman's failure to discuss the framed issues. The proceedings and the judgment shows that the tribunal framed 3 issues. The 1st issue was discussed and answered negatively which led to the negative answer to the subsequent issues. Thus, all issues framed were determined. The complaint has no merits.

In the event, I hold that the DLHT was correct to dismiss the application. Consequently, I dismiss the appeal in its entirety with costs. I uphold the decision of the DLHT.



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Court: Judgment delivered in chambers in the presence of Joyce Francis for the respondent who is also holding brief for Suleiman Kaganda, advocate for the appellant and in the absence of both the appellant and the respondent.

Sgd. I.C. MUGETA
JUDGE
15/6/2023