

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA DISTRICT REGISTRY)  
AT MWANZA**

**LAND APPEAL NO. 14 OF 2022**

*(Originating from Appeal No. 31 of 2021 at District Land and Housing Tribunal of Geita at Geita delivered on 25/03/2022 by E. Masao, arising from Application No. 194 of 2021 at Ludete Ward Tribunal)*

**MAKELELE MABUGA..... APPELLANT**

**VERSUS**

**DAUDI BUNZALI..... RESPONDENT**

**JUDGMENT**

*3<sup>d</sup> & 13<sup>th</sup> October 2022*

**OTARU, J.**

The Appellant, is challenging the decision of the District Land and Housing Tribunal (DLHT) that reversed the decision of the Ward Tribunal where he was declared the rightful owner of the land in dispute.

Briefly, the dispute between the parties arose after a survey conducted by the local authority in 2018. The Appellant instituted a case before the Ward tribunal for declaration of ownership. From the record it is not in dispute that the Appellant and the Respondent own adjacent pieces of land. The dispute is not on ownership of whole plots, but on the boundary between them.

When the matter was called up for hearing the Appellant was represented by Mr. Siwale, learned Advocate, while learned Advocate Ms. Yulitha Hezron represented the Respondent. Mr. Siwale mainly

*M. Ojawa*

focused on who between the parties purchased the land first. He submitted that both parties bought land from different people and there were written contracts to that effect showing that the Appellant bought in 2007 while the Respondent bought in 2012. He submitted further that the DLHT erred when it made a finding that the Respondent was the one who occupied the disputed plot first because that is different from what the contracts are saying. He referred this court to the case of **Haruna Chakupewa vs Patrick C. Ntalukundo**, PC Civil Appeal No. 10 of 2021 as well as Section 100(1) of the **Law of Evidence Act**, Cap 6 providing that where there are contradictions between oral and written evidence, written evidence should be given weight. He was of the view that had the DLHT Chairman analyzed the evidence properly, he could have seen who came there first.

He referred this Court to the Respondent's land purchase contract which mentions the Appellant as one of the neighbours, he thus contended that the Appellant came there first. In addition he submitted that the plot had been surveyed and no issues were raised during the survey, had there been any land issues, the survey process would have been halted, but there were none. It was his strong opinion that had the DLHT considered the evidence it would not have quashed the decision of

*M. Othman*

the Ward Tribunal as it correctly addressed itself and gave enough weight to the written evidence adduced.

Counsel for the Appellant also argued that, the Respondent's evidence was contradictory. Thus instead of relying on what he called contradictory witnesses, documentary evidence should have been given more weight. He reiterated the principle that written evidence should always prevail. He cited the authority of **Agatha Mshote vs Edson Emmanuel & 10 Others**, Civil Appeal No. 121 of 2019 that a document must speak for itself.

Finally, he prayed that the Court looks at who has the most reliable evidence and make a decision, allow the Appeal, quash the decision of the DLHT and restore the decision of the Ward Tribunal.

On her part, Ms. Hezron stated that the Respondent purchased his land from Mussa Samike in 2007 but he also has two different plots in the disputed area, one purchased in 1997 and the other in 2003, not 2012 as claimed by the Appellant. She stated that this is not a dispute of ownership but only a small portion that is between the two plots. It was her further submission that the Respondent was the one who purchased the land first and when the Appellant purchased in 2007, the Respondent was already there. As regards the plot purchased in 2012,

*M. Oparin*

she stated that there is no plot that the Respondent purchased in that year.

She insisted that it was the Appellant who found the Respondent already in the area and the dispute arose from encroachment of the boundary by the Appellant. She on her part does not see any problem with the oral evidence and states that the DLHT made the right decision.

She cited the case of **Linus Chengula vs Frank Nyika**, Civil Appeal No. 131 of 2018 to support her arguments and concluded by making a prayer before this court to dismiss the Appeal, uphold the decision of the DLHT, declare that the Respondent is the owner of the disputed plot, particularly his mother's grave, the Appellant to stop trespassing and destroying the burial place and any other remedy the Court may see fit.

The rejoinder by the learned counsel for the Appellant was to the effect that he disputes the 1997 and 2003 purchases. He states the area in dispute is not over the 1997 or the 2003 purchased land and that the Ward Tribunal's decision is right as it held that the Respondent did not buy earlier than 2012.

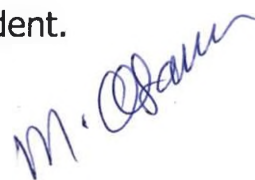
With regard to the survey process, he submitted that the evidence was clear that the grave was on the part of the Respondent. He

*M. Oduun*

concluded by repeating that written evidence and documents submitted before the Ward Tribunal should be reconsidered and prayed that this Appeal be allowed with costs.

Having completed the arguments both for and against the Appeal, this Court is invited to consider whether or not the said Appeal has merits. The Appellant through his learned counsel has questioned the decision of the DLHT arguing that the learned Chairman has failed to analyze the evidence adduced before the trial Ward tribunal properly as a result he ended up reaching a wrong conclusion. According to him, the evidence adduced by the Respondent was contradictory and ought not be accorded any weight. On the other hand, the Respondent holds the view that the trial DLHT was quite right in reaching such a decision. It considered the evidence of the Respondent, especially that of Musa Samike a person who sold the disputed land to the Appellant and he categorically stated that the tree and the grave are on the side of the Respondent. He argued this Court to dismiss the Appeal, to declare that the Respondent is the owner of the disputed land with no costs.

I have carefully gone through the submissions both for and against the Appeal. The issue is whether the part of the land where the tree is located belongs to the Appellant or the Respondent.



It is quite clear that the DLHT chairman relied solely on the evidence of Musa Samike in drawing his conclusion. He found him a credible witness as he is a person who sold the disputed land to the Appellant. His evidence was to the effect that the part of the land where the tree is situated belongs to the Respondent and not to the Appellant, by the time he was selling the said land to the Appellant in 2007 the Respondent was already there, as the result the chairman ruled out in favor of the Respondent.

Now the question which arises at this stage is what evidence carries the most weight. Counsel for the Appellant argues that the land that is the subject matter of this dispute was purchased by the Respondent in 2012. The Respondent on the other hand claims that he purchased it in 1997.

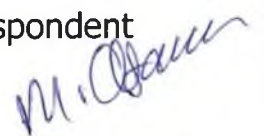
I reviewed the record of the Ward tribunal and that of the DLHT. Amongst the witnesses in the trial tribunal, is Consolata Mbesi who is the wife of the Respondent. As noted by the counsel for the Appellant, Ms. Mbesi informed the tribunal that they bought the land from one Adamu Kazeze on 15/06/2012, and from there Makelele (the Appellant) started claiming ownership of the piece of land where the land is located. Her testimony is to the effect that the land in dispute is the one that the Respondent bought in 2012 and not otherwise. Leave alone the

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testimony of Cosolata, there is evidence adduced through Hamadi Zolo about 'upimaji shirikishi' or literally survey involving community members, at the disputed land who testified that during 'upimaji shirikishi, the Respondent was present in person while the Appellant was represented by his wife. He kept on narrating that the Respondent is the one who was leading them. He informed them that the tree is on the side of the Appellant, the grave is on his side (the Respondent's) and the foundation is the boundary. They then put the beacons. The Respondent did not cross-examine this crucial evidence. The law is clear that failure to cross-examine amounts to an admission. In the case of **Emmanuel Saguda @ Sulukuka and Another v. R**, Criminal Appeal No. 422 "B" of 2013 (unreported), the Court cited with approval an old English case of **Browne v. Dunn** [1893] 6 R. 67 was cited, which held that: -

*'A decision not to cross-examine a witness at all or on a particular point is tantamount to an acceptance of the unchallenged evidence as accurate, unless the testimony of the witness is incredible or there has been a clear prior notice of intention to impeach the relevant testimony'.*

From the testimony of Consolata Mbesi, the Respondent's own wife, the plot of the Respondent which is the subject of this dispute is the one that was purchased in 2012, even though the Respondent



claims otherwise. In addition, the evidence of the Respondent's land purchase contract of 2012 also speaks for itself. As correctly submitted by the Appellant's counsel, there is strong evidence proving that the Appellant purchased the land in question earlier than the Respondent even if the Respondent was already in the area through previous land purchases. That evidence I have no reason to doubt. That being the case, the same evidence shows that the part where the tree is, belongs to the Appellant and the grave is on the Respondents side thus the boundary is to follow the beacons.

Having said so, this Appeal has merits. I agree with the learned counsel for the Appellant that the DLHT has failed to analyze the evidence properly as a whole. Consequently, the Appeal is allowed. The decision of DLHT is hereby quashed and set aside. The decision of the trial Ward Tribunal is restored with costs.

It is so ordered.

The right of Appeal is duly explained.

**DATED** at **MWANZA** this 13<sup>th</sup> day of October 2022.



  
M.P. OTARU.

**JUDGE**