

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

LAND APPEAL NO. 258 OF 2023

*(Originated from the decision of Mkuranga District Land and Housing Tribunal Land
in Application No. 13 of 2020 before Hon. Mwakibuja-Chairman)*

NASSORO SALUM KIRUMBI (administrator of the

estate of the late **Zaina Nassoro Hogora**) **APPELLANT**

VERSUS

HUSSEIN MOHAMED HOGORA..... **1st RESPONDENT**

RAMADHANI HASSANI HAMISI..... **2nd RESPONDENT**

J U D G M E N T

Date of last Order:15/08/2023

Date of Judgment:29/9/2023

K. D. MHINA, J.

This is the first appeal. It stems from the District Land and Housing Tribunal ("the DLHT") for Mkuranga in Land Application No. 13 of 2020, whereby Nassoro Salum Kirumbi (Administrator of the estate of the late Zaina Nassoro Hogora), the applicant who is now the appellant, claimed to be declared lawful owner of approximately seven (7) acres of land located at Mfuru Mwambao Village in Vianzi Ward within Mkuranga District, and the respondents be ordered to vacate from the disputed land,

nullification of the sale agreement between the 1st and 2nd respondents and the 2nd respondent be ordered to demolish the house erected in the disputed land.

The brief facts that led to the institution of Application No. 13 of 2020 at the DLHT are that the appellant alleged that the late Zainab Nassoro Hogora owned the land in dispute since 1962 after she was given by her father as a gift. She had been using that land till 2026 when she passed away.

The appellant further alleged that in 2016, the 1st respondent unlawfully trespassed into that land, pretending to be the lawful owner and sold the same to the 2nd respondent. This background prompted the appellant to rush and seek redress at the DLHT.

After the full trial, the DLHT dismissed the application for want of merits and declared that the applicant was not the lawful owner of the suit land.

In discontent, the appellant appealed to this court and preferred the following grounds to fault the DLHT decision

- i. That, the trial tribunal erred in law and in fact for giving judgment based on weak evidence*

- ii. That, the trial tribunal erred in law and in fact for failure to consider the requirement of regulation 19 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) of 2003, that the opinion of the assessors was not given in writing as the law requires.*
- iii. That the trial tribunal erred in law and in fact to grant the ownership of the disputed land to the respondents while their evidence totally failed to show how they acquired the land.*

The appeal was argued by way of written submissions. The appellant was represented by Ms. Pendo E Ulomi, Advocate, while the respondents were represented by Mr. Lulinga Jonathan Lulinga, Advocate.

Ms. Ulomi argued that the trial Tribunal erred in law and fact for giving judgment based on weak evidence.

She narrated that DW1, who sold the land to the 2nd respondent, did not have strong evidence regarding the ownership of the suit land. DW1 only testified that the suit land belonged to his late grandfather but did not have the letter of administration to legalize him to sell the deceased person's property upon agreement with the heirs or beneficiaries.

Moreover, he had no evidence of obtaining the beneficiaries' consent before selling the suit property.

She further submitted that the evidence of DW2 was very weak in the sense that he even failed to describe the size of the land in dispute.

Further, the evidence of DW2 was contradictory.

In the second ground of appeal, Ms. Ulomi faulted the DLHT by submitting that the DLHT failed to consider the requirement of regulation 19(2) of the Land Dispute Courts (the District Land and Housing Tribunal) Regulations of 2003 that the opinion of the assessors was not given in writing.

On the third ground of appeal, she submitted that the trial Chairperson failed to evaluate the evidence given by both sides.

She narrated that while DW1 failed to prove that he had the locus stand to sell the land in dispute for failure to produce evidence giving him the mandate to sell the property of his grandfather.

On the other hand, the appellant produced the evidence which gave him the mandate to sue for his mother's property as the administrator. To support her submission, she cited **Arnold Adam vs. The Republic**, Criminal Appeal No. 171 of 2019, HC-Mbeya, where it was held that;

"Failure to evaluate or an improper evaluation of the evidence inevitably leads to wrong and or biased conclusions or inferences resulting in miscarriage of justice."

In response, in respect of the first ground, Mr. Lulinga submitted that during the trial, the appellant presented only one witness and two exhibits: a Death Certificate (Exhibit P1) and Letters of Administration of Estate (Exhibit P2). However, neither exhibit had a connection with the disputed property.

He further stated that the judgment shows that the testimony of both sides was considered and evaluated.

Countering the second ground of appeal, Mr. Lulinga submitted that as per the assessors participated in the hearing of the matter and their opinions and observations were well recorded. The argument by the appellant that the opinion of the assessors was not in writing was a misconception and should be rejected in its entirety.

Submitting on the last ground of appeal, Mr. Lulinga reiterated what had been submitted in the first ground.

In a brief rejoinder, Ms. Ulomi argued the first and third grounds together. She submitted that the appellant proved his case in a required standard of proof, and his evidence was heavier than the respondent's.

The appellant produced a death certificate and the letter of administration, which gave him the status to sue or claim on behalf of the deceased property. At the same time, the 1st respondent did not have any legal document which gave him the status to sell the disputed property, which he claimed to be his grandfather's property.

Having objectively gone through the grounds of appeal, the rival submissions by both parties and the entire records of appeal, there are two issues for consideration that will determine both grounds of appeal. The issues are;

One, whether the evidence at the Trial was properly evaluated (this will answer the 1st and 3rd grounds), and

Two, whether the opinion of assessors was not given in writing as per Regulation 19(2) of The Land Courts (The District Land and Housing Tribunal) of 2003 (this will answer the 2nd ground of appeal)

In deliberating and determining the above issues, I will start with the second issue regarding assessors' opinions.

The record of the DLHT on page 26 of the typed proceedings reveals that on 26 January 2023, in the presence of the counsel for both parties,

after the closure of the defence case, the matter was adjourned to 8 March 2023 for the assessors' opinion to be read.

On 8 March 2023, the applicant, now appellant and his counsel were absent the assessor's opinion was read.

Further, upon further perusal of the record, I found the handwritten opinions of Musso Michael and Habiba Saidi Mgana, the assessors in that case. They both wrote and signed their opinion.

In addition to that, at page 6 of the impugned DLHT judgment, it was indicated that assessors gave their opinion.

Flowing from above, it is crystal clear that the assessor's opinion was read and presented in writing as per the requirement of Regulation 19(2) of The Land Courts (The District Land and Housing Tribunal) of 2023.

Therefore, this ground of appeal lacks merit.

Now, examining the first and third grounds of appeal are interrelated, as they both touch on the evaluation of evidence.

On this, it is the principle of law that Courts and Tribunals must evaluate evidence and give reasons for the decision.

In the instant appeal, the centre of complaints by the appellant was predicated on the issue that there was no evidence of how the 1st respondent acquired the land in dispute and passed it to the 2nd respondent.

Section 110 of the Evidence Act, Cap. 6 [R.E. 2019], which reads;

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he who asserts must prove that those facts exist."

The provision of law was cemented by a plethora of authorities. One such authority is the case of **Hemedi Said vs. Mohamedi Mbilu** (1984) TLR 113, where it was held that;

"He who alleged must prove the allegations."

At the Tribunal, the appellant was required to prove the ownership of the disputed land. In doing so, apart from his oral testimony that the land belonged to his late mother, he tendered the death certificate and the letters of administration. While on the defence side, there were oral testimonies of the 1st and 2nd respondents and the testimony of DW2, Shaban Said Hemed, a man aged 85 years old, neighbour and relative of both the appellant and the 1st respondent.

In its evaluation, the DLTH found that the appellant's evidence was a shortfall in proving his claims of the ownership of the disputed land. The DLHT also, after evaluation, held that the exhibits tendered by the appellant, the death certificate of his mother and the letters of administration in any way could be proof of ownership of the land dispute.

In its further evaluation, the DLHT held that the appellant had no document to prove ownership of the disputed land and failed to bring any neighbour or local leader to support his claims.

Flowing from above, after having gone through the record of the DLHT, the evidence of the appellant regarding the ownership of the suit land was evaluated, and the Tribunal made findings and reasons for its findings based on the available evidence.

Therefore, the DLHT properly analyzed the evidence and made the correct decision. Thus, the first and third grounds fail as well.

In the final analysis, Ms. Ulomi has failed to persuade me that the DLHT had failed to evaluate the evidence on record and that the trial was not proper for the failure to comply with Regulation 19(2) of The Land Courts (The District Land and Housing Tribunal) of 2003

In the end, and for the reasons given above, I find the appeal lacking merit and consequently dismiss it with cost.

I order accordingly.




K. D. MHINA
JUDGE
29/09/2023