IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[ARUSHA SUB- REGISTRY]

AT ARUSHA

LAND APPEAL NO. 3 OF 2023

(C/F the decision of Karatu District Land and Housing Tribunal, Land Application No. 60 of 2018)

DEEMAY KWAANG'W _____ APPELLANT

VERSUS

WAZIRI JAMES _____ RESPONDENT

20/10/2023 ***&*** *03/11/2023*

JUDGMENT

BADE, J.

The Above-named Appellant after being aggrieved with the whole decision of the Karatu District Land and Housing Tribunal (Hon. V.A LING'WENTU, Chairman) delivered on 29/11/2022 preferred an appeal in this court challenging the decision of the trial tribunal. Previously, the Appellant was sued at the District Land and Housing Tribunal of Karatu at Karatu vide Land Application No 60, on trespass over the suit land, with a result that declared Respondent herein the lawful owner of the suit land and the Appellant a trespasser who was restrained from

continued invasion of the land in dispute.

Putting context into the matter, the Respondent had alleged that he inherited the disputed land from his late father in 1986, and he had a peaceful use of the same until August 2014 when the Appellant herein invaded the land, harvesting trees which were planted by the Respondent, and planting his own. The matter was then referred to the Village Executive Office where the Council resolved the matter in favor of the Respondent. The Appellant had always insisted that he is the lawful owner asserting his right by an allocation through Operation Vijiji of 1974.

The Appellant lodged six grounds of appeal faulting the trial tribunal on its consideration of the evidence and wrong reasoning through grounds one to three. On ground four the appellant faulted the tribunal for failing to consider and rule that the disputed land has been in possession of the Appellant since 1974 hence Respondent's defence/claim cannot stand. Ground five faulted the tribunal for neglecting the Appellant's opinion as well as his witnesses Tluway Gidbanghe, Baha Tleemay and Fiita Bariye when the locus in quo was visited leading to a bad decision differing with reality on the site; and generally faults the whole of the proceedings, judgment and decree of the Trial Tribunal for contravening

the law.

The Appellants had the appeal argued by way of written submissions and had the services of legal counsel for drawing their submissions, and thus the appellant had the services of Nelson Massawe, learned counsel, while the respondent had the services of Bungaya Matle Panga, learned counsel.

The Appellant's counsel proposed to argue jointly the 1st, 2nd, and 3rd grounds of appeal, while the 4th, 5th, and 6th grounds of appeal were argued separately.

Submitting on the 1st, 2nd, and 3rd grounds of appeal, Mr. Massawe faults the trial chairperson for abstaining from scrutinizing the evidence adduced by the parties during the trial, in the sense that it was not disputed that the appellant and respondent are close neighbors, the only border from the respondent's house to the appellant's house is the land of one Tluway Gidbanghe. He contends that while the said Tluway Gidbanghe was present during the visit of the locus in quo, he was not called on to address the facts in disputes between the appellant and respondent.

On another note, he argues that the Respondent's evidence was contradictory since he stated that his father died in 1986, then stated

that the appellant invaded the suit land in 2014, and later on said that the dispute started after the death of his father on one hand, while AW3, on the other hand, stated that he was amongst the members of the village land committee who resolved the dispute between the appellant and respondent in 2014 and 2017, but when examined by the assessor, he stated that the dispute arose in the year 2000; wondering if the appellant trespassed into the suit land in 2000, then why the respondent preferred to recover the suit land in 2018, eighteen years later. He argues that the respondent's right to recover the piece of land had lapsed since for the past 12 years, the disputed land has been in occupation by the appellant from when the appellant started to develop the suit land in 1974 to the present, making reference to the decision of the Court of Appeal in **Bhoke Kitangitta vs Makuru Mahemba,** Civil Appeal No. 222 of 2017 (Unreported) underscoring the settled principle of law that when a person occupies someone's land without permission, and the property owner does not exercise his right of recovery within the time prescribed by law, such person (the adverse possessor) acquires ownership by adverse possession.

Submitting on the 4th ground of appeal, he argues the trial tribunal failed to put proper consideration on the issue of adverse possession of

the suit property since the appellant had proved possession for more than 12 years while using and owning the suit land without any kind of disturbance. He argues that this was corroborated by the respondent witnesses AW3 Martine Nicodemus when one of the assessors Mr. Mushi put a question to him. He insists that the respondent started to claim a right of ownership to the suit land only recently while every other development on the suit premises was made by the appellant herein.

He supports his position through the case of **Moses vs Lovegrove** [1952]2 Qb 533, and **Hughes vs Griffin** [1969j1 All E R 460, claiming all the circumstances in the cited case were prevalent, and that AW3 established that the appellant owned the suit land under adverse possession since the alleged trespass happened in the year 2000 and the respondent did not claim to recover this land within the prescribed time.

Submitting on the 5th ground of appeal, the appellant's counsel contends that the chairperson of the trial tribunal did not warn himself before the visit to the locus in quo not to act as a witness of either. The Court in **Nizar M. H. vs Gulamali Fazal Jan Mohamed** [1980] TLR 29, faced a scenario whereby the trial magistrate visited the locus in quo and the judge sitting on appeal also did so. Clarifying on the point, the

Court stated:

> *"It is only in exceptional circumstances that a court inspects a locus in quo, as by doing so a court may unconsciously take on the role of a witness rather than an adjudicator. At the trial, we can see no reason why the magistrate thought it was necessary to make such a visit. Witnesses could have given evidence easily as to the state, size, location and so on of the premises in question. Such evidence could, if necessary, be challenged in cross-examination. But at least the magistrate made his visit on the application of a party to the trial. We completely fail to see why the first appellate judge thought it was necessary for him to visit the premises. He was dealing with an appeal."*

He argues that in the case at hand, the trial chairman neither stated reasons for visiting the locus in quo, nor did he take any additional evidence from the neighbors, but rather, he engaged personally as he measured the land in dispute and fed these measurements he took in his composed judgment. The counsel argues in protest that neither the description nor the size of the suit land was at issue as all the details were properly described by the parties and their witnesses during the trial, which in his view, had effectively turned the trial chairman into the

position of a witness instead of being a neutral arbiter.

He explained further that at the time the tribunal visited the locus in quo, the neighbors including Tluway Gidbanghe, Baha Tleemay, and Fiita Bariye were present but they were not accorded any opportunity to testify, concluding that the proceedings, judgment, and orders of the tribunal were unprocedural, thus urging the proceedings forming the visit of the locus in quo be nullified, the judgment of the trial tribunal be quashed and set aside and appellant be declared the sole owner of the suit land.

Submitting on the 6th ground of appeal, Mr. Massawe argues that it is a mandatory requirement of the law for the chairperson of the tribunal to record evidence of witnesses and sign after recording evidence of each witness, failure of that renders the proceedings to be a nullity, referring to the provisions of Order XVIII Rule of the Civil Procedure Code, CAP 33 RE 2019:

> "The evidence of each witness shall be taken down in writing, in the language of the court, by or in the presence and under the personal direction and superintendence of the Judge or magistrate, not ordinarily in the form of questions and answer, but in that of the narrative and the judge or magistrate shall sign the

same."

The counsel argues that the cited law requires the signing of the evidence of each witness after recording it. The law is prescriptive because the provision was made in a commanding language with use of the word 'shall' to mean mandatory. He argues further that the word shall have been defined under the provision of section 53 (2) of the Interpretation of Laws Act, [Cap 1 RE 2019] such that;

> "(2) Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed."

In the case at hand the trial chairman did not sign the evidence of each witness after he recorded it, rebuking the act of abstaining from a mandatory requirement of the law should not be tolerated as it not only amounts to a bad practice but might be tainted with tampering with evidence by the decision maker, since the said requirement is imperative to safeguard the authenticity and correctness of the record. He insists that failure to append a signature to the evidence of a witness jeopardizes the authenticity of such evidence and it is fatal to the proceedings referring to the decision of the Court of Appeal in **Joseph Elisha vs Tanzania Postal Bank**, Civil Appeal No. 157 Of 2019,

(Unreported) where it was held:

> *"In the event, the omission to administer oath to the witnesses and failure by the arbitrator to append signature at the end of each witness's testimony vitiated the proceedings before the CMA.."*

In a further argument, the counsel for the appellant submits that the proceedings, judgments, and decree of the trial tribunal contravene the law in the sense that the trial chairperson failed to record the opinion of the assessors in the proceedings and instead, he only acknowledges it in his decision. The omission to record assessors' opinions in the proceedings means the assessors were not fully engaged throughout the proceedings, supporting his contention with the Court of Appeal decision in **Ameir Mbarak and Azania Bankcorp Ltd vs Kahwill,** Civil Appeal No. 154 of 2015 (Unreported) stating:

> *"Therefore in our considered view, it's unsafe to assume the opinion of the assessors which is not on the record by merely reading the acknowledgment of the chairman in the judgment. In the circumstances, we are of the considered view that assessors did not give any opinion for consideration in the preparation of the tribunal's judgment and this was a serious irregularity."*

He discounted the wordings of the chairperson in the judgment as not being the recorded opinion of the assessors since the proceedings did not show exactly what the assessor opined, supporting his contention with the cases of **Hosea Andrea Mushongi vs Charles Gabagambi,** Land Appeal No. 66 of 2021, (Unreported) and **Edina Adam Kibona vs Absolom Swebe (Sheli),** Civil Appeal, No. 286 of 2017 it was holding:

> "the opinion of the assessors must be given in writing and be reflected in the proceedings before a final verdict is issued."

Opposing the appeal, the Respondent's counsel Mr. Bungaya Panga proposes to follow the same trend that the counsel for the Appellant had used in arguing the appeal to counter the grounds of appeal.

Arguing the three grounds of appeal, the counsel understood the Appellant's complaint to be mainly based on failure to hear the Appellant's witness one TLUWAY GIDBANGHE at the time of visiting locus in quo, as well as discrepancies in testimony which have purportedly affected the Respondent's case before the trial Tribunal. First of all, it was primarily the duty of the Appellant to bring all the witnesses who shall build his case. The record of the trial Tribunal is silent on whether one TLUWAY GIDBANGHE was present during the trial. This desire to have this witness testify is an afterthought and urged the

court to disregard it.

The Appellant in ground two is also challenging the decision of the trial Tribunal on purported discrepancies that have affected the credibility of the Respondent's witnesses. He argues that the testimony of AW1, the Respondent in this case recorded from pages 5 to 7 of the typed proceedings does not have any purported discrepancies but rather the Respondent's testified that the dispute first emerged and in 2014 it was resolved by the village leaders. The same dispute reemerged in 2017 and was again resolved by the village council in favor of the Respondent. The argument that the Respondent's testimony is that the dispute started after the death of his father is misconceived. What the Respondent had stated in his testimony is implied to mean there was no dispute with the Appellant having his shamba nearest the land in dispute during his father's lifetime.

The counsel argues that the concept of time limitation as preferred by the Appellant has been brought as a result of misapprehension of the facts of this case. According to the Respondent's testimony, the dispute started in year 2014. It was resolved by the previous village leaders and reemerged in the year 2017 which was also resolved in favour of the Respondent by the village council. Despite all these efforts to resolve the

dispute, the Appellant was still disturbing the Respondent. As a result of unresolved dispute that had started in the year 2014 the Respondent in the year 2018 had lodged Land Application No. 60 of 2018 which resulted in this land appeal. Therefore, the concept of time limitation under the Law of Limitation Act, Cap. 89, R.E. 2019 is misplaced.

Responding to the issues against the testimony of AW3 who was the leader who resolved the dispute in the year 2014, it was geared to understanding that this is a dispute that has been reemerging, stating that in 2014 the dispute was resolved in favor of the Respondent. The dispute had ended and the Respondent was and still is in possession while resolving the dispute on several other occasions, reasoning that while it was proper for the trial chairperson to hold that the Respondent and his father had been in occupation since 1974 to date, he disagreed that the concept of time limitation to redeem the land were applicable in the circumstances of the case. He insists that there is no point in time that the Respondent had parted with ownership and occupation of the land in dispute. The appellant's own witness DW3 stated on pp 19 to 20 of the typed proceedings that in the year 2017, they had resolved the dispute and there were minutes of the village council taken down, which were tendered as Exh P1, himself being a leader of the village then.

The counsel further argues that the said exhibit indicated that the land belongs to the Respondent. In his view, this explains why the Appellant did not wish to tender the said minutes in Court while DW3 has confirmed that each of the disputants was availed with a copy.

Arguing the fifth ground of appeal, that the trial chairperson ignored the Appellant's opinion and those of the other neighbors during the visit of the locus in quo recoiling to submit that the counsel for the Appellant seems to be arguing on a completely different concept and substantially a new ground of appeal without first obtaining the leave of the Court, which is contrary to the provisions of Order XXXIX of the First Schedule to the Civil Procedure Code, Cap. 33 R.E. 2019 which makes it clear that the appellant can not be heard in support of any ground of objection not set forth in the memorandum of appeal.

The counsel for the respondent nevertheless traversed the said new ground respecting the holding of the guidelines by the Court of Appeal in **Nizar M.H. vs Gulamali Fazal Jan Mohamed** [1980] TLR 29 arguing the same were fully complied with. The proceedings of the trial Tribunal recorded the visit of the locus in quo which was conducted on 28/11/2022. Parties were allowed to show the boundaries of the land in dispute, and respond to various questions for clarification from the

members of the Tribunal, failing to understand the contention that the chairperson had turned out to be a witness in this case. He made an earnest prayer for this ground to be rejected outrightly on the reason that it has been raised without leave, and more so that it lacked merit.

Mr. Panga submits that the complaint on ground six is that the proceedings before the trial Tribunal contravened the law and resorted to Order XVIII of the First Schedule to Civil Procedure Code. In this respect, the Appellant attacked the proceeding of the trial Tribunal that it lacked the signature of the trial chairperson after recording each witness's testimony. He maintains in response that the basic tools available to the chairperson during the hearing were the Land Disputes Courts Act, Cap. 216, R.E. 2019 and the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002, G.N. No. 174 published on 27/06/2003, arguing that failure to affix signature after each witness's testimony is a mere error not affecting the trial and rights as between the parties particularly because there has not been raised any suspicion that in failing to affix the signature, one had tempered with the Tribunal's records. In his view, the error is, therefore, saved by the provisions of section 45 of the Land Disputes Courts Act providing:

"No decision or order of a Ward Tribunal or District Land and

Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in fact occasioned a failure of justice"

He further refers this court to the case of **Yakobo Magoiga Gichere vs Peninah Yusuph,** Civil Appeal No. 55 of 2017 (Unreported, available in TANZLII) where the Court of Appeal emphasized the Courts in this Country deal with substantive justice and do away with deciding cases on legal technicalities. Underscoring the said point thus:

"With the advent of the principle of Overriding Objective brought by the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [ACT No. 8 of 2018] which now requires the courts to deal with cases justly, and to have regard to substantive justice; section 45 of the Land Disputes Courts Act 13 should be given more prominence to cut back on over-reliance on procedural technicalities"

The counsel concluded by urging that the court should have regard to the contents of exhibit P1 collectively and the Respondent's witnesses,

praying that the appeal be dismissed in favor of the Respondent.

In rejoinder, I found the Appellant's counsel launched a submission on matters that were not necessarily the ones that he ought to have rejoined as submitted by the counsel for the Respondent, over which I am reproved to pay no heed as even the dates in the said filed rejoinder are all mixed up.

All in all, the Appellant insisted that the trial tribunal did not heed the directions of the previous appeal where the tribunal was emboldened to visit the locus in quo to be able to conclusively resolve the trespass to land dispute. As such, the file was remitted back to the trial Tribunal for compliance.

Having considered the records and parties' submissions, I am disposed to believe that the issues for determination before this court are twofold. One, the propriety or otherwise of the trial proceedings and the respective judgment by the trial tribunal culminating from the judgment of the High Court directions, and two, whether the trial tribunal is faulted in its evaluation of evidence leading to an erroneous decision.

In consideration of the first issue above, it is pertinent to look at the record of the trial tribunal. I am settled in the view that indeed the trial Tribunal complied with the order of visiting the locus in quo where on

14/11/2022 the trial tribunal ordered the visit of the locus in quo (see pages 23 – 25 of the typed proceedings), which was scheduled for 17/11/2022, and rescheduled to 28/11/2022, which is when the visit of the locus in quo took place.

The issue of the visit of the locus in quo is pertinent in deciding this appeal since as I have highlighted before, this matter was the subject of a previous appeal in this court (as decided by his lordship Gwae, J.) and was remitted back to the trial tribunal so that a visit of the locus in quo would be effected. While this was complied with, the Appellant complains that the same was not properly done, alleging there being no proceedings to show who was in attendance and what had actually transpired during the respective visit. This factual cum legal issue, despite being protested by the Respondent as a new issue that was not raised in the grounds of Appeal, the counsel for the Respondents took the liberty to respond to; and on which basis this court is justified to address in determination. In doing so, this court takes guidance from the Court of Appeal which guided on the issue of the visit of the locus in quo in extenso in the case of **Kimonidimitri Mantheakis vs Ally Azim Dewji & Others** (Civil Appeal No 4 of 2018) [2021] TZCA 663 (3 November 2021). The Court in its wisdom enumerated the conditions

over which a visit of locus in quo will be said to have been done properly:

> *"In the light of the cited decisions, for the visit of the locus in quo to be meaningful, it is instructive for the trial Judge or Magistrate to: one, ensure that all parties, their witnesses, and advocates (if any) are present. Two, allow the parties and their witnesses to adduce evidence on oath at the locus in quo; three, allow cross-examination by either party, or his counsel, four, record all the proceedings at the locus in quo; and five record any observation, view, opinion or conclusion of the court including drawing a sketch plan if necessary which must be made known to the parties and advocates, if any."*

The Court of Appeal also underscored the importance of not turning a visit of the locus in quo as a further opportunity to fill up gaps in evidence, other than verifying facts already adduced in testimony on record.

> *"In this regard, where the court deems it warranted, then it is bound to carry it out properly so as to establish whether the evidence in respect of the property is in tandem with what pertains physically on the ground because the visit is not for the purposes*

of filling gaps in evidence."

So based on the above holding, I find that the trial tribunal complied not only with the order of the High Court to visit the locus in quo but also with the instructions on how to properly conduct the said visit. The proceedings of the trial tribunal (pp 25 - 26 of the typed proceedings) have recorded all that took place during the visit, including recording of the tribunal's opinion of what it has observed.

In my considered view, bearing the opinion of the tribunal on the outcome of the visit of the locus in quo, the Trial Tribunal Chairperson found no value addition in incorporating this evidence in its composed judgment. Admittedly, this is a fault as he ought to have evaluated the said evidence so that it can add up to the reasoning of his decision. Nevertheless, since the Appellant has lamented on improper evaluation of evidence by the trial tribunal, this court shall undertake the said duty in consideration of the second issue as raised herein. The Court of Appeal in **Kimonidimitri's case** (supra), had as per the circumstances of that case, where the trial judge omitted to record the proceedings of the visit of the locus in quo observed, that the said omission occasioned a miscarriage of justice as the Court sitting on first appeal will not be able to make a proper re-evaluation of the entire trial evidence including

what had transpired at the visit in the locus in quo.

In the circumstances of the present case, the visit has been recorded in the proceedings even though its finding was not expressly considered in the judgment of the trial chairperson. It is my considered view that the said record of the Locus in quo then can now be evaluated by this court alongside re-evaluation of evidence as raised in the grounds of appeal fronted by the Appellant, in determination of issue no 2 herein.

On the issue of the mandate of this Court to reevaluate the evidence of the trial court as the first appellate court, the Court of Appeal was expressive in the case of **Japan International Cooperation Agency (JICA) vs Khaki Complex Limited**; Civil Appeal No. 107 of 2004 (unreported), where it was held that the first appellate court has a duty to re-evaluate the evidence of the trial court and come up with its own independent findings. In the case of **Registered Trustees of Joy in The Harvest vs Hamza K. Sungura** (Civil Appeal 149 of 2017) [2021] TZCA 139 (28 April 2021) the Court observed what is actually meant by re-evaluation of evidence *entailing a critical review of the material evidence on record in order to test the soundness of the trial court's findings*. (emphasis mine). Augmenting this assertion, the Court made reference to its previous holding in **Standard Chartered Bank**

Tanzania Ltd vs National Oil Tanzania Ltd and Another, Civil Appeal No. 98 of 2008 (unreported) on the same subject this Court held that:

> *"The law is well settled that on first appeal the Court is entitled to subject the evidence on record to an exhaustive examination in order to determine whether the findings and conclusions reached by the trial court stand (Peters vs Sunday Post, 1958 EA 424; William Diamonds Limited and Another vs R,1970 EA 1; Okeno vs R, 1972 EA 32)"*

I am now properly fortified to scrutinize the material evidence as gathered by the trial tribunal as I hereby do, starting with the issue of calling one Tluway Gidbanghe during the visit of the locus in quo. It is alleged that the said Tluway Gidbanghe was present during the visit of the locus in quo but was not called upon to address the facts in disputes between the appellant and respondent.

In my considered view this person was not called to testify as a witness because the Appellant did not summon him to be one. The Witnesses recorded in the proceedings for the Respondent who is now the Appellant were himself as DW1, Paulo Aweda Goranga, DW2, and Christian Gihheri who testified as DW3. The position of the law is tritely

explicated as per section 110 (1) and (2) of the Evidence Act [Cap 6 RE 2019] that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist; and that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

It is my finding that the witness alleged to have been present during the visit of the locus in quo who was the Appellant's neighbor was never called as a witness, and the duty and burden of proving what he was going to testify on behalf of the Appellant lied on him. In other words, the Appellant did not execute his burden of proof. The tribunal can not be faulted for not having the evidence of the person who was not called as a witness by a party.

Further, it is alleged that the Respondent's evidence was contradictory since he stated that his father died in 1986, then stated that the appellant invaded the suit's land in 2014, and later on said that the dispute started after the death of his father on one hand. AW3, on the other hand, stated that he was amongst the members of the village land committee who resolved the dispute between the appellant and respondent in 2014 and 2017, but when examined by the assessor, he

stated that the dispute arose in the year 2000.

I disagree with the contention of the Appellant that there is a contradiction of the witnesses, but rather, I am inclined to agree with the Respondent's counsel that the explanations are pointing to clarify how the dispute surfaced in different times and became an ongoing dispute until after it was taken before the Village Council in 2014. In my reading of the testimony of AW3 and AW1, it doesn't make any impudence that the dispute started in 1986, but rather 1986 is when the Respondent's father passed away, at which point the dispute became imminent particularly in 2000 as a marker of reference, and 2014 as when the same was taken before the village council for resolution.

The appellant's own witness DW3 stated on pp 19 to 20 of the typed proceedings that in the year 2017, they had also resolved the dispute and there were minutes of the village council taken down, which were tendered as Exh P1, himself being a leader of the village then. Despite the discrepancy in the dates over when the dispute arose, it is my finding that the Respondent was able to execute its burden, and as per the standard of proof in civil matters, the probabilities are better on the Respondent herein than the Appellant. This is so because the documents put in evidence by the Respondent testify to the existence of the dispute

and how the same was resolved. The other culminating proceedings on the same dispute have not proved otherwise. Same with the visit of the locus in quo, which has also not been able to neither verify the facts gathered in evidence nor disprove them in any way as it was observed by the trial chairperson that:

> "Hakuna mipaka ya uhakika kubainisha eneo lenye mgogoro, Mdai anadai kuwa ni miti (Mgunga mweusi) na Ayroi lakini miti hiyo imeota holela; Kuna korongo ambalo Mdaiwa anadai kuwa mpaka wao, na palio liko ndani ya korongo; Kila mtu yuko upande wake amejenga nyumba yake, mgogoro wao uko kwenye eneo kama la 1/4 ekari ya ardhi, ambapo Mdai anadai kuwa mdaiwa amevamia."

My reading of the record testifies that DW2 supports the finding that there is a "korongo" between the parties (see page 14 of the typed proceedings) which signifies the boundary between the Appellant and the Respondent. It can be then said that the visit of locus in quo only verified this information, and could not add any other material fact.

As a matter of principle, even though the point raised by the Appellant on the record being inappropriate for lack of signature did not form part of the issues I was addressing in disposing of this appeal, I had observed and took time to look at the record to check and satisfy myself

on the said allegation. It is my finding that the handwritten notes of the tribunal's record were properly signed as required by the law, and the typed proceedings are indicative of the fact that the original script had been signed by the person who recorded the same. This ground is found without any basis and is of no merit.

On the basis of the foregoing, I am of the considered view that this appeal has no merit and it is thus dismissed with costs. The Respondent is declared the lawful owner of the disputed land. The Appellant is restrained from trespassing into the Respondent's land.

It is so ordered.

DATED at **ARUSHA** this **03rd** day of **November 2023**

A. Z. Bade
Judge
03/11/2023

Judgment delivered in the presence of the Parties and or their representatives in chambers on the **03rd** day of **November 2023**

A. Z. BADE
JUDGE
03/11/2023