IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF SHINYAGA)

AT SHINYANGA

CIVIL APPEAL NO. 29 OF 2022

(Originating from Civil Case No. 01 of 2021 Resident Magistrate Court Simiyu at Bariadi)

KEPHULENI LUBIMBI.....1ST APPELLANT

VUMI MAGOTI.....2ND APPELLANT

MASHAURI DONALD.....3RD APPELLANT

ZEPHANIA MABULA.....4TH APPELLANT

MASHIKU MUNUBI.....5TH APPELLANT

KEPHULENI EMMANUEL.....6TH APPELLANT

ELIZA STEVEN.....7TH APPELLANT

JESTO MASHAURI.....8TH APPELLANT

VERSUS

BUHINU NG'WAJE..... RESPONDENT

JUDGMENT

15th March & 21th April 2023

MASSAM, J

The respondent herein, filed a suit at Simiyu Resident Magistrate's Court claiming against the appellant specific amount of Tshs, 50,490,000

alleging that they harvested the rice at his farm. Both appellants (defendants by then) denied the charge and claiming that they harvested at their own farms. After a full trial the trial court decided that the respondent proved his claim on the balance of probability and ordered the appellants to pay him Tshs. 50,490,000/=, 12% of the loss incurred and costs of the case.

Aggrieved with the said decision, the appellants preferred the present appeal armed with the following grounds:

1. *That, the trial court erred in both law and fact for holding that the Appellants harvested the Respondent's rice against the weight of evidence.*
2. *That, the Hon. Trial Court erred in both law and fact when it failed to hold that the Appellants harvested their rice planted in their field.|*
3. *That, the Hon. Trial Court erred in both law and fact in deciding in favour of the Respondent against the weight of evidence on record.*
4. *That, the Hon. Trial Court erred in both law and fact for filling to correctly consider and evaluate the evidence on record and consequently reaching into a wrong finding.*

When the appeal was called for hearing on 15th day of March 2023, Mr Elias Ezron and Khalfan Msumi, both learned counsels appeared for the appellants and respondent respectively. The appeal was heard orally.

Starting with the 1st ground of appeal, Mr Ezron submitted that the respondent failed to prove his claim on the balance of probabilities. He submitted further that the appellant failed to show the place where the rice was harvested nor stated its demarcation. Thus, he failed to discharge his duty as per Section 110 (1) (2) of **The Evidence Act**, Cap 6 R. E 2019.he cemented his argument with the case of **Pauline Samson Ndawavya vs Theresia Thomas Madaha**, 2019.

Opposing to this appeal, Mr Msumi replied to the 1st and 3rd grounds jointly. He told the court that the evidence submitted and admitted at the trial court proved that the rice was harvested by the appellants. Further to that the evidence of PW3 (Land officer) who went at the scene proved that it was true that the rice was harvested. Thus, at the trial court the evidence of the respondent carried more weight than that of the appellants to warrant such decision.

Coming to the 2nd ground of appeal, it was Mr Ezron, the learned counsel's submission that at the trial court the 1st appellant submitted the decision of the District Land and Housing Tribunal of Mwanza, Appeal No. 1 of 2013 and Ruling of High Court of Mwanza in Land Revision No. 9 of 2020 and Land Revision No. 10 of 2021 to prove that he harvested the said rice on his own land but the same was ignored by the court. He argued further that as there was no decision which overrule the submitted decision, the 1st appellant

has the right over the said land where he harvest the rice. So, he prays for this ground to be allowed as it has merit.

Replying to this ground, Mr Msumi, the learned counsel stated that the appellants submitted documents to prove ownership over the disputed land, but the trial court was correct to rule out that it had no jurisdiction to entertain the issue of ownership of the land as it in invested in special organs as per Section 3 of **the Land Disputes Courts Act**, Cap 216 R.E 2019.

Coming to the 3rd and 4th grounds of appeal which were argued jointly, the appellants' counsel told the court that the evidence of the respondent was not heavier than that of the appellants.

He stated further that if the court could have considered the CD submitted, they could have seen that it has no photos of some of the appellants and no eye witness who witnessed the appellants harvesting the said rice. He prayed for this court to re evaluate the whole evidence and come up with its own decision.

Lastly, he prayed for the appeal to be allowed and the decision of the trial court be quashed and set aside.

Responding to these grounds, Mr Msumi stated that, the respondent did discharge his duties as per the Section 110 (1) of TEA as is evidence was heavier than that of the appellants. He prayed for the appeal to be dismissed with costs for want of merit.

In brief rejoinder, the appellant reiterated what was already submitted in his submission in chief and added that there was no proof that the appellants were called to the meeting when the respondents visited locus in quo and the said meeting did not prove that the harvested rice belong to the respondent herein.

Having carefully considered the rival arguments advanced by the counsel for the parties and after having examined the record of appeal before this court, the main issue to be considered is **whether the appeal by the appellant is meritorious.**

This court upon going through the grounds of appeal noted that the appellants are challenging the evaluation of evidence and consideration of exhibits tendered at the trial court. Therefore, all the grounds will be determined jointly. It is worth noting that this being the first appellate court it is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny. See the case of **Makubi Dogani vs. Ngodongo Maganga**, Civil Appeal No. 78 of 2019 (CAT - Unreported).

The same position was observed by the Court of Appeal of Tanzania in the case of **Philipo Joseph Lukonde vs. Faraji Ally Saidi,** Civil Appeal No. 74/2019 (CAT – Dodoma Unreported) where it was held that:

"This being a first appeal, this Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusions."

In determining this appeal as to whether the appellant presented a good case before the trial tribunal this court will focus on the evidence adduced by the appellant before the trial court.

At the trial court the respondent testified that on 19/04/2020 three people went to harvest rice at his farm claiming that they were ordered by their father after he won the case.

He went on to inform the ward Executive Officer who also informed him that he has to stop harvesting the farm as the appellants won the case, he went to report the matter at the OCS's office, but he was arrested and be locked up for four days.

Later on, he went to report the matter to DC's office, and he decided to visit his farm with "kamati ya Ulinzi na Usalama" on 12/05/2020 but the appellant did not show up and he was advised to file a civil suit. His evidence was supported with that of PW2 and PW3 (Land Officer) who went at the locus in quo and stated further that on 11/05/2020 when they had a meeting with District Commissioner (DC)

the 1st appellant and his son were present and admitted harvesting 170 bags of rice.

On his side, the appellants denied the claim and the 1st appellant stated that they harvested on their own farms and that there is no farm in dispute as she won the case against Elias Charles, but she sold the same to the respondent herein. They also submitted different decisions of the DLHT and the High Court of Mwanza to proof their ownership and testified that the respondent is just a trespasser to her farm.

It is a trite law that the burden of proof in a civil case lies with the one who alleges must proof, See Section 110 of the TEA. Further to that in **Anthony M. Masanga vs Penina (Mama Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (CAT-Unreported) it was held that: -

> "*Let's begin by re-emphasizing the ever-cherished principle of law that generally, in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of sections 110 and 111 of the Law of Evidence Act, Cap. 6 Revised Edition, 2002.*"

Again this was elaborated to the case of **Barelia Karangirangi vrs Asteria Nyalwamba** in Civil appeal no 237 of 2017 Court of Appeal at Mwanza.

Having examined the evidence and made my own evaluation, I am again inclined to agree with the trial court that the evidence submitted by the respondent was heavier than that of the appellants that the respondent discharge his burden of proof to his claim. This is according to the evidence given and for the reason that the 1st appellant did admit that there was a dispute over the said farm with Elias Charles, but he won the case, so his success to the said case, did not gave him power to harvest the rice which is not his.

She submitted further that when she won the case the farm was already sold to the respondent who grows rice on the said farm. Being aggrieved he went to harvest the said rice claiming that the farm belong to him, so with the rice therein. That alone was admission on his part.

After evaluation of the evidence above, this court is of the view that the trial court's decision is to be left undisturbed as its decision based on the evidence submitted by both parties and all the exhibits tendered were considered by this court to find that respondent succeeded to prove his claim.

In upshot vent, I am of the considered view that the appellants' appeal is devoid of merit, and I entirely dismiss it with costs.

It is so ordered.

DATED at **SHINYANGA** this 21st day of April 2023.

R.B. MASSAM
JUDGE
21/4/2023