

**IN THE HIGH COURT OF TANZANIA**  
**(SUMBAWANGA DISTRICT REGISTRY)**

**AT SUMBAWANGA**

**LAND APPEAL NO. 03 OF 2023**

*(Originated from the District House and Housing Tribunal for Rukwa at Sumbawanga  
in Application No. 15/2022)*

**ALONI MWAMAKULA.....APPELLANT**

**VERSUS**

**MENILADI MILUNGA.....RESPONDENT**

**JUDGMENT**

*18<sup>th</sup> & 22<sup>nd</sup> March, 2024*

**MRISHA, J.**

Before this court is a memorandum of appeal containing five grounds of appeal upon which the appellant **Aloni Mwamakula** has invited the court to consider, allow his appeal with costs, quash the judgment of the District Land and Housing Tribunal for Rukwa at Sumbawanga (trial tribunal) and set aside the orders passed thereto.

The appeal has been preferred to this court by the abovenamed appellant following the decision of the trial tribunal which was handled down on 28<sup>th</sup> November, 2022 in favour of the respondent one **Meniladi**

**Milunga.** According to the appellant the learned trial chairperson of the trial tribunal erred in law and fact due to the fact that first, she used the evidence of one Obadi Unyese who did not testify before the trial tribunal; hence, occasioned a miscarriage of justice.

His second complaint is that the learned trial chairperson misdirected herself for failure to use the evidence of one Robert Kiberiti (SM2) who is the seller of the disputed land, instead she used the evidence of one Silivery Hassan (SU2), the heir of the late Deus Kiberiti who is not concerned with the seller of disputed land.

In his third complaint, the appellant faulted the learned trial chairperson for her failure to admit the appellant's documentary evidence to wit; a sale agreement of the disputed land despite being presented before the trial tribunal, instead she admitted the documentary evidence of tendered by another person which Robert Kiberiti could not have a chance to comment.

Fourthly, the appellant has complained that the learned chairperson was biased in her decision as she prevented the appellant's witness who drafted the sale agreement to testify before the trial tribunal despite the fact that the said witness attended before the trial tribunal.

The fifth complaint as can be gleaned from the appellant's memorandum of appeal, is that the learned trial chairperson erred in law and fact to order the appellant not to maintain his maize crops which he had planted in the nine (9) acres piece of land, instead the respondent was allowed to benefit.

When the appeal was called on for hearing, neither the appellant nor the respondent was represented by an advocate. Hence, each of them presented his case by making oral submissions before the court. Practically, it was the appellant who began to make his submission in chief in respect of the above grounds of appeal, then the respondent.

It was his submission that a person called Obedi Unyese (SM2) did not testify for him before the trial tribunal and he was not called by him. He also submitted that the document which was drafted at the disputed land bear the names of eighteen (18) witnesses, but only three (3) witnesses testified before the trial tribunal.

The appellant further submitted that Robert Kiberiti is the one who sold the disputed land to him, but he did not appear before the trial tribunal to testify about the sale agreement.

Having made the above brief submission, the appellant adopted his grounds of appeal to form part of his submission in chief and prayed to

the court to allow his appeal, quash the decision of the trial tribunal and set aside the orders passed thereto.

On the other side, the respondent disputed his counterpart's submission in chief arguing that he purchased the disputed land from Robert Kiberiti since 05.05.2020 in presence of the latter's relatives. He added that the disputed land contain seven (7) acres and he has been using it since then.

In winding up, the respondent prayed to adopt his reply to the memorandum of appeal in order to form part of his submission in chief and concluded by imploring the court to dismiss the instant appeal with costs for want of merits.

I have read and considered the above rival submissions made by the parties in light with the grounds of appeal as well as the records and the impugned judgment of the trial tribunal. The issue for determination is whether the present appeal has merits.

Before I determine that issue, however, I find it important to lay a foundation of my discussion by referring to some authorities relevant to the present case. The first one is based on the principle that, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, he must prove

that those facts exist. That is provided under section 110 of the Evidence Act, Cap 6 [R.E 2022].

In the case of **Paulina Samson Ndawanya vs Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (CAT at Mwanza, unreported), the Apex Court of the land expounded the above principle by stating that:

*"It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, Cap. 6 [R.E 2002]. It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved."* [Emphasis supplied].

Again, the second principle is that it is the duty of the trial court to evaluate the evidence of each witness in a case before it as well as the credibility of that witness and make a finding on the contested facts in issue; see **Stanlaus Rugaba Kasusura and Another vs Pires Kabuye** [1982] TLR 338.

The above authorities are apt for the determination of the instant appeal because my careful reading of the records and the impugned judgment of the trial tribunal, reveals that the fact in issue contested by the



parties was on the ownership of the disputed land located at Swaila Village, within Nkasi District in Rukwa region.

In the circumstance, it was incumbent upon the trial tribunal to evaluate the evidence and assess the credibility of each witness before making its finding on the contested issues. It was also the duty of the trial tribunal to find out whether the appellant had discharged his duty of proving his claim over the disputed land on required the standard, as stated above.

On my part, having gone through the records as well as the typed judgment of the trial tribunal, I am of the settled view that the Hon. Learned trial chairperson properly considered the above principles of law before finding in favour of the respondent. Hence, I cannot fault the findings of the trial tribunal. I will clarify hereunder.

The records of the trial tribunal depict that in the course of his testimony, the appellant who stood as SM1 while his sole witness one Obadi Unyese, testified as SM2, told the trial tribunal that the disputed land is his because he purchased it from one Robert Kibiriti in 2020 as it is shown at page 2 of the trial tribunal typed proceedings.

However, his evidence went opposite to the one adduced by SM2 who testified that he is the one who sold the disputed land to the appellant. It is due to such variation of evidence, that the learned trial chairperson

(as it appears at page 5 to 6 of the typed impugned judgment) found that the credibility of the appellant and his sole witness was wanting and goes to the root of the appellant's case compared to the evidence of the respondent whose evidence, the learned chairperson found to be credible and water tight as it was well corroborated by all his three witnesses.

It is also on record that having detected the above evidential discrepancy, the learned trial chairperson found that the respondent's evidence was heavier than that of the appellant. Her findings based on the principle of law that the party whose evidence is heavier than the other is the one who deserves to be declared the winner in civil cases, as it was stated in the case of **Hemed Saidi vs Mohamed Mbilu** [1984] TLR 113.

Back to the complaints raised by the appellant, it is my strong opinion that the same are devoid of merits first it is not true that a person called Obadi Unyese (SM2) did not testify before the trial tribunal. This is because at page 4 of the typed records of the trial tribunal, it is shown that a person who testified as the appellant's second witness was, Obadi Unyese. Hence, there was no any miscarriage of justice as the appellant

would like the court to find. Hence, the foregoing makes the first ground of appeal to crumble.

Secondly, the allegation that the learned chairperson misdirected herself for failure to use the evidence of one Robert Kiberiti who according to the appellant testified as SM2, is baseless because as I have pointed hereinabove, the typed records of the trial tribunal are glaring that a person who testified before the trial tribunal as SM2 (the appellant/plaintiff's second witness), was Obadi Unyese. Hence, I also find the second ground of appeal to be unmerited and dismiss it accordingly.

Coming to the third complaint that the learned trial chairperson erred in law and fact for her failure to admit the appellant's exhibit to wit: sale agreement of the disputed land, I am also unable to find any merit in such complaint because looking on the typed records of the trial tribunal, it appears that despite claiming to have purchased the disputed land from one Robert Kiberiti, a fact which as I have alluded earlier, was not corroborated by his sole witness, the appellant did not make any prayer to tender the alleged sale agreement for it to be admitted as an exhibit by the trial tribunal.

Nor is there any indication that after making such prayer, the Hon. Learned trial chairperson made an order dismissing the appellant's



prayer in respect of such documentary evidence. Also, having revisited the typed records of the trial tribunal, I have failed to come across any documentary evidence tendered by the respondent and admitted by the trial tribunal as exhibit. Had there been any, then such records would make it obvious. Thus, owing to the above reasons, I am constrained to find that the third ground of appeal is without merits.

Besides, through his fourth ground of appeal, the appellant has alleged that his witness was prevented by the learned trial chairperson to testify for him. However, he has not disclosed the name of such witness neither in the fourth ground, nor in the course of making his submission in chief before the court, thus making it difficult for the court to ascertain the truth behind his complaint.

Nevertheless, even the typed records of the trial tribunal are silent whether it is actually true that the appellant's witness was prevented from testifying before the trial tribunal. The only truth to be obtained from those records is that after completion of evidence by the appellant's witness, the appellant categorically informed the said land dispute court that he had no more witnesses to call and prayed to close his case. That is shown at page 4 of the trial tribunal's typed records. It

is due to those reasons that I also find no merit in the fourth ground of appeal.

The last complaint raised by the appellant in his fifth ground of appeal is that he was ordered not to maintain his crops which he had planted in the nine (9) acres piece of land. This complaint cannot detain me much because there is nowhere in the records of the trial tribunal it is shown that the learned trial chairperson made any injunction order restraining the appellant from maintaining what he has regarded as his land. Hence, I dismiss the fifth ground of appeal for want of merits.

In the upshot, I hold and find that the present appeal has no merits. It is therefore, dismissed with costs while the decision of the trial tribunal is upheld.

It is so ordered.

  
**A.A. MRISHA**  
**JUDGE**  
**22.03.2024**

**DATED** at **SUMBAWANGA** this 22<sup>nd</sup> day of March, 2024.



  
**A.A. MRISHA**  
**JUDGE**  
**22.03.2024**