

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SONGEA SUB-REGISTRY**

**(LAND DIVISION)**

**AT SONGEA**

**LAND APPEAL NO. 516/2024**

*(Originating from the decision of the District Land and Housing Tribunal for Songea at Songea in Land Application No. 25 of 2020)*

**SAMWELI SILVESTER PONERA ..... APPELLANT**

**VERSUS**

**ATHUMANI MNGOMELA NCHIMBI ..... 1<sup>ST</sup> RESPONDENT**

**HASSAN ATHUMANI NCHIMBI ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

Date of last Order: 19/03/2024

Date of Judgment: 16/04/2024

**U. E. Madeha, J.**

To begin with, Samwel Silvester Ponera (Appellant) filed an application before the District Land and Housing Tribunal for Songea requesting to be declared the lawful owner of a four-and-a-half-acres plot of land located at Mwekela "B" area within Ligera Village and Namtumbo District which the first Respondent was using, claiming to have rented from the second Respondent. He also prayed for the

declaration that the Respondents are trespassers and they must pay the costs of the suit.

After full trial, the trial Tribunal found the Appellant has failed to prove his claims and declared that the Respondent are not trespassers in the disputed land and the Appellant was ordered to pay the costs. Dissatisfied with the decision of the trial Tribunal, the Appellant filed this appeal on the following grounds of complain:

- 1. That, the trial Tribunal erred in law and in fact by deciding the matter before it without considering the weight of evidence given by the Appellant and his witnesses.*
- 2. That, the trial Tribunal erred in law and in fact by deciding the matter brought before it in favour of the second Respondent and ordering that the disputed land measuring 4½ acres belongs to the second Respondent regardless to the fact that in his written statement of defence the second Respondent stated that he was given only two acres of land by Ligera Village Government.*
- 3. That, the trial Tribunal erred in law and in fact by deciding the dispute before it without considering the principle of adverse possession.*

*4. That, the trial Tribunal erred in law and in fact in holding that the Appellant failed to call his father as a witness who has died without proof of his sickness.*

Briefly, the evidence adduced by the parties before the trial Tribunal are as follows: the Appellant who was the Applicant (PW1) told the trial Tribunal that the Respondent has invaded his 4.5 acres of land and cut ninety-nine trees. He reported the incident to the Ward Executive Officer at Ligera Ward whereby the first Respondent (Athumani Mngomela Nchimbi) stated that the disputed land was given to him by the second Respondent (Hassan Athumani Nchimbi). The Ward Executive Officer wrote a letter prohibiting the first Respondent from using the disputed land but that order was ignored. A letter written by Ligera Ward Executive Officer on 09<sup>th</sup> December, 2019 prohibiting the first Respondent from using the disputed land was admitted and received by the trial Tribunal as exhibit SP1.

Following the disobedience of the order given by the Ward Executive Officer, he reported the matter at the Police Station where he was advised to seek an assistance from an advocate and refer the matter before the trial Tribunal. Apart from that testimony, the Appellant tendered a copy of judgment from the trial Tribunal which was decided

in 2012, was pronounced in his favour in 2012 between him and another person known by the name of Yusuph Milanzi.

Boniventura Silvester Ponera (PW2) who was the only witness called by the Appellant stated that, he saw the first Respondent trespassing into the Appellant's farm by cutting trees and the Appellant reported to the Ward Executive Officer who restrained the first Respondent from using the land. However, the first Respondent defied and continued to use it. Then the Ward Executive Officer advised the Appellant to report the matter at the Police Station where he was advised to seek for advice from an advocate. The advocate advised him to file a complaint before the trial Tribunal.

In his testimony, the first Respondent told the trial Tribunal that the claims made by the Appellant are not correct since he is not the rightful owner of the disputed land and he is using it after renting from the second Respondent. The second Respondent in his testimony stated that, he was given the disputed land by Ligera Village Government in 1990. He was given two acres to build a house. He also added that, the disputed land is bordered by Yusuph Milanzi on the Eastern side, Shabani Mligo on the Western side, the main road on the Northern side and Boniventura Ponera on the Southern side. He testified

further that, he has built three houses which he has rented and the first Respondent is among his tenants. The Appellant has been causing disturbances to his tenants and on several occasions, they reported to the Village Government on the disturbance.

The testimony given by the Appellant were collaborated by Alfred Petro Luaga and John Edmund Luena who stated that the disputed land was given to the Appellant by Ligera Village Government in 1990 and he built houses on it. The disputed land previously was owned by Said Kadeweile who was a ten cell leader during colonial era.

From the testimony given by the parties, the trial Tribunal found the Appellant (Applicant) has failed to prove his claims and declared that the Respondents are not trespassers on the disputed area and the Appellant was ordered to pay costs of the application.

In this appeal, both parties had no legal representation, they appeared in person. Submitting in support of his appeal, the Appellant contended that, the trial Tribunal erred in law and in fact in declaring the Respondents to be not trespassers on the disputed land. He added that his evidence was strong enough to prove that he is the owner of the disputed land. He submitted further that he was surprised to find the trial Tribunal declaring the second Respondent to be the lawful owner of

the disputed land since in his written statement of defence and the testimony given in support of his case before the trial Tribunal shows that he owns only two acres and not 4.5 acres. He also averred that, the trial Tribunal erred in law and in fact in deciding the matter in favour of the second Respondent basing on the reason that if the Appellant was given the disputed land by his father why he failed to call him and to prove such allegations since he was alive when the application was heard before the trial Tribunal. Lastly, he prayed for this appeal to be allowed and the Respondents be ordered to pay costs.

In his submission, the Respondent contended that what has been stated by the Appellant is not correct since the disputed land was given to him by Ligera Village Government in 1990 and he has built a house on it. He prayed for this appeal to be dismissed and the Appellant be ordered to pay the costs.

Having gone through the grounds of appeal, the judgment and the decree of the trial Tribunal, the submissions made by both parties in this appeal, for the reasons which will be revealed out later, this Court will begin by responding the second ground of the appeal. In the second ground of appeal the Appellant has stated that the trial Tribunal erred in deciding that the area in dispute which is four and a half acres in size is

the property of the second Respondent despite the fact that in his written statement of defence and testimonies the second Respondent stated that the Village Government gave him only two acres.

Also, this Court having made perusal on the original records and found that, in reaching its decision the trial Tribunal had three issues. The first issue who is the lawful owner of the disputed land and the second was who is the trespasser in the disputed land and the third issue was on relief(s) to be granted. In its decisions, the trial Tribunal state that; the Appellant who was the Applicant before the trial Tribunal is not the owner of the disputed land which has a size of four and a half acres. The trial Tribunal also declared that the Respondents are not trespassers in the disputed area and ordered the Appellant to pay costs.

In this appeal; the Appellant contests the decisions and orders issued by the trial Tribunal that the Respondents are not trespassers in the disputed land, that is; they are the lawful owners of that land despite the fact that in his testimony, the second Respondent stated that he owns only two acres which was given to him by Ligera Village Government. In into its decision, the trial Tribunal stated that:-

*"... and also, the testimony given by the second Respondent has proved that the disputed land was*

*allocated to him by Liger Village Government in 1990.  
Basing on that testimony, this Tribunal finds the  
Respondents are not trespassers in the disputed land”.*

As far as I am concerned; and having gone through the judgment and the written statement of defence submitted by the second Respondent before the trial Tribunal, this Court concurs with the Appellant's argument that the second Respondent stated that he was given only two acre of land which he owns. The trial Tribunal's decision that the Respondents are not trespassers in the disputed land and that the Appellant (Applicant) has failed to prove his claims, means the disputed land of four and a half acres is the legal property of the second Respondent despite the fact that, the second Respondent owns a land of only two acres as stated in his written statement of defence and testimonies given before the trial Tribunal during trial. It is a trite law that, reliefs are granted based on the prayers made in the pleadings that are filed in Court or Tribunal and after being proved by evidence. See the case of **Bachhaj Nahar vs. Nilima Mandal & Co.**, Civil Appeal No. 5798 – 5799 of 2008 (Supreme Court of India) and **Melchiades John Mwenda vs. Gizelle Mbaga (Administrator of the Estate of John Japhet Mbaga) and Two Companions**, Civil Appeal No. 57 of 2018,

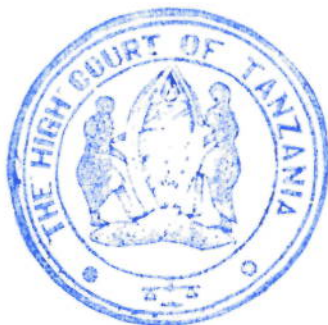
where the Court clearly stated that, Courts grants reliefs that are prayed by the parties.

Also, this legal position was given in the case of **James Funke Gwagilo vs. Attorney General** [2004] T.L.R 161 and **Hotel Travertine Limited & Two Others vs. National Bank of Commerce** [2006] T.L.R 133.

Finally, it is the view of this Court that the orders given by the trial Tribunal that the Appellant has not proved his application and the Respondents are not trespassers in the disputed land was not correct since the trial Tribunal failed to take into consideration that the second Respondent claimed to be the owner of only two acres. Thus, this Court finds the orders given by the trial Tribunal was not correct.

Therefore, this appeal is partly allowed. The original records are to be remitted back to the trial Tribunal for the trial Chairman to prepare another judgment after taking into consideration the written statement of defence filed by the second Respondent and his evidence on the size of the land. Each party to bear its costs. It is so ordered.

**DATED** and **DELIVERED** at **SONGEA** this 16<sup>th</sup> day of April, 2024.



  
**U. E. MADEHA**

**JUDGE**

**16/04/2024**

**COURT:** Judgment is read over in the presence of the Appellant and the Respondents. Right of appeal is explained.



  
**U. E. MADEHA**

**JUDGE**

**16/04/2024**