

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB – REGISTRY OF MANYARA
AT BABATI**

LAND APPEAL NO. 531505 OF 2023

(Arising from District Land and Housing Tribunal for Simanjiro in Application No. 24 of 2020)

TARAKWA SINDIYO FIRST APPELLANT

SEURI TARAKWASECOND APPELLANT

VERSUS

VICENT CHARLES MATARI.....FIRST RESPONDENT

DAUDI WAPISECOND RESPONDENT

JUDGMENT

6th March and 19th April 2024

MIRINDO, J.:

The second respondent, Daudi Wapi, a one-time resident of Korongo Tatu *Kitongoji* in Oljoro Village No 5, Simanjiro District sold twenty acres of land to Vicent Charles Matari on 26th January 2010, and later went to live at Luguru in Kilindi District. In 2014 when the first respondent, Vicent Charles Matari, attempted to cultivate that plot, he was prevented by the first appellant, Tarakwa Sindiyo and his son, Seuri Tarakwa, the second appellant. After unsuccessful attempts to resolve the dispute through village authorities, the first respondent instituted a land dispute before Simanjiro District Land and Housing Tribunal.

His main prayers were that he should be declared the lawful owner of the suit land, the appellants be declared trespassers to the suit land and be evicted from there. At the conclusion of the trial, two assessors were of the opinion that the suit land belonged to the first appellant. The first assessor conclusion was based on the fact that the sale price between Daudi Wapi and Vicent Charles was doubtful. The second assessor was of the view that the first appellant had proved his ownership of the suit land while Daudi Wapi failed to do so. The Chairman disagreed with the assessors and held in favour of the first respondent.

Tarakwa Sindiyo and Seuri Tarakwa were dissatisfied with the decision of Simanjiro Tribunal and has appealed to this Court on two grounds. Their main complaints are that the case was not proved on the balance of probabilities and there was no evidence that the suit land belonged to Daudi Wapi before he sold it to Vicent Charles Matari. The learned Advocate, Mr Abdallah Kilobwa argued the appeal on behalf of the appellants while the first respondent was represented by Mr Tadey Lister, learned Advocate. The second respondent appeared in person.

Mr Kilobwa, learned Advocate argued that had the Tribunal considered the exhibit indicating that the suit land was granted to Tarakwa Sindiyo by Oljoro Village No. 5, it would have held in favour of Tarakwa Sindiyo. In a second point of complaint, Mr Kilobwa, learned Advocate, argued that there was no evidence of how Daudi Wapi obtained the plot he sold to Vicent Charles Matari. The learned Advocate, Mr Lister responded that there was no doubt that Daudi Wapi

owned plots and even though he did not produce documentary evidence to prove this fact, there was sufficient oral evidence to prove it. Mr Lister, learned advocate, argued that Tarakwa Sindiyo either does not know the plot given to him by the Village Council or intentionally left the plot he was given and decided to invade the plot of Daudi Wapi. The learned advocate noted that it was not disputed that the appellants, the second respondent, and the appellant's fourth witness for the first appellant are relatives. Each of these persons admitted that Daudi Wapi arrived at Korongo Tatu before them. For this reason, Mr Lister argued that it is probable that Daudi Wapi was given the suit land before the appellants. The learned Advocate concluded that Tarakwa Sindiyo does not know the size of the plot allocated to him by the Village Council something which suggests the suit land once belonged to Daudi Wapi.

In answering these points of complaint, it is important to revisit the evidence adduced before the trial tribunal. At the trial it was established that Daudi Wapi, the second respondent, was once a resident of Korongo Tatu in Oljoro No. 5 Village in Simanjiro District and owned certain acres of land and was there prior to the arrival of his relatives, Tarakwa Sindiyo and his son Seuri Tarakwa. Also established is the fact that Tarakwa Sindiyo was granted unspecified acres of land by the Village Council in 2006.

Was the plot sold by Daudi Wapi to Vicent Charles Matari the one that was allocated to Tarakwa Sindiyo in 2006?

According to Tarakwa Sindiyo it was his plot land that was sold by Daudi Wapi. However, there is some evidence from two witnesses for the respondents who were village leaders at the time of the sale of the suit land that Tarakwa Sindiyo was granted a plot, which he still owns, in a place called "Mapilau." That evidence came from the former Oljoro Village No 5 Village Executive Officer, Mr Piniel Mollel, and Korongo Tatu Kitongoji Chairman, Mr Lamayani Ndoikai Mollel. This evidence was corroborated by the testimony of Kisili Sindiyo, a ten-cell leader and younger brother of Tarakwa Sindiyo. This evidence remains unchallenged. In his testimony, Tarakwa Sindiyo stated that he acquired ownership of the suit land in 2006 but made no reference to the plot in the Mapilau area. His real complaint was that the sale was problematic because village authorities were not consulted. This complaint was re-echoed by his witness, Salehe Saigolo, the Kitongoji Chairman at the time of this suit who was neither a chairman at the time of the sale nor knew the size of the suit land.

Once the applicant had discharged its burden on the preponderance of probabilities that Tarakwa Sindiyo was granted a plot at Mapilau which is different from the suit land, it was incumbent upon Tarakwa Sindiyo to disprove such fact.

Also clear is that the dispute regarding the suit land arose after Daudi Wapi sold it to Charles Vicent Matari and left for Kilindi District. That this was so, is clear from the evidence of Tarakwa himself whose evidence was corroborated by

the evidence of his younger brother Kisili Sindiyo. Once it is clear that the suit land was in possession of Daudi Wapi, the provisions of section 119 of the Evidence Act [Cap 6 RE 2109] cast the burden on Tarakwa Sindiyo of proving that Daudi Wapi was not the owner of the of the suit land. Section 119 enacts the principle that possession is prima facie evidence of title. This principle, originating from the common law, has been expressed by Sarkar, SC in *Sarkar Law of Evidence in India, Pakistan, Bangladesh, Burma, Ceylon, Malaysia and Singapore*, Malaysia Edition, Vol. 2, Lexis Nexis Malaysia Sdn Bhd, 2016 at page 2546:

The person in possession starts with a presumption of title in his favour, and the maxim, *presumitur retro* applies, and it is, therefore, for the other side to show, not only that the former's possession is not evidence of his title, but that the latter has a superior title...

This presumption has not been rebutted by Tarakwa Sindiyo.

The learned Advocate, Mr Kilobwa, contended that the sale agreement between Daudi Wapi and Vicent Charles was dubious. The agreement was doubtful for the following reasons. First, the price of three hundred million was too high. For 2010, it was not easy to sell the piece of land with that price. Secondly the agreement was not signed by the purchaser, Vicent Chales Matari. Thirdly, the four witnesses of the buyer to the agreement did not sign it. The fourth reason is that among the four witnesses of the seller: two did not sign.

Under these circumstances, it was wrong for the Tribunal to take into account that doubtful agreement. In response, Mr Lister, learned Advocate pointed out that the defects in the sale agreement are irrelevant given that there is no dispute about the sale between Daudi Wapi and Vicent Charles Matari. The learned Advocate argued that even if the written agreement were to be excluded, there was sufficient oral evidence to support the sale.

I find Mr Kilobwa's argument attractive but given the finding that Daudi Wapi being the owner of the suit land capable of disposing it, and that the current dispute is not between the buyer and seller; the argument is beside the point.

For the reasons given above, this appeal stands dismissed with costs.

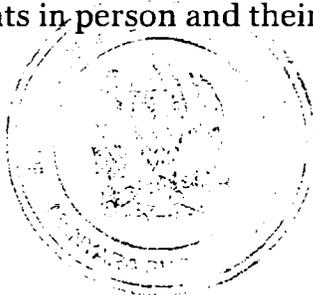
DATED at BABATI this 2nd day of April, 2024



F.M. MIRINDO

JUDGE

Court: Judgment delivered this 19th day of April, 2024 in the presence of the appellants in person, their advocates Abdallah Kilobwa and in the presence of the respondents in person and their advocate Fides Mwenda.



F.M. MIRINDO

JUDGE

19/4/2024