IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION - DAR ES SALAAM)
AT MOROGORO

LAND APPEAL NO. 119 OF 2021

(Arising from the Judgment and Decree of the District Land and Housing Tribunal for Ulanga, at Malinyi in Land Application No. 11 of 2020)

KRISTO SEMBERA.....1ST APPELLANT

KAMILA MMANGA.....2ND APPELLANT

VERSUS

ATELA ITEKA.....RESPONDENT

JUDGMENT

4th Nov, 2022

CHABA, J.

In this appeal, the appellants, Kristo Sembera and Kamila Mmanga were the respondents in Land Application No. 11 of 2020 before the District Land and Housing Tribunal for Ulanga, at Mahenge (the trial tribunal). Dissatisfied with the decision of the trial tribunal, they appealed before this Court. In their memorandum of appeal, the appellants raised four (4) grounds of appeal, to wit: -

1. *That, the trial tribunal erred in law and facts for dealing with the case where the second appellant had no locus stand to prosecute the matter,*
2. *That, the trial tribunal erred in law and facts for disregarding the sale agreement between the 1st Appellant which was presented before it, henceforth it deprived the 1st Appellant's right to own the said disputed land,*

3. *That, the tribunal erred in law and facts to believe and adjudicate in favour of Respondent who was not the owner of the disputed land in whatever manner as well who did not proof her ownership,*

4. *That, the trial tribunal erred in law and facts for failure to evaluate, analyze and assess the evidence adduced before the tribunal henceforth came with wrong decision basing on the respondent's vague and contradictory evidence.*

In summary, the matter arose in this way: Before the District Land and Housing Tribunal for Ulanga at Mahenge, the respondent (Ateka Iteka) instituted Land Application No. 11 of 2020 praying for the following orders: **One;** She be declared as a lawful owner of the land in dispute, **Two;** Payments of general damages amounting to TZS. 3,000,000/= being compensation for trespass over her land in dispute, **Three;** Payments of TZS. 1,000,000/= being compensation for disturbance, and **Four;** Costs of the suit and any other reliefs the tribunal thinks fit to grant.

It was the respondent's contention that her late father, Samson Simon Mpankule during his lifetime bequeathed the disputed land to her in the year 1984 and untimely passed away in 2001. According to the record, the disputed land is measured two (2) acres or more and it is located at Ujiji area within Uponera Village in Ulanga District within Morogoro Region. According to the record, the dispute arose in the year 2011 when the 1st appellant herein trespassed over her land and claimed for ownership over the disputed land. Her testimony was corroborated by the evidence of her neighbors, Agatangelus Prosper Mdai (SM.2), and Tarsis Tarsis Liguluka

(SM.3).

On their part, the 1st appellant claimed that he bought the disputed land from the 2nd appellant herein for the price of TZS. 3,000,000/= in the year 2004. Although the sale transactions took place in the office of Uponera Village, but the 1st appellant herein did not tender the said sale agreement to prove his allegation and ownership as well. On the other hand, the 2nd appellant claimed that the disputed land belonged to her late father, Faustine Petro Mmanga who passed away in 1993. In the meantime, she is claiming that she is the lawful owner of the farm in dispute. It is on record that in 2012 she sold the farm/land in dispute to the 1st appellant. Believing that her land was trespassed by the 1st and 2nd appellants, the respondent herein instituted a land case before the trial tribunal against them claiming for her rights.

After a full hearing, the trial tribunal ruled in favour of the respondent and declared her a winner and a lawful owner of the land in dispute and she was awarded the costs of the suit. As hinted above, the appellants / defendants were unhappy, hence this appeal.

At the hearing of this appeal, Mr. Thadeus Ernest Niragila, learned counsel appeared for the appellants, while Mr. Mandela Kisawani, learned counsel entered appearance for the respondent. With the parties' consensus, the matter was disposed of by way of written submissions. Both parties filed their respective written submissions as per Court's scheduled orders.

Arguing in support of the first ground, Mr. Niragira submitted that the 2nd appellant / 2nd respondent had no *locus standi* to sue or to be sued as she was a mere beneficiary, thus she was neither the owner nor possessor of the letter of administration. On the other hand, the respondent / applicant sued the 2nd appellant in her own capacity as a beneficiary of the disputed land, as vividly demonstrated throughout in the trial proceedings. The counsel submitted that, on page 6 of the typed judgment, the record reflects that: - *"..... mjibu maombi wa pili (SU-2) ambaye ndiye alikuwa muuzaji, katika ushahidi wake alilieleza Baraza hili kuwa ardhi bishaniwa ni mali ya baba yake FAUSTINE PETRO MMANGA ambaye alifariki 1993...."*. He submitted that, since the trial tribunal entertained the matter, yet the 2nd appellant had no *locus standi*, this was a serious irregularity that went to the root of the matter and it occasioned grave injustice. To reinforce his argument, the counsel cited the case of **Lujuna Shubi Balonzi Vs. Registered Trustees of Chama Cha Mapindizi** [1996] TLR 203, wherein the Court stated that: -

> *"According to the law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the Court has power to determine the issue but also that he is entitled to bring the matter before the court..."*

He further referred this Court to the case of **Petro Zabron Sinda & Another Vs. Zabron Mwita,** Civil Case No. 176 of 2017, (unreported) wherein this Court (Mruke, J.) while reflecting on the finding of the Court in

the case of **Lujuna Shubi Balonzi,** had the following to say: -

> *"even though the plaintiffs are beneficiaries, were supposed to have important requisite as provided in the laws of administration of an estate. In order to have locus standi before such institution, the plaintiffs were first to be appointed as administrators of their late mother's estate".*

He accentuated that, it was irregular for the respondent herein to sue the appellants without joining the administrator of the estates to avoid multiplicity of disputes over the same. He said, section 100 of the Probate and Administration of Estates Act [CAP. 352 R. E, 2019] provides that, *an executor or administrator has the same power to sue in respect of all causes of action that survive the deceased.*

As regards to the 2nd and 3rd grounds, Mr. Niragira submitted that, the trial tribunal did not consider and evaluate all evidence adduced at trial. According to him, the trial tribunal refrained from addressing most of the issues and facts raised in trial. To strengthen his argument, he cited the authority of the case of **Hussein Idd & Another Vs. R,** [1986] TLR 166, where the Court observed that: - *"It was a serious misdirection on the part of the trial judge to deal with the prosecution evidence on its own and arrive at the conclusion".* Connecting the above holding with the present case, Mr. Niragira highlighted that, the trial tribunal disregarded the evidence adduced by the appellants' witness one Rashid Hussein Ngawagara as exhibited on pages 6 - 7 of the typed trial proceedings. To bolster his contention, the counsel referred this Court to the case of **Nkungu Vs. Mohamed (1984)**

TLR 46, R Vs. Mahuzi Zaidi (1969) H.C.D on page 249, and **Ndizu Ngasa Vs. Masisa Magasha [1999] TLR, 202.** All these cases emphasized that the Court has a duty to weigh, re-assess the evidence of the trial Court and adjudicate the matter based on the evidence adduced.

Regarding the 4th ground, Mr. Niragira contended that the trial tribunal erred in law and facts for failure to evaluate, analyze and assess the evidence adduced before the tribunal and henceforth came with the wrong decision based on the respondent's vague and contradictory evidence. To fortify his argument, he cited the case of **Mohamed Ramadhani Vs. R, [1972] H.C.D. 177.** He stated that, it is the legal principle from the Court of records that, the party's evidence has to be taken into consideration otherwise reasons for not taking the same into consideration must be provided. He further accentuated that, the trial tribunal made no analysis on the record and did not examine the same before reaching to its decision. Instead, it only summarized what every witness testified. He said, if the trial tribunal would have analyzed and examined the evidence before it, no doubt that the appellants would have declared as the lawful owners of the land in dispute. To buttress his contention, he cited the case of **Mzee Ally Mwinyimkuu @ Babu Seya Vs. R,** Criminal Appeal No. 499 of 2017, CAT at DSM (unreported) on page 22 wherein it quoted with approval the decision in the case of **Leonard Mwanashoka Vs. R**, Criminal Appeal No. 226 of 2014, and held *inter-alia* that: -

"It is one thing to summarize the evidence for both sides separately and another thing to subject the entire evidence to an objective evaluation in order to separate the chaff from the grain".

He concluded that, failure to consider their evidence it occasioned miscarriage of justice and certainly prejudiced the appellants. Based on the above submission, he prayed the Court to alter and reverse the decision of the trial tribunal of Ulanga, at Mahenge for being tainted with irregularities.

Responding to the appellant's submission, Mr. Kisawani submitted at lengthy. Starting with the 1st ground, he underlined that the same is misplaced for a reason that the 2nd appellant herein was not prosecuting at the trial tribunal, rather she was defending her case as she claimed that she was the owner and seller of the disputed plot. He further submitted that, it is undisputed fact that the 2nd appellant was not a lawful administratrix of the estate of the late Faustine Petro Mmanga as she had no letters of administration, thus cannot invoke the defence of locus standi. During proceedings before the trial tribunal, the 2nd appellant in her written statement of defense, averred that the suit land belongs to herself as she inherited from her late father. He stressed that, it is trite law that parties are bound by their own pleadings as it was underscored by the Court of Appeal of Tanzania in the case of **Barclays Bank (T) Ltd Vs. Jacob Muro**, Civil Appeal No. 357 of 2019 (unreported). He insisted that, the 2nd appellant cannot hide on the issue of locus standi at this stage because, she insisted

in her defence that she was a lawful owner of the disputed land. Thus, she is bound by her own pleadings. .

He went on submitting that, the case of **Lujuna Shubi Balozi and Petro Zabron Sinda** (supra) cited by the counsel for the appellants, is distinguishable and irrelevant due to the facts that, the two cases are insisting that the plaintiff or the applicant cannot commence the matter without substantiating their authority. But in this case, 2nd appellant was not an applicant but rather the respondent. In view of the above, Mr. Kisawani stated, the 1st ground must fail.

Responding to the 2nd ground, Mr. Kisawani contended that, the appellants' grievances is mainly based on the sale agreement whereby the main complaint is that the trial tribunal erred in law and facts for disregarding the sale agreement between the 1st and 2nd appellants which was presented before it, henceforth it deprived the 1st appellant's right to own the said disputed land. On this point. Mr. Kisawani strongly submitted that this ground is unmerited as the position of the law is that, document(s) not admitted in evidence shall not form part of the record. He stated that, it is undisputed fact that the said sale agreement was not tendered in evidence as an exhibit before the trial tribunal as clearly shown on page 5 of the typed judgment. To buttress his contention, he cited the case of **Japan International Cooperation Agency (JICA) Vs. Khaki Complex Limited**, Civil Appeal No. 107 of 2004 (unreported), where the Court of Appeal of Tanzania while reproducing Order XIII, Rules 4 (1) and 7 (1) &

(2) of the Civil Procedure Code [CAP. 33 R. E, 2019], it observed that, *"documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them".*

Relying on the above principle of law, Mr. Kisawani stressed that, the argument that, the sale agreement was tendered or presented before the trial tribunal is misplaced and uncalled for. Based on the above submission, he submitted that, the 2nd ground has no merit.

Arguing on the 3rd and 4th grounds of appeal, Mr. Kisawani argued that, at the trial tribunal all parties presented their testimonies and summoned their respective witnesses to build up their standpoints in Land Application No. 11 of 2020. On her part, the respondent explained how the disputed suit land related to her and she finally proved that she was the lawful owner. He submitted that, there is no valid ground to disturb and overturn the decision of the trial tribunal. The respondent's witnesses joined hands with the respondent on the historical occupation of the suit land. He cited the case of **Hemedi Said Vs. Mohamed Mbilu [1984] TLR, 113** which insists that the one with heavy evidence must win.

Mr. Kisawani accentuated further that, the law has been long settled that the Court should always be slow to disturb the long-term possession of the land as it was depicted by the respondent and her witnesses that she came into the possession of the disputed suit land in 1984 which is a period of 38 years now. Looking at this piece of evidence, it is clear from the testimonies of the appellants and their witnesses that, the same are full of

contradiction and inconsistencies on the date in which the 1st appellant bought the land in dispute from the 2nd appellant, i.e., 2004 as shown on page 5 of the typed judgment, whereas the 2nd appellant told the trial tribunal on page 6 of the same judgment that he sold the suit land to the 1st appellant in 2013. All these contradictions cast doubt. He continued to state that, these inconsistencies are grave and it goes to the root of the case on how the 1st appellant came into the possession and ownership of the said suit land. To back up his argument, the counsel cited the case of **Moshi Hamisi Kapwacha Vs. Republic,** Criminal Appeal No. 162 of 2011 (unreported), wherein the CAT sitting at Tabora while citing the case of **Mohamed Said Matula Vs. Republic,** [1995] TLR 3, held: -

> *"Where the consistencies by witnesses contains inconsistencies and contradictions, the Court has a duty to address the inconsistencies and try to resolve them where possible, else the Court has to decide whether the inconsistencies and contradictions are only minor, or* ***whether they go to the root of the matter"****. [Emphasis is mine].*

In conclusion, Mr. Kisawani emphasized that, there is no doubt that the trial tribunal summarized, examined, and assessed the evidence adduced by both parties and their witnesses during the trial and deliberated that the inconsistencies demonstrated by the appellants are grave and thus it was proper for the trial tribunal to declare the respondent as the lawful owner of the disputed land.

On the strength of the above submission, the learned counsel for the respondent prayed the Court to dismiss this appeal for being devoid of merits with costs.

In rejoinder, the learned counsel for the appellants had nothing to add from what he submitted in chief.

Having carefully reviewed the records of the trial tribunal and considered the rival submissions from both sides, the pertinent issue for determination is, whether this appeal has merit or not.

In this appeal, the appellants have accessed this Court seeking to impugn the decision of the District Land and Housing Tribunal for Ulanga, at Mahenge through a memorandum of appeal premised on four grounds of appeal. However, given the course I have taken in resolving the present appeal which does not call for a turn to and adopt them, I think in opinion that, it will be unjust if I will not commend them for the thorough research they made which have assisted me significantly in the determination of this appeal.

Hence, to determine the appeal, I find it apt to deal with the grounds of appeal in pattern. Commencing with the first ground of appeal, I had ample time of reviewing the trial tribunal's record and submissions from both sides. It is apparent from the trial tribunal's record that the 2nd appellant herein was not a prosecuting party at the trial, rather she was fending for her case. She asserted that, since she was the owner of the disputed plot, this is why she sold it to the 1st appellant. Again, it is

undisputed fact that the 2nd appellant was neither a lawful administratrix of the estates of the late Faustine Petro Mmanga, nor had the letters of administration to prove to that effect. As correctly submitted by Mr. Kisawani, at this stage the 2nd appellant cannot invoke the defence of lacking locus standi. Indeed, she is prevented to invoke such a defence. According to the trial tribunal's record, the 2nd appellant averred in her written statement of defense that, the disputed parcel of land belonged to herself as she inherited from her late father. Paragraphs 7 and 8 of the written statement of defence filed by the 2nd appellant (2nd respondent at trial) before the trial tribunal bears out that, I quote: -

> ***"7.*** *That, the contents of paragraph 7 (a) ii of the Applicant's application are strongly disputed and the applicant is put in strict proof thereof. However,* ***the Respondent state that the applicant is not the lawfully owner of the disputed land since the land in dispute belongs to 2nd respondent who inherit from her late father during their lifetime in the year 1980".***
>
> ***8.*** *That, the contents of paragraph 7 (a) iii of the Applicant's application are strongly disputed and the applicant is put in strict proof thereof.* ***However, the 2nd respondent states that the land in dispute was sold to the 1st respondent since the applicant was given the land in dispute by the 2nd respondent for temporary uses but the applicant refused to hand back the land to the 2nd respondent.*** *[Emphasis is mine].*

From the above excerpt of pleading averred by the 2nd appellant before the trial tribunal, she pleaded that the land in dispute did belong to herself

as she inherit it from her late father during his lifetime in the year 1980. She further pleaded that she gave the respondent (applicant at trial) temporarily to use it but she refused to hand over back to her. Based on the above facts pleaded by the 2nd applicant, no doubt that she was sued on her own capacity and not as an administratrix of the estates of her late father, Faustine Petro Mmanga. Her testimony before the trial tribunal reveals on page 7 of the typed judgment that, the disputed land belonged to her father.

> *"Mjibu maombi wa pili (SU-2) ambaye ndiye muuzaji, katika ushahidi wake alieleza baraza kuwa ardhi inayobishaniwa ni mali ya baba yake FAUSTINE PERTO MMANGA".*

With the above pieces of evidence, I subscribe to the submission advanced by the counsel for the respondent that, it is settled law that parties are bound by their own pleadings. In law, pleading means written presentation by a litigant in a law suit setting forth the facts upon which he/she claims legal relief or challenges the claims of his opponent. It includes claims and counter claim but not the evidence by which the litigant intends to prove his/her case. **(See: Pleading in law - Encyclopedia Britannica http://www.britannica.co. Topic).** Since the pleading is a basis upon which the claim is founded, it is settled law that, parties are bound by their own pleadings and that, any evidence produced by any of the parties which is not supportive or is at variance with what is stated in the pleadings must be ignored. However, parties' can only depart from their own pleadings where the Court grants leave to amend the requisite

pleadings. In similar vein, the trial Court/Tribunal is also bound by the pleadings of the parties. As such, the Court/Tribunal is precluded from entertaining any inquiry into the case before it, other than to adjudicate specific matters in dispute which the parties themselves have raised through pleadings.

This principle has been interpreted by the CAT in number of cases including **Barclays Bank (T) Ltd Vs. Jacob Muro**, Civil Appeal No. 357 of 2019 (unreported); **Salim Said Mtomekela Vs. Mohamed Abdallah Mohamed,** Civil Appeal No. 149 of 2019 (unreported); **James Funke Ngwagilo Vs. Attorney General [2004] TLR 161, Lawrence Surumbu Tara Vs. The Hon. Attorney General and 2 Others,** Civil Appeal No. 56 of 2012 (unreported); and **Charles Richard Kombe t/a Building Vs. Evarani Mtungi and 3 Others,** Civil Appeal No. 38 of 2012 (unreported), to mention a few.

Since, the evidence adduced by the 2nd appellant is not supportive and is at variance with what is stated in the pleadings, I thus ignored it. In my considered view, the 2nd appellant cannot hide under the umbrella of locus standi and left untouched. On this aspect, the 2nd appellant is bound by her own pleadings.

On further reviewing the records at trial, I noted that the 2nd appellant's age (Kamila Mnanga) is 45 years old whereas the respondent's age is 74 years old. The fact that, the 2nd appellant gave the respondent the disputed land temporary so that she can use it, but later on, she refused to hand it

over back to the 2nd appellant, in my view, this allegation is unsound and hard to bank on.

Coming to the 2nd ground of appeal, the appellants' complaint is that, the trial tribunal erred in law and facts for disregarding the sale agreement between the 1st appellant which was presented before it, henceforth it deprived the 1st appellant's right to own the said disputed land. I have carefully perused the record of the trial tribunal in particular the testimonies of DW.1, Kristo Sembela and SU.2/DW.2, Kamila Mmanga herein 1st and 2nd appellants. Honestly speaking, this ground of appeal cannot hold water. I say so because, the evidence of DW.1 and SU.2/DW.2 are silent as to whether the purported sale agreement was tendered in evidence and admitted as an exhibit. The allegation raised by the appellants that, the trial tribunal disregarded the sale agreement made by the 1st and 2nd appellants are baseless and unfounded. At paragraph 5 of the 1st appellant's written statement of defence shows that, he acquired the disputed land by way of purchase from the 2nd appellant (the original owner), and attached the sale agreement as annexture S-1 (secondary document), but none of these two witnesses produced such a document before the trial tribunal as an exhibit and the document itself does not reflect whether it was received and admitted as an exhibit by the trial tribunal or not. On further scrutiny of the record, I came across with a document titled HATI YA MAUZIANO YA SHAMBA dated 21/4/2014. It bears out to this effect: -

"MIMI KAMILA FAUSTINE MMANGA NIKIWA NA AKILI ZANGU TIMAMU NIMEMUUZIA SHAMBA LANGU KRISTOGONOSI LUKASI SEMBERA LENYE UKUBWA WA HEKA (3) TATU KWA THAMANI YA TSHS. 1,000,000/= (MILIONI MOJA) LEO HII TAREHE 21-04-2014. AMENILIPA HELA ZANGU ZOTE 1,000,000/= (MILIONI MOJA).

MBELE YA MASHAHIDI WAFUATAO:

MASHAHIDI WA MUUZAJI:

1. *RASHID HUSSENI NGAWAGARA .....Signed.*
2. *ATHUMANI HUSSENI NGAWAGARA ..... Signed.*
3. *IDDI IDDI HAKHIMU ..... Signed.*

MASHAHIDI WA MNUNUZI:

1. *ASHA SHABANI MVALAMALIGA .....Signed.*
2. *GOOD PAULO MATALE ..... Signed.*
3. *DENESIA LUKASI SEMBERA ..... Signed.*

Stamped by: MWENYEKITI

KITONGOJI CHA UPONERA".

As correctly submitted by the counsel for the respondent, it is trite law that a document(s) not admitted in evidence shall not form part of the record. As exhibited above, it is crystal clear that the said sale agreement was not tendered in evidence as documentary exhibit to prove that the 1st and 2nd appellants concluded a deal concerning selling and buying of a parcel of land which is the subject of this appeal. Even the ones who witnessed the sale agreement concluded by the parties, were not summoned to appear before the trial tribunal to recount what actually transpired on the material date.

On this facet, I concede with the submission advanced by the counsel for the respondent that, a document(s) not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them. Since the appellants alleged that, they tendered in evidence the purported sale agreement while the truth is not, such piece of evidence is like an empty shell left behind after a gun is fired, misplaced and uncalled for. The case of **Japan International Cooperation Agency (JICA) Vs. Khaki Complex Limited**, Civil Appeal No. 107 of 2004 (supra), cited by Mr. Kisawani, counsel for the respondent is relevant.

As depicted by the records, the appellants failed to prove that the 1st appellant was a true and lawful owner of the disputed land after he had bought from the 2nd appellant. The trial tribunal upon assessed and examined the evidence on record, was satisfied that the appellants did not tender any documentary evidence as proof to indicate that the said sale agreement was concluded as claimed. Having carefully studied the records, re-assessed and evaluated the evidence, I find that this ground of appeal is devoid of merit.

I now turn to the 3rd and 4th grounds of appeal. The major complaints raised by the appellant are to the effect that, the trial tribunal erred in law and facts to believe and adjudicate in favour of respondent while she failed to prove that she is the lawful owner of the disputed land and that the trial tribunal failed to evaluate, analyze and assess the evidence adduced before it henceforth came out with wrong decision basing on the respondent's

vague and contradictory evidence.

It is evident from the trial tribunal's records that, all parties presented their testimonies and summoned their respective witnesses to build up their cases. The 1st appellant (DW.1) testified that he bought the disputed farm in 2004 from the 2nd appellant / SU.2/DW.2 and all relevant documents were handed over to him upon approved by the village authority and the sale transaction was duly effected. From there, he became the owner of the parcel of land. During cross examination, DW.1 told the trial tribunal that he bought the farm for TZS. 3,000,000/= after he had assured by the SU.2/DW.2 that she was the true and original owner. That means the farm/parcel of land had no any encumbrances. As indicated above, he didn't produce any documentary evidence to prove that he bought the farm from the 2nd appellant. On her part, the 2nd appellant (SU.2/DW.2) recounted that, the farm belonged to her late father who passed away in the year 1993. In 2011, she was informed by the respondent that the farm/land in dispute was her property but she denied. Seen that, she reported the matter before the Ward Chairperson who summoned the respondent, but she refused. Afterward she (SU.2/DW.2) filed a land case before the Ward Tribunal and won the case. In 2012 she sold the disputed farm to DW.1. On cross examination by the respondent, SU.2/DW.2 stated that the farm did belong to her late father, Faustine Petro Mmanga but she had no idea how he acquired the same. Upon cross examined by the 1st assessor, one Raymond A. Mgonyi, she told the trial tribunal that the size of the land in

dispute is 3 ½ acres. Her testimony got support from her witness, Emeresiana William Maboga.

On the other hand, the respondent recounted how the disputed suit land related to her and she finally proved that she was the lawful owner. Her witnesses also gave evidence of material particulars and clearly explained the historical occupation of the suit land by the respondent. On reviewing the respondent's testimonies, truly I see no valid ground to disturb and overturn the decision of the trial tribunal. The case of **Hemedi Said Vs. Mohamed Mbilu [1984] TLR, 113** which insists that the one with heavy evidence must win, is an ideal in the circumstance of this case. As rightly submitted by the Mr. Kisawani, it has been a long-settled law that, the Courts should always be slow to disturb the long-term possession of the land. As gleaned from the records of the trial tribunal, the respondent began to possess the disputed suit land in 1984 which is a period of 38 years now and the 2nd appellant's father died in 1993 intestate. On scrutiny of the whole testimonies, I noted that the appellants adduced evidence tainted with uncertainties, and full of contradictions and inconsistencies. For instance, the 1st appellant asserted that he bought the land in dispute from the 2nd appellant in 2004 and paid TZS. 3,000,000/=, whereas the evidence of the 2nd appellant exposes that she handed over the farm to the 1st appellant in the year 2012 and sold it to him in the year 2013. As hinted above, the purported sale agreement shows that she sold the farm to the 1st appellant for TZS. 1,000,000/=.

As correctly submitted by the counsel for the respondent, all these contradictions and inconsistencies cast doubt and are grave as it goes to the root of the case on how the 1st appellant came into the possession and ownership of the disputed suit land. The authorities cited by the counsel for the respondent covering issues of contradictions and inconsistencies are vital in this appeal. See: **Moshi Hamisi Kapwacha Vs. Republic,** Criminal Appeal No. 162 of 2011 (supra) (unreported) and **Sahoba Benjuda Vs. R**, Criminal Appeal No. 96 of 1989 (unreported). For instance, in **Sahoba Benjuda** (supra), the Court of Appeal of Tanzania held: -

> *"Contradiction in the evidence of a witness affects the credibility of the witness and unless the contradictions can be ignored as being only minor and immaterial the court will normally not act on the evidence of such witness touching on the particular point unless it is supported by some other evidence".*

Relying on the above principle, it is apparent from the trial tribunal's records that, the statements of the position opposite to one another already made by the appellants, affects the credibility of these two witnesses. It is my holding that, this Court cannot rely on their evidences taking into account that such evidences are not supported by some other evidence.

From the foregoing observations, I am satisfied that the trial tribunal summarized the evidence before it, examined and made an appropriate assessment of the evidences adduced by both parties and their respective

witnesses during trial. The contention made by the counsel for the respondent that, the contradictions and inconsistencies demonstrated by the appellants were grave and thus compelled the trial tribunal to declare the respondent as the lawful owner of the disputed land, is sound. It is worth noting that, in civil cases including land cases, the burden of proof lies on the party who alleges anything in his/her favour. See: Section 110 and 111 of the Evidence Act [Cap. 6 R. E, 2022]. The CAT has also made interpretation of the above provisions of the law in number of cases including the caseS of **Attorney General & 2 Others Vs. Elig Edward Massawe & Others**, Civil Appeal No. 86 of 2002 (unreported), **Godfrey Sayi Vs. Anna Siame** (Suing as legal representative of the late Mary Mndolwa), Civil Appeal No. 114 of 2012 (unreported), and **Anthony M. Masanga Vs. Penina (Mama Ngesi) and Another,** Civil Appeal No. 118 of 2014 (unreported), wherein the CAT cited with approval, the case of **Re B [2008] UKHL 35,** to mention a few.

For the reasons I have endeavoured to demonstrate above, it is my holding that trial tribunal/DLHT arrived to a fair and just decision upon assessing, evaluated and closely examined the evidence adduced before it by both parties. As shown above, the 1st appellant failed to prove on balance of probabilities that he bought the disputed land from the 2nd appellant and finally became the lawful owner of the farm, meanwhile the evidence given the respondent displays that for about 38 years she has been in possession of the disputed land and therefore a lawful owner of the farm in disputes.

In the final event, this appeal is non-meritorious and it is hereby dismissed in its entirety with costs. The decision reached by the District Land and Housing Tribunal for Ulanga, at Mahenge in Land Application No. 11 of 2020 is upheld. **I so order.**

DATED at **MOROGORO** this 4th day of November, 2022.

M. J. CHABA

JUDGE

04/11/2022