

TANZANIA / JUDGMENT

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA LAND APPEAL NO. 10881 OF 2024 (From the District Land and
Housing Tribunal of Songwe, at Mbozi, in Application No. 52 of 2023) ASUKILE BABUKEYE
MASEBO.....APPELLANT VERSUS EKINA SULTAN
KAYILA.....RESPONDENT

JUDGMENT

Date: 19 December 2024 & 18 March 2025 SINDA, J.: The appellant is aggrieved and wishes to challenge the decision of the District Land and Housing Tribunal of Songwe at Mbozi (the DLHT). The brief facts of the case are that both the appellant and the respondent claim ownership over more than one acre of land located at Isanzo, Chapwa village, within Momba District and Songwe Region (the Disputed Property). The appellant claims that Chapwa Village gave him the Disputed 1 Property in 1987. The respondents contended that the Disputed Property belonged to her and that the appellant was a trespasser. The respondent successfully sued the appellant before the DLHT. Dissatisfied with the decision of the DLHT, the appellant brought this appeal on the following grounds:

1. That the Trial Court erred in law and fact by determining the suit as final while the necessary parties, Chapwa Village and Mbozi District Council, were not joined.
2. That the Trial Court erred in law and fact by basing its decision on extraneous matters rather than on evidence from records.
3. That the Trial Court erred in fact and law for failure to evaluate and analyse the evidence presented before him that's a reason he reached an unfair decision.
4. That the Trial erred in law and fact for being biased by considering evidence adduced by the respondent's witnesses and disregarding evidence adduced by the appellant's witnesses.
5. That the trial Court erred in law for failure to consider strong evidence adduced by the Appellant's side as the appellant owned suit land since 2 1987 after being allocated the suit land to Chapwa Village Council and based on the weak evidence adduced by the respondent's side.

6. That the Trial Court erred in law and fact for failure to observe that the case for the respondent's side had never been proved on the balance of probabilities. The appeal was by way of written submission. The appellant was represented by Ms. Mary Gatuna, learned counsel, and the respondent was represented by Ms. Beatrice Rukamilwa, learned counsel. In her submission in chief, Ms. Gatuna argued that it was wrong for the DLHT to determine the matter while there was a misjoinder of parties, namely Chapwa Village and Mbozi District Council. She added that the appellant testified before the DLHT to have been allocated the Disputed Property by Chapwa Village Council in 1987. She believed that the DLHT should have stayed proceedings and made an order for joining necessary parties to the case. Ms. Gatuna added that the said misjoinder was in the knowledge of the respondent's counsel. She maintained that the respondent counsel once prayed to do research on whether there was a need to join Chapwa Village counsel. That being the case, she believed that the non-joinder of the said parties prejudiced the 3 appellant's rights. Supporting her argument, Ms. Gatuna cited Order 1 Rule 10 (2) and Order 1 Rule 9 of the Civil Procedure Code, Cap 33, RE 2019 (the CPC) and the cases of Christina Mwamlima & another vs. Henry Jalison Mwamlima & six Others, Shaibu Salim Hoza vs. Helena Mchacha (As Legal Representative of Amerina Mchacha), Civil Appeal No. 7 of 2012, CAT at Dar es Salaam. Moving to the second ground, the counsel argued that the DLHT included extraneous matters in its judgment (the Judgment). That either party had not testified the extraneous matter. She added that it is the trite position of the law that the court must base its decision on evidence on record. Thus, it was wrong for the DLHT to base its decision on extraneous matter. Where she cited the case of Shomari Mohamed Mkwama vs. Republic, Criminal Appeal No. 606 of 2021. Concerning the fourth grounds of appeal, Ms. Gatuna submitted that the DLHT ignored evidence the appellant adduced and reached an unfair decision. She was of the view that failure or improper evaluation of evidence leads to a wrong or biased conclusion, resulting in a miscarriage of justice. She cited the case of Bahati Kabuje vs. The Republic, Criminal Appeal No. 252 of 2014. 4 The counsel argued the third, fifth and sixth grounds of appeal collectively. She submitted that the DLHT failed to consider strong evidence adduced by the appellant and based its decision on weak evidence adduced by the respondent. From the DLHT proceedings (the Proceedings), among other things, the respondent's side failed to prove ownership of the Disputed Property prior to her purchase. The counsel added that it is a settled law; the alleges must prove as provided under Sections 110 and 111 of the Law of Evidence Act (the Evidence Act). From the evidence, the respondent failed to prove her case on the balance of probabilities as she never explained from whom she purchased the suit land. In her reply submission, Ms. Rukamilwa was of the view that there was no requirement to join Chapwa Village and Mbozi District Council for some reasons. First, the appellant had the duty to bring those people who allocated the land to him. Second, Ms. Rukamilwa claimed the law requires the appellant to state exactly how the village is involved in the matter to necessitate the joinder. Third, the counsel submitted the misjoinder of Chapwa village and Mbozi District Counsel would not render the decree non- executable if passed. For emphasis, she cited the case of Juliana Francis Mkwabi vs. Lawrent Chimwaga, Civil Appeal No. 2020. Submitting on the second ground, Miss

Rukamilwa argued that the Disputed Property 5 involves the appellant and the respondent, respectively. That all matters decided in the case were about the appellant and respondent. She disputed that no extraneous issues were used to determine the Disputed Property. The counsel cited Section 110 (1) of the Evidence Act. For the third, fourth, fifth and sixth grounds of appeal, the counsel argued that the respondent's evidence was heavier than the appellant's. The reason is that the respondent managed to testify on how she acquired the Disputed Property, where she brought a witness who saw the respondent buying the same. That, the appellant subscribed to the respondent's evidence that the Disputed Property belonged to the respondent who went to Malawi, spent 9 years there, and came back in the Disputed Property. She continued that the appellant, on the other hand, failed to explain how the Disputed Property was allocated to him. The procedure of revocation of the Disputed Property from the respondent to the appellant was not stated. Hence, the respondent managed to prove her case on the required standard as per Section 3 (2)

- (b) of the Evidence Act. She also cited the case of Ibrahim Twahili Kusundwa & Another vs. CRDB Bank PLC & Another, Civil Appeal No. 194 of 2021 [2024] and that of Registered Trustees of Joy in the Harvest vs. Hamza K. Sungura, Civil Appeal No. 149 of 2017 [2021]. 6 In rejoinder, on the first ground, Ms. Gatuna argued that the respondent was trying to mislead the court by stating that the DLHT was satisfied that Chapwa village and Mbozi District had nothing to do with the dispute because the same is not reflected in the Proceedings. Concerning the failure of the appellant to call witnesses to testify over Chapwa village nor mention people involved in the allocation of Disputed Property. The counsel termed such information to be deceptive since the appellant called DW2 as a witness in the DLHT. She added that the appellant did not just mention Chapwa village but also explained how it was involved in allocating the Disputed Property. Ms. Gatuna maintained that non-joinder of Chapwa village would prejudice the appellant's rights. From the argument above, the counsel stated that the case of Juliana Francis Mkwabi vs. Lawrence Chimwaga (Supra), as cited by the respondent, is distinguishable from the matter at hand. Rejoining on the second ground, Ms. Gatuna argued that the point for determination is not whether the matter involves other people apart from the appellant and respondent. Instead, it is essential to know whether the respondent managed to prove the seller of the Disputed Property. The respondent said she purchased the land from three different people, and it 7 was upon her to prove the seller of the Disputed Property under Section 110 of the Evidence Act. The respondent supported the appellant's submission by mentioning different names in the Proceedings. Coming to the third, fifth, and sixth grounds, the counsel argued that the respondent alleged that the appellant failed to state how the Disputed Property came into his possession and the procedure used by Chapwa village to allocate it. She added that Chapwa Village allocated the Disputed Property to the appellant, making Chapwa Village a necessary party to a suit. Moving to the fourth ground, the counsel maintained what she submitted during her submission in chief. I have reviewed submissions from both sides and records from the DLHT. Thus, I must decide whether I find the appeal meritorious. To begin my deliberation, I will address the second ground of appeal. The DLHT erred in law and fact

by basing its decision on extraneous matters rather than the evidence in the records. I took it upon myself to go through the records of the DHLT, particularly the Judgment. At page two (2) of the Judgment, it was stated, and I quote: “Mleta Maombi alifafanua kuwa ametumia nyumba hiyo kwa muda mrefu hadi mwaka 2015 ambapo Mdaiwa alikuja na kumjengea nyumba hiyo 8 nyingine ya kisasa mahali pengine. Ambapo baada kupewa nyumba hiyo Mdaiwa alianza kueleza kuwa yeye Mdai hahusiki tena katika eneo hilo.” After reading the page, I must agree with Ms. Gatuna that the DLHT introduced extraneous matters in the Judgment. The evidence quoted herein is not reflected anywhere in the handwritten and typed Proceedings. Much worse, the said extraneous matter goes to the root of the case, as it impliedly justifies the appellant’s occupation of the Disputed Property. It is a settled principle of law that the court must reach its decision based on the evidence on record. Failure to do so vitiates the proceedings and judgment of the court altogether. Essentially because other than the court or tribunal adding new facts in the Judgment, it might have omitted some evidence adduced by parties during trial. The same was discussed in the case of Athanas Julius vs. Republic, Criminal Appeal No. 498 of 2015. That provides: “The second anomaly noted, is the act of the trial resident magistrate to include in his judgment, facts which are not reflected in the recorded evidence in the proceedings. The implication here is that, either, in his judgment, the trial resident magistrate did include extraneous matters which did completely not feature in the evidence of the witnesses who were called to testify, or, the trial resident magistrate did omit to record a number of facts that were said by the witnesses in their testimony. In either case, we are inclined to join hands with the contention of the learned counsel for 9 both sides that, the irregularity occasioned was fatal, and did vitiate the entire proceedings of the trial court” From the foregoing, I find merit in the second ground of appeal. As such, I will not discuss the rest of the grounds of appeal. As provided in the case of Athanas Julius vs. Republic (supra), I proceed to quash and set aside the Judgment and Proceedings of the DLHT. I order a retrial in an expedited manner before a different chairman and a new set of assessors. As the parties did not cause the default, I make no order regarding costs. It is so ordered. Right of appeal explained. DATED at MBEYA on this 18 day of March 2025. A. A. SINDA JUDGE 10

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