

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL No. 22 of 2018

(Arising from Land Application No .53 of 2016 of Shinyanga District Land and Housing Tribunal)

JUMANNE ALLYAPPELLANT
(Administrator of the Estate of the late Salima Luhende).

VERSUS

PHILIMON MVUNYI.....1st RESPONDENT

AUGUSTINE BALTAZAL2nd RESPONDENT

JUDGMENT

Date of Last Order: 16/4 /2020

Date of Judgment: 22/5/2020

MKWIZU, J.:

The Appellant in this case was the Applicant in the Land Application No. 53 of 2016 of Shinyanga District Land and Housing Tribunal in which he applied for a declaration that he is a lawful owner of the suit land and that a sale of Plot No. 253 and No. 254 to the 2nd respondent if any, is null and a void.

It is from the trial tribunal's records that, the suit plots in dispute belonged to his mother, the late, Salima Luhende who gave it to the appellant as a gift. It was also alleged that appellant learned of the trespass by the

respondent who had sold Plot No 253 and 254 to the 2nd respondent after he was appointed an administrator of his mother's estate. Respondent refuted the allegation, he claimed to be the rightful owner of the said land which he acquired in the year 1966, given to him as a bush land by one Mwangagwa called Mondi Wawingula. He processes for the offer from the land authorities in 2013.

After a full hearing, the tribunal found for the respondent. The tribunal reasoned that applicant (now appellant) has failed to establish his ownership over the suit land. The tribunal viewed that if at all the applicant was given the said land before the death of his mother who is said to have passed away in the year 1984, what action did the appellant take since then to 2013. Considering that fact, the tribunal declared the respondent an adverse possessor who is as well protected under the law.

Aggrieved, appellant JUMANNE ALLY filed an appeal to this court with the following grounds of appeal:-

1. After aggrieved with the Judgment decided by Chairman of the *That the Trial Tribunal glossily erred in and procedure by failing to analyze effectively the evidence adduced by the appellant.*

2. *That the Trial Tribunal grossly erred in law and facts to failing to compare the evidence tendered by the appellant at Ward tribunal and entered the judgment which was genuine.*
3. *That the trial Tribunal erred in law and in facts to entertain the matter as a land in dispute while the matter is inheritance of the said Salima Luhende.*
4. *That the Trial Tribunal grossly erred in law and facts to adduce the judgment in favor of the respondent while the appellant's evidence was watertight.*
5. *That the Trial Tribunal grossly erred in law and facts to adduce the judgment in favor of respondent while the plot No 252, 253 and plot No. 254 Block QQ which is at Upongoji was the owner of the said Salima Luhende.*

When the Appeal was called on for hearing, the Appellant and the 1st Respondent appeared in person while the 2nd respondent had the service of Vincent Masalu, Advocate.

Appellant argued the grounds of appeal generally, He said, the suit land belonged to his mother, Salima Luhende and 1st Respondent is a trespasser as his plots were sold. He argued the court to evaluate the evidence and his ground of appeal and find in his favour.

1st Respondent opposed the appeal. He said he has been in the suit land safely since the year 1966 and he has processed the title deed .

Second respondent is a beneficiary of the suit land who bought two plots from the 1st respondent. His advocate, Mr. Masalu argued that the trial tribunal's decision contains a correct evaluation of the evidence and the law.

On the 2nd ground of appeal, in which the appellant is complaining of the tribunals failure to compare the evidence adduced at the ward tribunal and the one presented before it, Mr. Masalu said, the ground is misplaced because the matter which was before the DLHT was a fresh case having no connection with the issues that arose at the ward Tribunal.

Mr Masalu as well opposed the complaint that the tribunal was wrong to entertain the matter which is a probate issue. If anyone is to be blamed for filing the dispute is the appellant who filed land application at the

tribunal. He explained that, at the tribunal, appellant had said that he was given the suit land as a gift by his mother.

Mr. Masalu urged the court to disregard grounds 4 and 5 of appeal because the evidence at the trial tribunal was evaluated and concluded that appellant failed to justify his claim. He lastly prayed to have the appeal dismissed with costs.

I have carefully considered the grounds of appeal, submissions of both parties and the records of the trial tribunal. The issue for this court's determination is whether the appeal is merited or not. I propose to determine the grounds generally.

The evidence by the appellant at the trial tribunal was twofold, **one**, that the plot in dispute was the property the late Salima Mahende appellant's mother who passed away in 1984. **Secondly**, that, that piece of land was given to him (appellant) by his mother during his life time as a gift. However, the record is silent on how Salima Mahende got the land and what happened after her death in the year 1984.

It follows therefore that, since the appellant alleged that the plot belonged to his mother, and that 1st respondent is a trespasser then the onus of proof is on the appellant as per Section 110 of the law of evidence Act Cap 6 R.E 2019. See also the case of **Mohamed Abdul Lyuu V. Zainabu Kasimu Lyuu** High Court Dar es salaam Misc. Land Appeal No. 56 of 2019 (Unreported) where the court stated that:-

"Since the Appellant is disputing ownership of the suit land by the Respondent who is in possession of that land, the burden of proving that the Respondent is not the rightful owner of that land is on the Appellant."

In arriving at its decision and as hinted herein above, the trial tribunal was of the view that, even if it is to be taken that the land belonged to the appellant's mother, and thereafter repossessed by the 1st respondent who has stayed in that land since then to 2013, 1st respondent was an adverse possessor who acquired a good title.

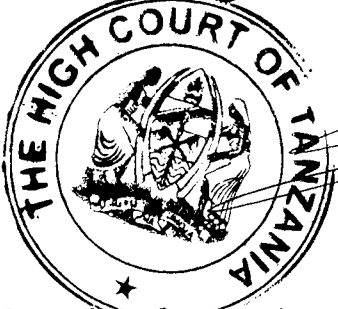
The evidence on the record is that 1st respondent stated that he had been on the land in dispute since 1966 and that he processed and was availed with a letter of offer on Plot No 252 Block QQ. The 1st respondent's evidence is supported by the evidence of DW2. This piece of 1st

respondent's evidence is more convincing. Reading the records, it does not come out clearly whether the suit plots belongs to the appellant who was given as a gift before his mother's death or they belong to Salima Mahende and that appellant claim comes in by virtual of him being the administrator of his mother's estate. The appellant failed totally to substantiate his claim at the trial tribunal.


In the premises, I find merit in this appeal the upshot of which is to dismiss the appeal as I hereby do. Respondents to have their costs.
with costs.

Order accordingly.

DATED at Shinyanga this 22th day of May 2020.


E.Y. Mkwizu
E.Y.MKWIZU
JUDGE
22/05/2020

COURT: Right of appeal explained.


E.Y. Mkwizu
E.Y.MKWIZU
JUDGE
22/05/2020