

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MBEYA**  
**AT MBEYA**  
**LAND APPEAL NO. 28 OF 2019**

*(Originating from Application No. 217/2017, District Land and Housing Tribunal for Mbeya)*

**AYASI RASHID MBISA** *(Administrator of the Estate*  
*of late Rashid Mbisa)* ..... **APPELLANT**

**VERSUS**

- 1. JAMIL TWALHA RASHIDI MBISA**
- 2. ASAA TWALHA**
- 3. ASIA TWALHA**
- 4. HALIMA TWALHA**
- 5. HASSAN TWALHA**
- 6. JAZILA TWALHA**
- 7. LAZIA TWALHA**
- 8. MISK TWALHA**
- 9. RAIYA TWALHA**
- 10. SHUFEE TWALHA**
- 11. SILAJU TWALHA**
- 12. TWAIBU TWALHA**
- 13. ZOMBE TWALHA**

14. AZIZI MULSARI
15. DEBORA MKONGWI
16. EDWINI SUKEMO
17. FATUMA HUSSENI
18. FELE F. RAMADHANI
19. GEORGE MWAKATOBÉ
20. JENY
21. JUMANNE YUNUSU
22. LUKIA JOHN
23. MICHAEL MWAMBUGI
24. MWAJUMA MUSSA
25. RASHIDI RAMADHANI
26. ZABIBU KHATIBU MWAPILI
27. ASHA SAIDI

..... RESPONDENTS

## JUDGMENT

*Date of last Order: 15/10/2020*

*Date of Judgment: 30/10/2020*

**Dr. A. J. Mambi, J**

This appeal originates from an appeal filed by the appellant namely **AYASI RASHID MBISA** (*Administrator of the Estate of late Rashid Mbisa*). Earlier in the District Land and Housing Tribunal of Mbeya, the Tribunal made the decision in favour of the respondents. The records reveal that the appellant was aggrieved by the decision of

the District Land and Housing Tribunal before he appealed to the District Land and Housing Tribunal which upheld the decision of the ward Tribunal. In his appeal, the appellant preferred three related grounds of appeal as follows:

1. That the Trial Tribunal erred in law and fact when it illegally held in the absence of the evidence
2. That the Trial Tribunal erred in law and fact when it failed to evaluate illegally on the evidence
3. That the Trial Tribunal erred in law and fact o disregard the evidence by the appellant that was proved on the balance probability

During hearing, parties agreed to argue the matter by way of a written submission form. While the appellant was represented by the learned Counsel Mr Amani Angolwisye, the respondents appeared under the service of Ms Jenifer Biko, the learned Counsel. Addressing the grounds of Appeal, the appellant Counsel MR. Amani Angolwisye briefly submitted that the trial tribunal erred on law when illegally and in absence of evidence held that the Respondent got the Land in dispute by way of adverse possession. To substantiate his submission, the appellant referred the decision of the court in **Registered Trustees of Holy spirit Sisters Tanzania vs January Kamili Shayo and 136 other Civil Appeal No. 193/2016.**

He argued that the evidence testified by PW1 show that that the land in dispute is the property of the late Rashidi Mohamedi Mbisa, since the disputed land has the house and permanent trees

developed by the late Rashid Mbisa. He argued that all daughters and sons of the late Rashid Mbisa, including father of Respondent as beneficiaries to the estate from 1977 continued to use the land in dispute until 2017 when Respondents (grand-children of late Rashidi Mbisa) illegally wanted to inherit the estate (land in dispute) of the late Rashidi Mohamedi Mbisa. He argued that the issue of Adverse possession principle does not apply and the trial Tribunal Chairman was wrong in his decision. He averred that the appellant was dully appointed as administrator of the deceased estate in the year of 2017 before the respondents trespassed into the land.

The appellant further submitted that the Hon. Chairman reached to a wrong holding when held that, evidence of relative was not material in establishing rights of parties, pg. 4 of the Judgement. He contended that the chairman illegally disregarded the evidence of Appellant contrary to S. 127 (1) of the law of Evidence Cap. 6. He argued that the trial Tribunal was required to draw an adverse inference for failure to call a material witness. He referred the decision of the court in ***Warda Hassani vs National Bank of Commerce and 1 another, Land Appeal No. Land case No. 159/2014 High Court of Tanzania (Dar es Salaam Registry) (unreported Copy attached) at pg. 8***

In response, the respondent Counsel Ms Jenifer Biko briefly submitted that the respondents do not agree with the grounds of the appellant since the grounds have no merit. She argued that the respondent before the District Land and Housing Tribunal was right in its decision. She contended that the Chairman did not rely his decision based on adverse possession principle as submitted by the

Counsel for the Appellant. She was of the view that the decision of the chairman is based on the law applicable and evidence on record.

The learned Counsel further submitted that submission that the disputed land belonged to the Late Rashid Mohamed Mbisa who died in 1977 and from 1977 the same was under supervision of the one Twalha Rashid Mbisa. Referring Section 110 of the Law of Evidence Act CAP 6, [R.E 2019], the respondents' counsel submitted that the appellant was duty bound to prove his claim on the disputed land but he failed to do so. The learned Counsel further averred that the respondents together with their late father have been un-disturbly using the land for more than 40 years as indicated under **exhibit D1**. She referred the decision of the court in **ATTORNEY GENERAL Vs MAALIM KADAU AND 16 OTHERS [1997] TLR 69 at p.204**.

Responding to the appellant claim that the respondents were bound to call all material witnesses, the respondents' Counsel submitted that Section 143 The Evidence Act Cap 6 is clear that which provides that, no particular number of witnesses shall in any case be required for the proof of any fact.

I have carefully gone through the ground of appeal and submission by both parties. I wish to appreciate brief submission made by both the learned Counsels for the parties. I have also keenly gone through all records from the District Land and Housing Tribunal. In

my observation and considered view, the main issue at hand is whether the Tribunal was right in holding that the respondents were the rightful owner of the disputed land or not. The other issue is whether the District Land and Housing considered the evidence of both parties.

The records from the Trial Tribunal reveals that the land belonged one Rashid Mohamed Mbisa who was the father of the appellant (Ayasi Rashid Mohamed Mbisa) and Twalha Rashid Mbisa. It is on the records that when Rashid Mohamed Mbisa died the appellant was appointed to be an administrator of the deceased estate. It is also on the records that when Rashid Mohamed died the land was under the custodian of one Twalha Rashidi Mbisa who is the father of the 1<sup>ST</sup> , 2<sup>ND</sup> , 3<sup>rd</sup> , 4<sup>th</sup> , 5<sup>th</sup> , 6<sup>th</sup> , 7<sup>th</sup> , 8<sup>th</sup> , 9<sup>th</sup> , 10<sup>th</sup> , 11<sup>th</sup> , 12<sup>th</sup> and 13<sup>th</sup>. This means that it is the appellant and the father of the 1<sup>ST</sup> , 2<sup>ND</sup> , 3<sup>rd</sup> , 4<sup>th</sup> , 5<sup>th</sup> , 6<sup>th</sup> , 7<sup>th</sup> , 8<sup>th</sup> , 9<sup>th</sup> , 10<sup>th</sup> , 11<sup>th</sup> , 12<sup>th</sup> and 13<sup>th</sup> who had right to inherit from their fathers who are the deceased. However, it appears the Hon. Chairman misdirected himself without considering the evidence adduced and ended up in a wrong decision. Had the Trial tribunal Chairperson properly evaluated the evidence, the position could have been different. Indeed the evidence of Mohamed Rashid Mbisa (PW4) is clear as recorded by the Tribunal that the suit land once belonged to Rashidi Mohamed Mbisa and after his death the suit land was handled to Twalha Rashid and Ayasi Mbisa (appellant) who are blood brothers. Though Jamil Mbisa (DW1) testified that the suit land belonged to his father

Twalha Rashid Mbisa, but the evidence is clear that the land in disputed belonged to both Twaha Rashid Mbisa and Ayasi Twalha Rashid Mbisa who by virtue of the law are the only one who had the right to inherit from their father Mohamed Rashid Mbisa (the deceased). Even the trial Tribunal in his judgment at page 3 admitted that the land belonged to the family members of Twalha Rashid Mbisa and Ayasi Rashid Mbisa. It is trite law that once the deceased dies, the first beneficiaries with legal right to inherit are his/her spouse if alive and children. This means that wives and children of if any can only inherit from their father Twalha Rashid Mbisa after the land is divided between Ayasi Rashid Mbisa, Twalha Rashid Mbisa, and other remaining surviving sons or daughters if any of the late Mohamed Rashidi Mbisa (deceased). In other words some of the respondents (the 1<sup>st</sup> , 2<sup>nd</sup> , 3<sup>rd</sup> , 4<sup>th</sup> , 5<sup>th</sup> , 6<sup>th</sup> , 7<sup>th</sup> , 8<sup>th</sup> , 9<sup>th</sup> , 10<sup>th</sup> , 11<sup>th</sup> , 12<sup>th</sup> and 13<sup>th</sup> )can only step into the shoes of Twalha Rashid Mbisa (the deceased ) after the land is divided among the sons and daughters of Mohamed Rashidi Mbisa (deceased) under the supervision of the appellant who is the administrator of the estate of Rashidi Mohamed Mbisa.

Indeed the respondents in their evidence at the trial tribunal did not prove if the land was solely owned by Twalha Rashid Mbisa. It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff and the standard of proof is on the balance of probabilities. This simply means that he who alleges

must prove as indicated under section 112 of the **Law of Evidence Act, Cap 6 [R.E2002]**, which provides that:

*“The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person”.*

The court in **NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZALA & 4 OTHERS, Comm. CASE NO 59 OF 2003( ) HC DSM**, observed that:-

*“The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side”.*

Therefore, since the respondents were claiming that the land in dispute belonged to their father and the appellant had no right and the appellant was not the owner of the land, it was the duty of the respondents to prove their claim but they did not do so.

The evidence from the records of the trial Tribunal is clear that the land belongs to both Ayasi Rashid Mbisa and Twalha Rashid Mbisa as legal heirs of their late father Rashid Mohamed Mbisa. In other words, the children and wives of the late Twalha Rashid Mbisa can only inherit part of the land through the portion of Twalha Rashid Mbisa after the land is divided between the sons (including Ayasi Rashid Mbisa and Twalha Rashid Mbisa and other surviving sons or their heirs) and daughters of late Mohamed Rashid Mbisa.

In the course of going through the Tribunal Judgment, I have also observed that the tribunal Chairman neither analyzed the evidence



from both parties nor gave reasons for his decision. The importance of clearly analyzing and determining whether the evidence is acceptable as true or correct, was clearly discussed by the court in the case of **JEREMIAH SHEMWETA VERSUS REPUBLIC [1985] TLR 228**, where it was held:-

*“By merely making plain references to the evidence adduced without even showing how the said evidence is acceptable as true or correct, the trial Court Magistrate failed to comply with the requirements of Section 171 (1) of the Criminal Procedure Code Section 312 (1) of the Criminal Procedure Act, (1985) which requires a trial court to single out in the judgment the points for determination, evaluate the evidence and make findings of fact thereon”.*

It was therefore expected for the Tribunal, to not only summarize but also to objectively evaluate the gist and value of the evidence of both parties, weigh it and give reasons for its decision on the judgment.

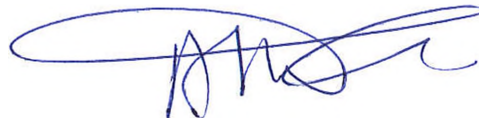
The records further show that the Hon. Chairman made his decision without properly analyzing evidence and giving reasons to the judgment. It is trait law that every judgment must be written or reduced to writing under the personal direction of the presiding judge or magistrate in the language of the court and must contain the **point or points for determination, the decision thereon and the reasons for the decision**, dated and signed. The provisions of the laws are clear that the judge or magistrate must show points for determination, the decision thereon and the reasons for the decision in his/her judgment.

From the foregoing reasons, it is my considered firm view that the land in dispute belongs to the appellant (Ayasi Rashid Mbisa) and Twalha Rashid Mbisa and other legal heirs who are sons and daughters of their father late Mohamed Rashid Mbisa on the reasons I have given above.

In the premises, this appeal is meritorious and it is accordingly allowed. From the foregoing reasons, I set aside that decision of District Land and Housing Tribunal and any other orders made thereof.

In the interest of justice and for avoidance of further dispute, I find it proper the land in dispute which is the estate of late Rashid Mohamed Mbisa be divided among his children and his wives if any under the supervision of his son Ayasi Rashid Mbisa (the appellant who is the administrator).

In the event I make no orders as to costs, each party to bear its own costs. Order accordingly.



**A. J. Mambi, J**  
**Judge**  
**30.10. 2020**

Judgment delivered in Chambers this 30<sup>th</sup> day of October, 2020 in presence of both parties.

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**A. J. Mambi, J**  
**Judge**  
**30.10. 2020**

Right of appeal explained.

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**A. J. Mambi, J**  
**Judge**  
**30.10. 2020**