

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

**AT SHINYANGA**

**LAND APPEAL NO 26 OF 2020**

***(Arising from Land Application No. 10 of 2020 before the District Land and  
Housing Tribunal for Shinyanga )***

**PANTE JOHN.....APPELLANT**

**VERSUS**

**ABDALLAH KASSANDA.....1<sup>ST</sup> RESPONDENT**

**RAMSO ABDALLAH.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

29<sup>th</sup> March & 30<sup>th</sup> April, 2021

**MKWIZU, J.**

This is an interesting appeal. The appellant's suit against the respondents at the trial tribunal was for declaration that he is a legal tenant of the suit Stall No 171 located at New stand Area within Shinyanga Municipality and that applicant be ordered to give him vacant possession of the said Stall and be paid general damages plus the costs of the suit.

The facts of the suit as gathered from the records are that, respondents were doing hardware business in a Stall No 171 located at New Stand area within Shinyanga Municipality owned by the Shinyanga Municipal Council. While in the said stall, appellant entered into a lease agreement again, with

the Municipal council. Their agreement was between 1/7/2017 to 30/6/2018. It seems appellant was just virtually in the said stall but actual occupiers were the respondents. On 8/3/2019, after his lease agreement had expired, appellant filed this suit against the respondent claiming to be a legal tenant. The respondent claimed to have been using the said stall since 2013 before the appellant had entered into agreement with the Municipal council. It is also on the records that, appellant had never used the said stall since and that the applicants' suit was filed while his contract with the Municipal council had already expired and no renewal was preferred.

PW2, is an officer from the Municipal council who confirmed that the stall was leased to the appellant but at that time it was occupied by the respondent.

After a full hearing, the tribunal found for the respondent, it directed the appellant to lodge his claim for rent he paid over the said stall to the Municipal Council. Appellant is not happy with that decision, he has come before this court with three grounds of appeal that:

1. That the trial tribunal erred in law and fact for not analysing the evidence tendered before it

2. That the trial tribunal erred in law and fact for not resolving the issues framed before it
3. That the trial tribunal erred in law and fact for deciding the application in favour of the respondents against the weight of evidence on records.

Mr. Audax Constantine advocate appeared for the appellant and argued 1 and 2<sup>nd</sup> ground together. He said, the tribunal's chairperson did not analyze evidence by parties and make findings on the contested issues. He just agreed on the assessors opinion and dismissed the application. Relying on regulation 20 (1) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) regulations of 2003 GN No 174 of 2003, he said, the tribunal's judgment must contain findings on the framed issues. Mr Audax was of the view that, the chairperson of the tribunal wrongly agreed with the assessors opinion without considering each and every issue raised by the tribunal. He on that point cited the case of **Stansalaus Rugaba Kasusura and the AG V Pharles Kabuye** (1982) TLR 338. He prayed for the nullification of the judgement and the tribunal be directed to re write new judgement in accordance to the law. He said, should the court find it appropriate, it can step into the trial tribunals shoes, evaluate the evidence and come to its own conclusion. And if the court opts to reappraise the



evidence, said Mr Audax, the appellant evidence is stronger than that of the respondents.

In reply, Mr Geoffrey Tuli who represented the respondent argued that the trial tribunal did consider the issues framed by ruling in favour of the respondents. Appellant was advised to claim his tenancy from his Land landlord, the Shinyanga Municipal council.

Mr. Tuli said, the chairperson was right in agreeing with the assessors opinion. This, stated Mr. Tuli is after he was convinced that assessors were right. He added that this being the 1<sup>st</sup> appellate court, it can rightly as proposed by the appellant's council re- appraise the evidence and come into its own findings if finds appropriate.

On the third ground of appeal, Mr. Tuli contended that, trial chairperson did evaluate the evidence and found the respondent's evidence is weightier than that of the appellant. He said PW2 admitted that 2<sup>nd</sup> respondent was in rental agreement with the Municipal Council and that he is the one who built the said stall in agreement with his Land lord. The above evidence, stated Mr. Tuli was supported by that of DW3. He therefore prayed for the dismissal of the appeal with costs.

In rejoinder, appellants counsel insisted on his earlier on submissions with an addition that the court should order a retrial or a fresh case to be filed to allow addition of a new part/ necessary party who is the Land Lord, Shinyanga Municipal council. He prayed for the appeal to be allowed but each part be ordered to bear owns costs.

I have considered and evaluated the grounds of appeal, the records as well as the parties' submissions for and against the appeal. The grounds of appeal taken together challenges the trial tribunals decision for lacking analysis of evidence and that the findings are not supported by the evidence on the records. I propose to determine all three grounds generally. In so doing, this court is minded that this is a first appeal where the court is duty bound to re-evaluate the evidence, and if warranted, come into its own conclusion. See **Faki Said Mtanda V The Republic**, Criminal appeal No 249 of 2014 (unreported) .

In his evidence, PW1, Pante John claimed to be the legal tenant of the Stall No 171 that he paid rent and had a lease agreement for the period between 2017 and 2018 but he never occupied the room. PW2, supported Pw1's evidence. On the other hand, DW1 explained that he had been occupying

the room since 2013 and that he was in a lease agreement with the Municipal Council for the year 2019. DW3, the Municipal Solicitor, Josephat Peter Mushi supported DW1's evidence. He said , the stall is the property of the Municipal council and that Kasanda Nilla Bujiku won the tender and had lease agreement with the Municipal council and therefore Kasanda Nilla Bujiku is the legal tenant.

The evidence on the records reveals that Municipal council is the owner of the suit stall and is the one who leased the stall to one Kasanda Nilu Bujiku. This was substantiated by PW2 and DW3. It is trite law that he who alleges has a burden of proving his allegation as per the provisions of section 110 of the Tanzania Evidence Act, Cap 6, R.E. 2002. It was therefore the duty of the appellant to prove that he had a valid lease on a balance of probabilities.

In **Paulina Samson Ndawanya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported), it was stated that;

*"It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved"*



The appellant in this case was required to prove the legality of his tenancy over the disputed stall. This wasn't done. The appellant's lease as specified in his pleadings was between him and the Shinyanga Municipal Council. The lease agreement admitted as exhibit P1 was for the year between 2017 to 2018 and it was between him and the Shinyanga Municipal Council. Again, exhibit P2 were the receipt for rent paid by the appellant on the said contract.

On why he was paying rent to the Municipal Council without using the room, I think the proper entity to have answered this question was the Municipal council which the appellant chose not to bring her in court for the reasons known to himself. On why the respondents were occupying the said stall is not the appellant's business. It was the Municipal Council who was responsible to explain why he rented the Stall to the Appellant, collected rent at the same time allowing the respondents to occupy the room. Now that the land lord, Shinyanga Municipal Council was not brought before the court, appellants questions remain without answers. I for that reason, of the considered view that, appellant claim was wrongly lodged against the respondents. The claim for rent paid to the Municipal Council without using

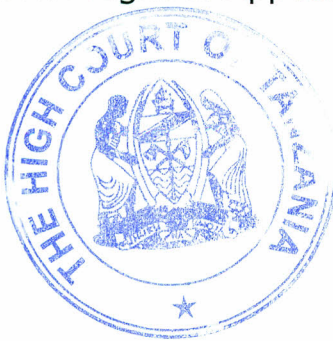
the rented room would have been valid if it was filed against the appellant's Land lord, the Shinyanga Municipal Council.

Generally, and without more ado, appellant failed to substantiate his claim against the respondents. Unmeritorious appeal is therefore dismissed with costs to the respondents. It is so ordered.

Dated at Shinyanga, this 30<sup>th</sup> April, 2021

  
E.Y. MKWIZU  
JUDGE

COURT: Right of Appeal explained



  
E.Y. MKWIZU  
JUDGE  
30/4/2021