

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SONGEA**

**AT SONGEA**

**LAND APPEAL NO.01 OF 2021**

**(Originating from the Decision of the District Land Housing Tribunal of  
Tunduru at Tunduru in Land Case No.01 of 2021)**

**AYES ALLY JEMBU (An administratrix of the state of the late  
Ally Alimu Jembu) ..... APPEALANT**

**Versus**

**OMARY SANDALI JEMBU..... RESPONDENT**

**JUDGMENT**

**Date of Last Order: 05/10/2021.**

**Date of Judgment: 21/10/2021.**

**BEFORE: S.C. MOSHI, J.**

The appellant being an administrator of the Estate of the late Ally Alimu Jembu instituted a land case at the District Land and housing Tribunal of Tunduru at Tunduru against the respondent, she claimed that the respondent trespassed to the land measuring 4.5 acres located at Changarawe village, Namwinyu within Tunduru District the property of the deceased Ally Alimu Jembu. After a full trial, the trial Tribunal dismissed

the application without cost and declared the respondent to be the owner of the suit land. Aggrieved by the decision the appellant has filed this appeal on the following grounds:-

- 1. That the trial Tribunal erred in law and facts for failure to analyze and evaluate the evidence that was presented by the appellant and his witnesses at the trial hence arrived into erroneous decision against the appellant.*
- 2. That the trial tribunal erred in points of law and facts for failure to consider that the respondent was merely an invitee to the disputed land owned by the appellant instead he proceeded to declare the respondent as the lawful owner.*
- 3. That the trial Tribunal misdirected himself for failure to find that not always the long stay of an invitee grants him ownership of land hence he declared the respondent as the lawful owner of the disputed land.*
- 4. The trial Tribunal grossly erred in points of law and facts for declaring the respondent being the lawful owner of the*

*disputed while the respondent case was not proved to the balance of probability.*

The appeal was heard exparte, following the respondent's refusal to sign three summonses served to him by the appellant, this was also proved by the court process server's affidavit stating that the respondent refused summons. During the hearing of this appeal the appellant appeared in person and prayed the court to adopt the grounds of appeal. The facts of the case according to the appellant is that the late Ally Alimu Jembu was the owner of the suit land who in 1994 gave the same to the respondent for purpose of taking care of the suit land and the proceeds of the land was to be used for schooling his son (deceased's son) who is named Mohamed. However, the respondent didn't take care of Mohamed; hence the appellant referred the matter to Namwinyu Vilage Land council which gave its decision in favour of the respondent declaring him the owner. Dissatisfied with the decision he filed the application to District Land and Housing Tribunal of Tunduru



claiming that the respondent has trespassed the land, an eviction order against the respondent, his agents and tenants, general damages of Tshs. 10,000,000/=, costs of the suit, and any other reliefs. The tribunal declared the respondent the owner of the suit land hence not a trespasser to the same. Aggrieved again by the decision of the District land and Housing Tribunal she filed this appeal.

The issue to be determined is whether this appeal has merit.

I at the outset would like to point out that, I have noted in the defence evidence that the respondent stated that the matter was once adjudicated by Namwinyu Village Council where the respondent was declared the owner of the suit land. However, legally the village land council plays only a role of mediation and reconciliation of parties but not adjudication. See section 60(1) of the Village Act, Cap. 114 R.E 2019. If parties are satisfied the dispute will end there. However, if a party is not satisfied the law requires the unsatisfied party to

take the matter to a competent tribunal, if the matter goes to the court of competent jurisdiction, the case has to start afresh. See section 62(1) of the Village Land Act Cap. 114 R.E 2019. Village Land Council being the mediator its records do not go to the adjudicating tribunal. Besides, its decision has no binding effect where a party decides to refer/take the dispute to the Tribunal for adjudication. Therefore, Namwinyu Village Council erred in law declaring the respondent owner of the suit land. It was required to mediate and reconcile the parties only.

Reverting back to the grounds of appeal; the appeal revolves around analysis of evidence. Whether the trial tribunal failed to consider that the appellant's father gave the suit land to the respondent for the purpose of making sure that the proceeds of the suit land is used to support the appellant young brother's (Mohamed) education, the duty which the respondent failed to discharge.

I have considered the trial court's records and the grounds of appeal raised by the appellant. The grounds of appeal

essentially focus on evaluation of evidence. Therefore, I will discuss them together. Under sections 101,102, and 103 of the Evidence Act, Cap. 6 R.E 2019, the burden of proof lies on the party who asserts the existence of the issue or question in dispute. In civil cases, the standard of proof is on balance of probabilities. In the case at hand, the burden of proof was on the appellant. She was to prove on balance of probabilities that her late father is the owner of the suit land, her evidence was to be good enough to satisfy the trial tribunal that on the evidence presented before the tribunal, that the deceased let the land to the respondent with a condition that he should take care of his son Mohamed by giving him all the school needs.

The appellant stated that the deceased let the suit land to the respondent subject to taking care of his son Mohamed whereas the respondent stated that the deceased gave him the suit land in 1994 which was forest, he cleared the same, planted cashew nuts trees and has been using the land peacefully up to 2018 when the appellant instituted the case at



Namwinyu Village Council. In regard to the first and fourth ground, I subscribe to the findings reached by the trial tribunal that the appellant failed to discharge his duty of proving the claim that the deceased leased the suit land to the respondent. The respondent's evidence was heavier compared to that of the appellant. The respondent testified that the deceased gave the land to him, it was a forest, he cleared the land and planted cashew nut trees. His testimony was supported by SU2, SU3, SU4. He also said that the deceased's farm is different from the respondent's farm. The respondent farm is on upper side whereas the deceased's farm is on the lower side. The appellant on her part failed to discharge her duty of calling Mohamed who was supposed to be taken care by the respondent especially by providing him with all school needs. The tribunal found that the suit land belongs to the respondent, he was given by the deceased and it was not leased to him with a condition attached on it. I subscribe to the District land and Housing Tribunal decision and analysis of

evidence. The appellant didn't state the time frame or period which the agreement would run. The evidence shows that the respondent has been tilling the land for more than twenty years. Hence, I find the first ground of appeal meritless.

The second ground has been answered in the first ground in a sense that the respondent was not an invitee rather the owner of the suit land as he was given it by the appellant's father.

In regard to the third ground, that the trial tribunal misdirected itself for failure to find that not always the long stay of an invitee grants him ownership of land, hence he declared the respondent as the lawful owner of the suit land. The record does not support the argument that the trial tribunal ruled out that the appellant was an invitee rather at page 8 of the judgment it said, I quote: -

*"Ni maoni yenye nguvu ya Baraza hili  
kwamba shamba hilo la marehemu Ally Alimu  
Jembu, ambapo alilisafisha, alipanda,*



*mikorosho, alilitunza na amemiliki kwa muda wa Zaidi ya miaka 12 (kumi na mbili) bila usumbufu wowote"*

It is true that no invitee can exclude his host whatever the length of time the invitation takes place regardless of the exhausted improvements made to the land on which he was invited. See the case of **Mussa Hassan vs. Barnabas Yohanna Shedafa**(Legal Representative of the late **Yohanna Shedafa**), Civil Appeal No. 101 of 2018 Court of Appeal sitting at Tanga (Unreported), where it was held that:-

*"An invitee cannot own a land which he was invited to the exclusion of his host whatever the length of his stay. It does not matter that the said invitee had even made unexhausted improvements on the land on which he was invited."*

Also, in the case of **Samson Mwambene vs. Edson James Mwanyingili** [2001] TLR 1, it was held that: -

*"The appellant was invitee ex gratia of James on the land in dispute. As this court has consistently held no invitee can exclude his host whatever the length of his occupation."*

However, as stated earlier, looking at the record, the trial tribunal did not hold that the appellant was an invitee, rather the owner of the suit land, that the land was given to him by deceased Ally Alimu Jembu.

In the upshot, I find no reason to differ with the trial tribunal, the appeal has no merits and it is consequently dismissed.

Right of Appeal Explained.



**S.C. MOSHI**

**JUDGE**

**21/10/2021**

