

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

LAND APPEAL NO. 79 OF 2020

(Originating from the District Land and Housing Tribunal for Iramba at Kiomboi in Land
Application No. 27 of 2018)

SHANGO PESI ALIAS JUMANNE MSENGI APPELLANT

VERSUS

VAILETH WILLIAM MGWATU

(as adm. Of the estate of

the late Marco Mgwatu).....**RESPONDENT**

6/12/2021 & 17/12/2021

JUDGMENT

MASAJU, J

The Respondent, Vaileth Wiliam Mgwatu, the administratrix of the estate of the late Marco Mgwatu successfully sued the Appellant Shango Pesi Alias Jumanne Msengi in the District Land and Housing Tribunal for Iramba at Kiomboi.

Aggrieved with the decision, the Appellant has come to the Court by way of an Appeal. The Appellant's Memorandum of Appeal is made up of five (5) grounds of Appeal.

The Respondent filed his Reply contesting the Appeal.

When the Appeal was heard in the Court on the 6th day of December, 2021, the Appellant was represented by Mr. Lucas Komba, Advocate while the Respondent appeared in person.

Submitting in support of the Appeal, the Appellant dropped the 1st ground of Appeal and argued on the remaining grounds of Appeal that the Appellant was able to prove how he acquired the impugned land as per the evidence adduced by the Appellant himself (DW1) and Nicholus Kiula Kisimbi (DW2). That, he cleared a virgin land upon buying it from Mgwatu upon consideration of TZS 190,000 and one maize bag and DW2 supported the Appellant.

That, the Respondent's evidence was weak since she tendered a hand over Note (Exhibit P1) which lacked her own signature and there was no village Government Official stamp, and no eye witnesses. The Appellant prayed the Court to allow the Appeal with costs accordingly.

On her part the Respondent contested the appeal by submitting that Exhibit P1 had been stamped with the village Government office. The Respondent prayed the Court to adopt her Reply to the Memorandum of Appeal to form part of her submissions.

In the trial Tribunal the Appellant in his own Written Statement of Defence particularly in paragraph 7 he alleged that he had bought the land from the Respondent's late grandfather Mr. Marco Mgwatu. In his testimony he had the same story adding that the consideration thereof was TZS 190,000/= . The Appellant had no any documentary proof to that effect. His witness, Nicholus Kiula Kisimbi (DW2) contradicted his story arguing that the Appellant had never bought the land but rather cleared the land. Thus, the

Appellant's evidence in the trial Tribunal on how he acquired the impugned land was contradictory, hence unreliable.

The Respondent alleged the land to have been owned by the late Marco Mgwatu, her late grandfather, that, the Appellant was only using the land. That, after her grandfather passed away in 2005 they requested the Appellant to hand over the land and in 2017 the Appellant handed over the land (Exhibit P1). That the handing over was witnessed by the village Government and other official. The Respondent's evidence was support by Emmanuel William Gwatu(PW2) as well as Exhibit P1 which was stamped and witnessed by four(4) witnesses and the village chairman contrary to the Appellant's submissions in the Court which are regarded by the Court as an afterthought since he ought to have objected to the exhibits admission in the trial Court. Thus, the Exhibit P1 can not be contradicted by the Appellant's oral evidence pursuant to section 101 of the law of Evidence Act [Cap 6].

That said, the Court is of the considered position that the Respondent proved her case in the required standard of proof as rightly decided by the trial Tribunal.

The Appeal is hereby dismissed for want of merit. The Appellant shall bear the costs of the Appeal.



GEORGE M. MASAJU

JUDGE

17/12/2021