

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

**LAND APPEAL NO. 21 OF 2022**

*(Arising from Land Application No 45 of 2018 District Land and Housing Tribunal for Morogoro)*

**MUHIDINI RAMADHANI .....APPELLANT**

**VERSUS**

**FIKIRI BAKARI.....RESPONDENT**

**JUDGEMENT**

*Last Court Order on 09/5/2022*  
*Judgement date on 31/5/2022*

**P. J. NGWEMBE, J.**

The appellant after being aggrieved by the decision of the District Land and Housing Tribunal for Morogoro in Land Case No. 45 of 2018, Preferred this appeal.

Brief background of this appeal, traces back to the appellant's claim of ownership of the suit land. Alleged that he inherited the suit land from his late father in year 1986. Contended further that, his late father passed away in year 1988. It means even before the demise of his father in year 1988, he was owning it (1986).

At the same time, the respondent alleged to have acquired the suit land by way of sale. That he bought that land from Amri Juma Mawenge

and Asha Juma Mawenge in year 2013 for consideration of TZS. 700,000/=. The suit land is located at Sembete area in Mtamba village within Morogoro District in Morogoro region. Having that background, now the appellant preferred an appeal armed with four (4) grounds namely:

1. *That, the trial tribunal erred in law and fact by invoking the doctrine of adverse possession in the circumstance where the respondent was a licensee.*
2. *That, the trial tribunal erred in law and fact by not recording part of the appellant evidence, hence making an erroneous conclusion.*
3. *That, the trial tribunal erred in law and fact completely distorting the appellant testimony and evidence thereby making erroneous conclusion.*
4. *That, the trial tribunal grossly erred in law and fact in deciding in favour of the respondent against the weight of evidence.*

On the hearing date of this appeal, unfortunate both parties failed to procure legal representation, however, they stood firm and argued their case properly. The appellant submitted briefly that, the suit land is a quatre of acre, which is located at Sembete area, at Mtamba Village in Morogoro District, whereby Asha Juma sold it to the respondent. He prayed this court to revisit the whole proceedings of the trial tribunal and decide properly.

In turn, the respondent averred that, he bought the suit land in year 2013, from Amri Juma Mawenge and Asha Juma Mawenge, in

consideration of Tshs 700,000/=, which he paid in two instalments. The first instalment was TZS. 500,000/- paid on 7.12.2013 and the second and last instalment of TZS. 200,000/= was equally paid to the seller. He further argued that Thabit Ramadhan Dagila, a brother of the appellant trespassed into the suit land and harvested coconuts, such act was reported to the Street Leadership, where he was found guilty and paid compensation of TZS. 300,000/=.

In year 2015 the appellant who is a younger brother of Thabit Ramadhan Dagila, preferred a criminal suit against the respondent at Primary Court charged for the offence of stealing coconuts, but the court found him innocent and the suit was dismissed and he was discharged. The appellant was aggrieved by the decision of Primary Court, hence he appealed to the District Court of Morogoro, but also the appellate court upheld the decision of Primary Court and found him not guilty. At the end they landed in the District Land and Housing Tribunal, which also found the respondent a lawful owner of the suit land. Hence, prayed for dismissal of dismiss the appeal with costs.

I have carefully scanned the evidence on record, grounds of appeal and the rival arguments from both parties. Substantially, I find one pertinent issue, which is capable of being considered by this court, that is, whether the trial tribunal erred in law and facts in holding that the suit land belongs to the respondent. Upon answering this issue obvious the rest features in there.

This being the first appellate court, it goes like a day followed by night, that this court has a duty to reevaluate the whole evidences adduced during trial. This position was held in numerous appeals including in the case of **Japan International Corporation Agency (JICA) Vs.**





**Khaki Complex Limited; Civil Appeal No. 107 of 2004** (unreported),  
the court held:-

*"the first appellate court has a duty to re-evaluate the evidence of the trial court and come up with its own independent findings."*

The same position was repeated in the case of **Standard Chartered Bank (T) Ltd Vs. National Oil (T) Ltd and Another, Civil Appeal No. 98 of 2008** (unreported) held:-

*"The law is well settled that on first appellate the Court is entitled to subject the evidence on record to an exhaustive examination in order to determine whether the findings and conclusions reached by the trial court stand (Peters v Sunday Post, 1958 EA 424; William Diamonds Limited and Another v R, 1970 EA 1; Okeno v R, 1972 EA 32)"*

In the present circumstance, I find vital to examine what transpired during trial. According to the evidences on record, the appellant who testified as PWI, confirmed that Asha Juma sold her suit land to the respondent. Thereafter, she reported the dispute to the village council (Baraza la Kijiji). At the village council, Asha Juma alleged to have inherited the suit land from her father namely Kobelo Mawenge and Saidi Mawenge. The village council made a call to Kobelo Mawenge and Saidi Mawenge, but Kobelo Mawenge didn't enter appearance at the Village Council, while Said Mawenge denied to have given that piece of land to Asha Juma. In conclusion the disputed land was handled back to him, as part of his inheritance from his father Ramadhan Salim who died in year 1988. Continued that, the land bequeaths to the appellant in year 1986 where the appellant planted coconut trees therein.

Thereafter, the appellant reported the respondent to police, but police though arrested the respondent, but later decided that the matter belong to land dispute. In turn the respondent filed a land dispute at the Ward tribunal for Kisemu where the Ward tribunal ruled in favour of the respondent. As the result he filed appeal in the District Land and Housing Tribunal for Morogoro, which nullified the whole proceeding of the Ward tribunal for non-joinder of necessary party.

Again, he instituted another land dispute to the District Land Tribunal which dispute was supported by PW2, who testified to the effect that, he used to see the father of the appellant farming in the suit land. But at the end he denied to know who was the owner of the suit land.

On the other hand, the respondent testified that he bought the suit land from Amri Mawenge for the total sum of Tshs 700,000/=, on 7.11.2013 he paid TZS. 500,000/= remaining an outstanding balance of TZS. 200,000/= which also was paid on 8.12.2013 as was agreed.

Unfortunate in year 2013 Amri Mawenge died. Thereafter, the brother of the appellant trespassed into the suit land and harvested some coconuts. The matter went to the village council and the trespasser (Brother of Amri Mawenge) was found guilty and paid the respondent a total of TZS. 300,000/= as compensation.

The story went on as recapped herein above. It is on record that during trial, the respondent tendered several copies of judgements, that is, a copy of judgement of Criminal Case No. 69 of 2016 of Primary court of Matombo as "D1", copy of judgement, Criminal Appeal No. 81 of 2016 of the District Court of Morogoro as "D2", copy of judgement No. 01 of 2017 of the Ward tribunal at Kisemu as "D3", copy of judgement of Land Appeal no 73 of 2017 of the District Land and Housing Tribunal at



Morogoro and as "D4". All those copies proved that the respondent is the lawful owner of the suit land.

Obvious there is a cherished principle of law, that generally, in civil cases including land cases, the burden of proof lies on the party who seeks protection of the court of law. I am fortified by the provisions of sections **110 and 111 of the Law of Evidence Act [Cap 6 R.E, 2002]**, which among other things state as follows:-

**Section 110**, *"Whoever desires any court to give judgement as to any legal righty dependent on existence of facts which he asserts must prove that those facts exist."*

**Section 111**. *"The burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side"*

Considering these two sections of law, the Court of Appeal in the case of **Attorney General & 2 others Vs Elig Edward Massawe & others, Civil Appeal No. 86 of 2002** (Unreported), made reference on the same sections on burden of proof on civil cases. It is a common knowledge, that in civil proceedings, the party with legal burden also bears the evidential burden and the standard is on a balance of probabilities. In addressing a similar scenario on who bears the evidential burden in civil cases, the Court of Appeal in **Godfrey Sayi Vs. Anna Siame as legal representative of the late Mary Mndolwa, Civil Appeal No. 114 of 2012** (unreported), and in **Anthony M. Masanga Vs. Penina (Mama Ngesi) and another, Civil Appeal No. 118 of 2014** (unreported), the Court of Appeal cited with approval, the case of **Re B [2008] UKHL 35**, where Lord Hoffman, provided the most lucid definition of the term "balance of probabilities" to mean:-

*"If a legal rule requires a fact to be proved (a fact in issue), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates in a binary system in which the only values are 0 and 1. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of 0 is returned and the fact is treated as not having happened. If he does discharge it, a value of 1 is returned to and the fact is treated as having happened"*

It is established principles of land law that the court will only grant protection to a person who has subsisting right over land. The principle is quoted hereunder for ease of reference: -

*The protection of the Court can only be granted or extended to the person who has valid, subsisting right over land.*

The evidence collected and recorded by the trial tribunal, show that the appellant failed to prove his ownership over the suit land, as the evidence adduced before the trial tribunal are contradictory evidence. He testified that, he inherited that land from his father in the year 1986. Part of the proceedings are quoted hereunder:-

*"...nakumbuka baada ya Asha Juma kuuza eneo alimwita Asha Juma kwenye Baraza la Kijiji nikamwambia kwanini ameuza eneo langu naye alisema amerithi kwa baba zake*





*Eneo hilo aliacha mzazi wangu Ramadhani Salim, alifariki 1988, aliniachia eneo hilo mwaka 1986, nilipanda minazi"*

Based on such piece of evidence, the village council ruled that the suit land belong to the respondent. There was no evidence that the appellant inherited that land from his father who died in year 1988. Also, there is no proof that he was bequeath the suit land after death of his father. Above all there is no any proof from the family members or administrator of his father's estate to prove ownership. Therefore, the appellant failed to prove ownership.

PW2 didn't support the evidence adduced by the appellant, as he didn't know who is the owner of the suit land. if that suit land belongs to his father, how possible his paid compensation of 300,000/= to the respondent? The respondent proved how he obtained the suit land. He bought it from Amri Mawenge and the proof was tendered during trial. Therefore, the respondent was the one who own the suit land.

To conclude therefore, I wish to refer with emphasis, to section 45 of the Land Disputes Courts Act Cap 216 R.E. 2002 that: -

*"No decision or order of a Ward Tribunal or District Land and Housing Tribunal **shall be reversed or altered on appeal or revision** on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence has in **fact occasioned a failure of justice**".*





In view of the aforesaid, and on strength of evidences referred hereto in line with section 45 of the Act, this court finds no reason to fault the decision of the District Land and Housing Tribunal for Morogoro. The tribunal was justified to declare that the disputed land belongs to Fikiri Bakari. As such there is no reason to reverse or alter that judgement and decree. In conclusion this appeal is devoid of merit same is dismissed with costs.

**I accordingly order.**

Judgement delivered in chambers this 31<sup>th</sup> day of May, 2022



**P.J. NGWEMBE**

**JUDGE**

**31/5/2022**

**Court:** Judgment delivered at MOROGORO in Chambers on this 31<sup>st</sup> day of May, 2022 in the presence of the appellant and in the absence of the respondent.

**Right to appeal to the Court of Appeal is explained.**



**P. J. NGWEMBE**

**JUDGE**

**31/5/2022**