

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

AT SHINYANGA

LAND APPEAL NO. 20 OF 2021

(Arising from Misc. Land Application No. 56 of 2021 of the Maswa District Land & Housing Tribunal)

KULWA KIPORO..... APPELLANT

VERSUS

SHASHI GIDI..... 1ST RESPONDENT

SHOMA MADUHU.....2ND RESPONDENT

JUDGMENT

17th May & 10th June 2022

MKWIZU J:

This is an appeal against the decision of the District Land and Housing Tribunal in respect of Land Application No. 56 of 2018 where appellant, sued the Respondents claiming ownership of un-surveyed piece of land measuring 40 acres of land located at Mkuyuni Village at Ikungulyabashashi Ward within Bariadi district in Simiyu Region. On 2nd March 2021 the Maswa District Land and Housing Tribunal decided the dispute in favour of the respondent. Aggrieved appellant has lodged this appeal on following grounds that;

- 1. That, the trial Chairman erred in law and facts for erroneously failure to consider and examine properly the documents tendered (exh DW) by the 1st respondent while she has no lucas to tender the same since the document contained the same of her mother.*
- 2. That, the Trial Chairman erred in law and facts for failure to acknowledge that there was no any documents tendered before the tribunal showing that the 1st respondent was given the said land by her mother as claimed.*
- 3. That, the trial Chairman erred in law and in fact for failure to acknowledge that the 1st respondent has acquired no better title to pass to the 2nd respondent since she is not either the administratrix of the estate of late GUDANIWA KASENGA JABASI or an Attorney which makes the sale to be null and void*
- 4. That the trial magistrate erred in law and facts for failure to analyse, evaluate and consider the evidence adduced by both parties to the case.*

Parties were all unrepresented during the hearing of this appeal. Arguing in support of the appeal, Appellant was brief, he prayed for the consideration of his grounds of appeal with an order allowing his appeal. First respondent said the land is his, he acquired it from his mother while 2nd respondent said, he is just a purchaser who bought the suit land from the 1st respondent.

I have thoroughly evaluated the trial Tribunal's record, parties' evidence and submissions before this court and the grounds of appeal. The main issue is whether the appellant claim at the trial tribunal was proved on the balance of probability as required by section 3 (2) (b) and section 110 of the law of Evidence Act (Cap 6 RE 2019) that;

"110. -(1) Whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

The Appellant is the original applicant at the trial tribunal where he claimed to be declared rightful owner of the suit land. He claimed to have been given the suit land by his mother and that 1st respondent is a trespasser. His evidence was supported by other two witnesses. PW2, Rehema Masanja and PW3, Jacob John. This evidence, however, is short of clarification on when and how the appellant acquired the suit land. While declaring that the land was given to him by his mother, the appellants evidence is silence on whereabouts of the mother and whether he inherited the same or just given as a gift. His evidence is also contradictory on the size of the land. While the pleadings describe the size of the suit land as a 40 acres land, Pw2's evidence named it as 25 acres of land without defining it more. In fact, even the description of the suit land is obtained from the respondent's evidence.

On the other hand, 1st respondent evidence was specific that he was given the suit land measuring 36 acres by his mother called Gidanhwa Kasenga Jabasi before her death and owned under a customary right of Occupancy. He was also categorical that he sold 12 acres of the suit land to the 2nd respondent. His evidence was supported by PW2 Nyeja Sumbula and PW3, Jeremiah Lupiga, the Village chairperson by then and who participated in the issuance of Customary Right of Occupancy to the respondent's mother in 2010. PW3 was also able to spell out the size of the suit land that is 36 acres and that 12 of them were sold to the 2nd respondent at a

consideration of 4400,000/=2nd respondents' evidence also was in support of the 1st respondent. The tendering of the Customary Right of Occupancy exhibit DW1-1 as admitted without objection, from the appellant. Thus, the respondent's evidence is as observed by the trial tribunal chairperson is weightier than that of the appellant/ original applicant. The principle of law demands that a person with heavier evidence than his/her adversary must win the case. This stance of the law was stated in the case of **Hemedi Saidi v. Mohamedi Mbilu** [1984] TLR 113 where the Court said both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win.¹ This court therefore finds nothing to fault the trial tribunals decisions.

In view of the above analysis, I uphold the decision of the trial tribunal and dismiss the appeal accordingly with costs.

DATED at **SHINYANGA** this 10th day of June, 2022.


E.Y. MKWIZU

JUDGE

10/06/2022

COURT: Right of Appeal Explained


E.Y. MKWIZU

JUDGE