**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO.82 OF 2021**

*(Arising from the decision of Shinyanga District Land and Housing Tribunal in Land Appl. No. 53 of 2019)*

**MAYEKA MASANJA@ NKENGI MHANGO.....APPELLANT**

**VERSUS**

**JUMA KASEKO..... .....RESPONDENT**

**JUDGMENT**

*31st May & 15th July 2022*

**MKWIZU, J:**

The center of the dispute in this appeal as it was at the trial tribunal is ownership of a piece of land measuring 24 acres located at Igalamya Village in Usule Ward, Shinyanga. The appellant's claim is that he is the legal owner since 1994 and that the respondent is a trespasser. The averment in his application shows that there was a village meeting convened on 28/1/2018 to resolve their dispute and that it ended by the respondent's admission of the claim with an agreement that the respondent vacate the suit land after the harvests of his crops but contrary to the agreement, respondent illegally and without any justification refused to hand over the land to him.

The respondent had a different version of the story. His claim was that the land belongs to his grandfather late Maganga Kaseko who passed it to Kaseko Maganga, the respondent's father before it landed to him in 1988 after his father's death.

A total of seven witnesses were heard by the tribunal. Five witnesses for the appellant and two witnesses for the respondent. At the end of the trial, the tribunal chair was satisfied that the appellant has failed to prove his claim. He found in favour of the respondent.

The Appellant is not happy; he has approached this court on four grounds of appeal which can easily be summarised into two (***1) the tribunal contravened the law by recording the witnesses' evidence without taking an oath or affirming and (2) that the tribunal's decision is not supported by the adduced evidence.***

At the hearing of the appeal, both parties were unrepresented. Through an interpreter, the appellant prayed for the consideration of his grounds of appeal without more. Respondent, also aided by an interpreter supported the trial court's decision. In his short rejoinder, the appellant said, the land belongs to his father; he bought it from his uncle and that he has been using the suit land for 20 years now.

I have gone through the trial tribunal's record. It is evident that all the seven witnesses who testified for the parties herein were recorded after they have been sworn. The first issue is therefore without merit.

The second complaint that the trial court's decision is not supported by evidence calls for the re-evaluation of evidence by this court. This is in accord with the legal position that the first appeal is in the form of a re-hearing as enunciated in the case of **Siza Patrice V. Republic,** Cr. Appeal No 19/2010, where the Court of Appeal observed that:

> *"We understand that it is settled law that a first appeal is in the form of a rehearing. The first appellate court has a duty*

*to re-evaluate the entire evidence in an objective manner and arrive at its own findings of fact, if necessary"*

I have subjected the entire evidence to sympathetic scrutiny. Both, pleadings, and evidence by the appellant (original applicant at the trial tribunal) are silent on how he acquired the suit land. Paragraph 6 (a) (i) of his application at the tribunal avows on ownership of the suit land without more and his evidence on pages 6 to 8 of the proceeding divulges nothing in relation to how he acquired the suit land. He instead relied on the Community meeting minutes (exhibit P1) chaired by his own blood brother, Mhango Masanja PW**2**, the then, hamlet chairperson dated 28/1/2018 that pronounced him owner.

I have also examined the said minutes, (exhibitP1). Three things are obvious here. ***One***, the document is a copy. In his evidence, PW2, the then hamlet chairperson and the alleged meeting chairman told the tribunal that the minutes of the meeting were handled to the appellant, owner of the suit land. Under such a circumstance, and without any legal excuses, the appellant was required to tender the original copy of the minute but in this case, the record is silent on why the original minutes were not brought before the tribunal. ***Two,*** the participants of the meeting did not sign the minutes to signify their actual presence at the said meetings whose validity was vehemently contested by the respondent on page 7 of the proceedings. ***Three,*** there was no reading out of the contents of exhibit P1 after its admission. It is settled law that whenever the document is introduced in evidence, its content must be read out before the court after admission. The trial tribunal omitted, this procedure, exhibit P1 was admitted without reading over its content to the respondent, a lay person to let him understand and make a

meaningful defence including cross-examining the witnesses on the said documentary evidence. The omission is therefore fatal. As a result, exhibit P1 is expunged from the record.

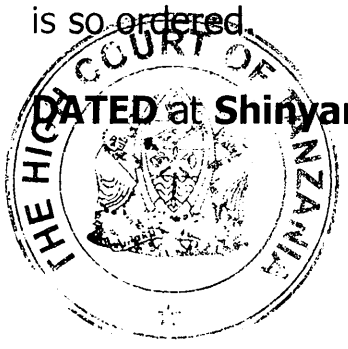
There is however other evidence by PW2, Mhango Masanja, Maige Nkengi Mandwa(PW3), and PW4 on the purchase of the suit land by the appellant. These three witnesses said the appellant had purchased the suit land from Makonda Ntula. This assertion, however, remained bare without proof either from the documentary or by the person from whom the land was bought. The seller's evidence was, in my view, important as he would have disclosed to the court how he, personally acquired the land before he sold it to the appellant but for undisclosed reasons, the seller was not brought to the witness box triggering the drawing of an adverse inference against the appellant.

Yet again, the appellant's evidence was contradictory rendering trustworthiness minimal. Contrary to the main claim, Pw3 described the suit land as eight (8) acres of land while PW4, witnesses of the alleged purchase said the suit land is 20 acres. Again, while PW4 was categorical that the appellant had purchased the suit land in 1994 when the respondent was still a young boy, during examination in chief, PW3 informed the tribunal that the appellant began to use the land before the respondent is born and during cross-examination, he said, the respondent is his child's age mate who completed standard seven in 1980. I doubt the credibility of the appellant's witnesses above. PW5, Paulo Ngasa is of no assistance because he admitted to having no knowledge of how the appellant got the Suitland.

Respondent had short but focused evidence that the land is his having obtained it through inheritance after the death of his father. His evidence was supported by his mother Dw2.

This is a civil case where the standard of proof is on the balance of probabilities (see Section 3(2)(b) of The Tanzania Evidence Act, Cap 6, R.E 2019) and the settled position is "who alleges must prove as dictated by the provisions of section 110 and 111 of the Tanzanian Evidence Act, Cap 6, R.E 2019. The appellant was under the above principle required to prove his claim to the required standard. That proof is lacking in this case. Appellant's evidence is weak not only on when he acquired the suit land but on both how and from whom he acquired the legal ownership of the suit land.

I do not find any reason to differ from the trial tribunal's decision. The trial tribunal was therefore justified to declare the Respondent the rightful owner of the suit land. Accordingly, the appeal is dismissed with costs. It is so ordered.




**DATED** at **Shinyanga** this 15th day of **JULY** 2022.

**E.Y. MKWIZU**
**JUDGE**
**15/7/2022**

**Court**: Right of Appeal Explained

**E.Y. MKWIZU**
**JUDGE**
**15/7/2022**