

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

**AT ARUSHA**

**MISC. LAND APPEAL NO. 11 OF 2022**

*(Originating from Land Application No. 4/2021 DLHT of Karatu originating from Land  
Complaint 3/2019)*

**ROZIMARY SILVESTA.....APPELLANT**

**VERSUS**

**SARA SIASI.....RESPONDENT**

**JUDGMENT**

**26/7/2022 & 23/09/2022**

**GWAE, J**

In the Rhotia ward tribunal ("trial tribunal"), one Gumbala Siasi, the late husband of the appellant, Rosemary Sylvester instituted a dispute against the respondent, Sara Siasi via Application No. 3 of 2019. However, on 9<sup>th</sup> March 2020, the late Gumbala Suasi passed away. Following the demise of the said Gumbala Siasi (appellant's late husband) the appellant lodged a Probate and Administration Cause No. 55 of 2020 in the Urban Primary Court of Karatu and she was granted letters of administration on 3<sup>rd</sup> day of September 2020.

Seemingly, while the land dispute was pending before the trial tribunal, the respondent instituted a Probate and Administration Cause No. 14 of 2020 in the Urban Primary Court of Karatu in respect of the estate of her late mother, Lucia Yaro. The respondent's Cause was plainly objected by the appellant on the basis that, one of the estate is the property owned by the late Gumbala however on 18<sup>th</sup> day of May 2020 the respondent was issued with letters of administration of the estate of her late mother, the appellant's mother in-law.

The trial tribunal heard the parties and eventually entered its verdict in favour of the appellant which was reversed by the District Land and Housing Tribunal (herein the appellate tribunal). Aggrieved by the decision of the appellate tribunal, the appellant has knocked the doors of this court being armed with four grounds of appeal, to wit;

1. That, the Hon. Chairperson erred in holding the suit land was the property of the respondent's deceased mother and therefore subject of administration
2. That, the Hon. Chairperson misdirected his mind when analyzing and evaluating the evidence adduced in the ward tribunal that led to an erroneous decision in favour of the respondent

3. That, the Hon. Chairperson erred and in fact by relying on inconsistent and insufficient evidence adduced by the respondent's witnesses on the ownership of the suit land
4. The appellate tribunal erred for holding that the suit land is a family property relying its decision on the absence of written records to justify the appellant's deceased husband to the suit land

On 26<sup>th</sup> July 2022 when this appeal was called on for hearing before me, both parties appeared unrepresented. In addition to the grounds of appeal contained in the petition of appeal, the appellant stated that, the suit land was in use and occupancy of her late husband whom she stands as an administratrix of the estate of her late husband, Gumbala Siasi. She went on arguing that, the suit land was distributed to her late husband when the respondent's late mother was alive. On the other hand, the respondent argued that, the land in dispute is the property of her late mother who passed away in 2015 and that she is an administratrix of the estate.

Having outlined what transpired before the tribunals below and this court in appeal stage, I should now turn to determination of the appellant's grounds of appeal however as ground No. 1 and 3 touch on the re-evaluation

of evidence by the appellate tribunal and ground 2 and 4 are all about complaint on the challenged declaration by the appellate tribunal of the suit land to be subject of administration. It follows therefore, this court is going to determine two grounds of appeal namely;

1. That, the appellate tribunal erred in law and in fact by failing to properly evaluate evidence adduced before the trial tribunal
2. That, the appellate tribunal erroneously held that the suit land is the estate of the respondent's deceased mother and therefore subject of administrate

In the 1<sup>st</sup> ground of appeal herein above, it is well cherished principle that, the 1<sup>st</sup> appellate court may step into shoes of the trial court or trial quasi-judicial body like the present appellate tribunal which was entitled to re-evaluate evidence recorded by the trial tribunal and come up with its own findings. Hence, the appellate tribunal was required to properly re-assess the evidence adduced before the trial tribunal. This position was judicially stressed in the case of **Philipo Joseph Lukonde vs. Faraji Ally Saidi** Civil Appeal No. 74 of 2019 (CAT – Dodoma Unreported) where it was held that;

*“This being a first appeal, this Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusions.”*

As the appellant's complaint on the 1<sup>st</sup> ground is on the alleged failure to re-valuate evidence adduced by the parties before the trial tribunal by the appellate tribunal, I am therefore duty bound to carefully re-assess whether the appellate tribunal misdirected itself in re- evaluating the evidence duly recorded by the trial tribunal.

The finding of the appellate tribunal as far as the evidence adduced before the trial tribunal is concern is, that it was sufficiently established that though the appellant's late husband used to hire the suit land especially to Augustino John but it was so under directives or consent of the respondent and that, there was no tangible evidence justifying the appellant's assertion that the late Gumbala was allocated the suit land during operation vijiji in the year 1974.

Carefully examining the records especially, the testimonies adduced by the parties and their respective witnesses particularly, AW2, Aliana Managhe, Moshi Sipuu (AW4) and Augustino John (RW4) who amply and together testified that, the respondent and her sister, Apolonia Siasi (RW2) being accompanied by their uncle known by the name of Sarea Hhau did approach the respondent's mother one Lucia Yaro in order to distribute the family land to them but the said late Lucia refused on the ground that the family land

had already been distributed to the sons of the late Lucia by the late Siasi Waree (respondent's late father). For sake of clarity pieces of the evidence adduced by the parties' witnesses are reproduced *herein under;*

*AW2 "Watoto wa kike kwa Siasi walimowomba mama maeneo lakini mama yao alikataa kwamba maeneo ni ya vijana baba amegawa sina maeneo ya kugawa...baada ya siku nying mama kafariki*

*AW3: ..Baada ya madai yao mama alikataa. Baada ya muda si mrefu mama alifariki dunia...tuligawiwa katika eneo la baba yetu wakati wa mwaka 1974 yaani operation*

*AW4" (mama mzazi) alikataa maombi yao mbele ya mjomba wao akisema sina shamba la kugawa maeneo yote ya kugawa yamegawiwa kwa vijana na baba yao.....*

*RW4 "Kuna wakati nikiwa balozi wasichana wa mzee Siasi Waree waliomba shamba wakiongozwa na mjomba wao SAREA HHAU lakini mama yao alikataa, alisema baba yao ameshagawa kwa vijana"*

Taking into account of the pieces of evidence adduced by both sides and quoted above, it is therefore more probable that the late Siasi Waree, whom they did not disclose as when he actually died, gave his two sons namely; Gumbala Siasi and Saya Siasi the family land whose part is now in dispute. In other words, it is highly improbable that, the suit land was not distributed to the appellant's late husband. I have also taken into account of

the period (1974) that, AW3, Saya had testified to have been given his parcel of land (10) and that of his late brother Gumbala by their late father.

More so, I have further considered the issue of gender insensitivity on the parts of the respondent's biological parents nevertheless I have observed that in this case there is an issue of absolute giving and receiving by the late Siasi and his sons respectively which has been proved in the balance of probabilities. In **Siraj Din v Ali Mohamed Khan** (1957) 1 EA 25 it was inter alia stated that;

*"The quantum of proof ordinarily required in civil litigation is not such as resolves all doubts whatsoever but such as establishes a preponderance of probability in favour of one party or the other".*

See also section 3 (2) (b) of the Tanzania Evidence Act, Cap 6 Revised Edition, 2019).

Basing on the precedent cited above, provisions of law and the evidence adduced by the parties during hearing, the fact that the suit land was given to the appellant's deceased husband is found to have been proved in that required standard that is preponderance of probability.

I am further of the considered view that, had the appellate tribunal properly directed its mind on the documentary evidence tendered before the

trial tribunal, it would not have found that whatever was done by the appellant's late husband was authorized by the respondent. Therefore, the respondent was one in control of the suit land. I am of that view for an obvious reason that, the sale agreement of a plot located at Huduma Village between the late Gumbala and Protasi Paskali dated 13<sup>th</sup> February 2019 and lease agreement between Gumbala and Protas Pascal Karama dated 4<sup>th</sup> November 2019 followed by the sale between the appellant and Protasi Paskali dated 9<sup>th</sup> April 2020 in order to cover the funeral expenses in respect of the late Gumbala.

It is also clearly and sufficiently established that at one time the respondent built a shelter for her biological mother in the suit land, the house in which the late Lucia and the appellant together with the late Gumbala were living together. I think the respondent's acts of building a residential house as vividly adduced by (AW2) alone does not establish her ownership of the disputed land. Having analyzed as herein above, the 1<sup>st</sup> ground is therefore not without merit.

As to the 2<sup>nd</sup> ground, following the court's determination of the 1<sup>st</sup> ground of appeal, I am not therefore supposed to be unnecessarily curtailed dealing with this ground since it is sufficiently established that, the late



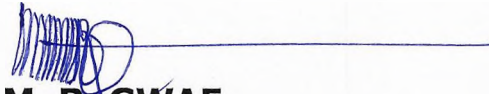
Gumbala and his young brother one Saya Siasi were given parcels of land by their late father during his life time as well as when the respondent's late mother was alive. Thus, the suit land is not part of the estate of the late Lucia Yaro.

Before tying off this judgment, I find it worth noting that despite the fact that both parties stood suing and being sued in the capacities of administratixes of their beloved ones yet the proceedings of this court and that of the tribunals below which yielded this appeal bear the names of the parties in their personal capacities, that is wrong in law however as the proceedings, tribunal's judgments and documentary evidence (letters of administration of estate of deceased persons) depict that they stood as administrators. In the circumstances of this case, therefore, I am not persuaded if such irregularity namely; a failure by the tribunals and this court to insert the parties to the dispute as administratixes of the estate of their late deceased persons renders the proceedings and decisions a nullity.

That said and done, this appeal is merited, it is allowed. The judgment and decree of the appellate tribunal are hereby quashed and set aside. Given the existence of parties' relationship, I feel compelled to abstain from making an order as to costs of this appeal and those before the tribunals below.

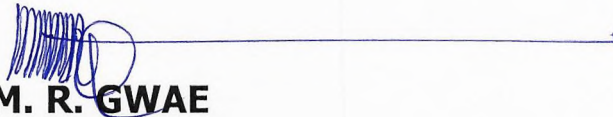
It is so ordered

Dated and delivered through this **23<sup>rd</sup> September 2022**



**M. R. GWAE**  
**JUDGE**  
**23/09/2022**

**Court:** Right of appeal to the Court of Appeal of Tanzania and its requisite processes fully explained



**M. R. GWAE**  
**JUDGE**  
**23/09/2022**

