

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF SHINYANGA**

**AT SHINYANGA**

**LAND APPEAL NO.85 OF 2021**

*(Originating from Maswa District Land and Housing Tribunal in Land Application No.75 of 2020)*

**GASHEL S/O GAKUNE.....APPELLANT**

**VERSUS**

**MBUKE D/O SHIMBA..... RESPONDENT**

**JUDGEMENT**

27<sup>th</sup> September, 2022 and

6<sup>th</sup> October, 2022

**L.HEMED, J**

At the district Land and Housing Tribunal for Maswa, (DLHT) **MBUKE SHIMBA**, administration of the estate of the late Shimba Shega, sued the Appellant herein, **GASHELI GAKUNE** demanding him to vacate from the suit landed property located at Mwatunguji village within Meatu District in Simiyu Region. It was alleged that the suit property which is part of the estate of the



late Shimba Shega, was acquired in 1950s by the late Shimba Shega through clearing a bush.

It was stated further that the late Shimba Shega used the suit land up to 1986 when he temporarily assigned the disputed land to one Mboje Iseme who was his best friend,(the father of the Appellant) on the arrangement that he was to vacate the disputed land when the owner requires his land.

However, when the late Shimba Shega demanded the land back from Mboje Iseme, his efforts appeared to end in vain. On 13<sup>th</sup> April,1998, the respondent father (Shimba Shega) reported the matter to the Ward Executive Offer where the Appellant's father admitted that the suit land was the properly of Shimba Shega.

The appellant father never returned to the Respondent father until when the Respondent's father died in the year 2000. After the death of the respondent's father, Mboje Iseme handed over the disputed land to his son one Gasheli Gakune (the Appellant).

After being appointed administratrix of the estate of her late father, the Respondent continued to demand the Appellant to vacate from said land, but



he resisted to vacate claiming to have inherited the disputed land from his late father.

Before the District Land and Housing Tribunal the Respondent who was the Applicant, testified as PW1 that the suit land is the property of his late father which he got by clearing the bush. She stated that the suit land which is located at Mwafuguji village is comprising of 63 acres. The respondent who also adduced as administratrix of the estate of her late father, mentioned the boundaries of the suit land that in the south borders the piece of land of Magundule, in the East by Nyanda, in the west by Gakune, and in the North by Magube. The evidence of the Respondent was supported by PW1 one DADUTUNGU. The Appellant was the only defence witness who testified as DW1 that the suit land belongs to his late father and not the Respondent's father. He ended closing his case.

The trial chairman after having heard evidence from the parties he found in favour of the Respondent herein. He ordered that the land measuring 63 acres situated at Mwafuguji village Meatu District in Simiyu Region, the property of the late Shimba Shega. The Appellant were permanently restrained from trespassing into the suit piece of land.



The Appellant was aggrieved by the whole decision of the District Land and Housing Tribunal hence the present Appeal on the following ground;

*1. THAT: - The Honourable chairman of Tribunal J.K.*

*KANYERINYEZI erred both in law and fact for failure to consider the evidence given by the Appellant.*

*2. THAT: - The Honourable chairman of Tribunal J.F.*

*KANYERINYERI erred in law and in fact by deciding in favour of the Respondent while the disputed Land belong to the Appellant and his clan Members.*

*3. THAT: - The Honourable chairman of Tribunal J.F.*

*KANYERINYERI erred in law for failure to follow the procedure when he refused to visit at focus in quo, therefore he reached into a wrong decision.*

The Appellant is thus praying for the Appeal to be allowed by quashing and setting aside the decision and orders of the trial Tribunal

The matter was argued orally by the parties who appeared in person. The Appellant submitted that his witnesses were not heard as the chairman was





transferred to Dodoma. He asked this Court to consider his appeal as the suit land is his property which he inherited from his father.

On her part, the Respondent submitted that she adduced evidence concerning the suit land. She stated that the Appellants father was a mere licensee in her father's land. She wondered why the Appellant is refusing to vacate from the premises.

After having heard the submission made by both parties let me turn to the grounds of appeal as they were presented in the Memorandum of Appeal. As to ground No 1, the Appellant is blaming the trial chairman for failure to consider the evidence given by the appellant. This ground of appeal prompted me to go through the proceedings and found that, the Appellant gave his testimony on 24<sup>th</sup> June, 2024. On that date he had only few words to inform the tribunal where he said since his childhood, he know the disputed land to belong to his father. He prayed to close his case.

I have compared the evidence of the Respondent and those of the Appellant which are on record. The respondent's evidence established how her father got the suit land, that is by clearing the bush. She also testified about the size of the suit Shamba, (63 acres) and the boundaries of the suit



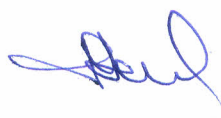
land. She finally testified on her *locus standi* as she adduced to be the administratrix of the estate of her late father.

The evidence of the Respondent was supported by another person (PW2) who testified to know the suit land as the property of the late father of the Respondent.

On his side the Appellant never established how his father acquired the suit land. In his evidence on record, he did not tell the trial tribunal who is currently owning the suit land after the demise of his father, as he only adduced to know that the suit land belonged to his father of the two parties, I am the firm view that the evidence adduced by the respondent was heavier than those adduced by the Appellant. In the case of **Hemed Said Vs Mohammed Mbilu** [1984] TLR 113 It was held that "a party with heavier evidence is the one that must win."

In the circumstance, it was proper for the trial Tribunal to decide in favour of the Respondent. Ground number one fails.

Regarding ground 2 that the trial tribunal erred in law and in fact by deciding in favour of the Respondent while the disputed land belong to the Appellant and his clan members, I am of the opinion that this ground has to fail outright



on the reasons aforesaid in ground No. 1. The respondent managed to prove her case before the trial tribunal rendering the trial tribunal to decide in her favour.

As regard the 3<sup>rd</sup> ground of Appeal that the trial tribunal erred in law for failure to follow the procedure when it refused to visit at *locus in quo*, in the first place, I have perused the proceedings of trial tribunal, I could not find anywhere showing that the parties had prayed for visitation of the locus in quo. Besides, visit of *locus in quo* is not a must in every case. It has to be done only in exceptional circumstances by the trial court/tribunal to ascertain the stat size location and so on of the premises in question. Cementing on this point the court of Appeal of Tanzania in the case of **Nizar M. H. Vs. Gulamali Fazal Janmohamed** [1980] TLR 29 had this to say:

*"It is only in exception circumstance that a court inspect a locus in quo, as by so doing a court may unconsciously take on the role of a witness rather than an adjudicator."*

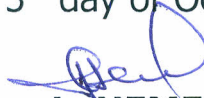
In the matter before the trial tribunal there was no prayer from either party for visiting the locus in quo. But again, it was not necessary to visit *locus in quo* as there was nothing to verify as to the location of the disputed land,



boundaries and boundary neighbor, and physical features of the land. In the circumstance, I find no merits as to the 3<sup>rd</sup> ground of appeal it fails either.

From the foregoing analysis it is obvious that the trial chairman was justified to decide in favour of the Respondent. There is no option other than to dismiss the entire appeal. I so dismiss with costs. It is so ordered.

**DATED** at **SHINYANGA** this 3<sup>rd</sup> day of October, 2022.

  
**L. HEMED**  
**JUDGE**  
**06/10/2022**

Delivered this 6<sup>th</sup> October, 2022 in the presence of the Respondent appearing in person.

Right of appeal explained.



  
**L. HEMED**  
**JUDGE**  
**06/10/2022**