

**IN THE HIGH COURT OF TANZANIA
DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA**

LAND APPEAL NO.46 OF 2021

***(Originating from Shinyanga District Land and Housing Tribunal in land
Application 5/2020)***

DISMASI MASHEMA.....APPELLANT

VERSUS

NGAI SIYAKO NDESARIKA1st RESPONDENT

WILFRED EVARIST MBASSA.....2ND RESPONDENT

JUDGMENT

20th Sept & 7th Oct, 2022

Nongwa, J.

The above-named appellant being aggrieved and dissatisfied with the Judgement and Decree of the Shinyanga District Land and Housing Tribunal delivered on 02nd day of March, 2021 by **Hon. C. HATSON** – Chairman, hereby appeals against the whole of the Judgment and Decree on the following grounds;

- 1. `That the trial tribunal erred in law and in fact by failing to consider the credible evidence adduced by appellant.*

2. *That the trial tribunal misdirected itself and arrived at a wrong and unjustifiable decision by not taking into account that when PW2 one Therezia Mbasia testified in the trial tribunal admitted that at the time she bought the plot for her son (2nd Respondent) from Nsamaka Wande Ngelya the said plot was not accessible to the disputed plot but they were just bordering with the Appellant's father one Charles Mashema.*
3. *That the trial tribunal erred in law and in fact for not considering the fact that when the 1st respondent testified in the trial admitted that at the time, he bought a disputed plot from the 2nd respondent there was a house in the disputed plot that is old and there are people living in it and he was informed that the said house belonged to the Appellant.*
4. *That the trial tribunal erred in law and in fact by deciding in favour of the 1st Respondent basing on contradictory evidence.'*

The appellant prays to this Honorable Court to allow this appeal, and the decision and Orders of the District Land and Housing Tribunal be quashed and set aside with costs. The appellant has been represented by the Learned advocate Geoffrey Tuli while the Respondent has been represented by the learned counsel Pharles Malengo.

Having heard the two sides oral submission, of which for the interest of time I wish not to reproduce the same here, it is in the proceedings, however I will be referring in the course of determining this appeal. I have endeavored to go through the proceedings of the trial tribunal while comparing with what

the two sides have alleged. From the evidence of the appellant, there was no proof of ownership of plot No. 3 at page 32 of the typed proceeding he gave a contradictory testimony he said the plot belongs to his father, again he says belongs to family and did not tender any evidence showing his interest, nor he was the owner of or his father's plot. On being cross examined by DW2 he said that the plot was surveyed in 1987 and says no payment was made because the place was not surveyed. As argued by the counsel for the Respondent, that from the records, DW3 evidence shows that survey was done in 1987 and that after survey they troubled themselves to look for documents of ownership.

I am in consensus with the argument by the counsel for the Respondent that once registration process of the land is complete no search behind the register is needed. In that contention, Mr. Malengo refereed the case of **Leopord Mutembei vs Principal Assistant Registrar of Titles Ministry of Land, Civil Appeal no. 57 of 2017** where the court referred the book bearing the little conveyancing and Disposition of Land in Tanzania Law and Procedure, Law Africa, Dar es salaam 2017.

It has been observed that the sale agreement, letter of offer, in the name of 2nd Respondent was issued to that effect. From the evidence, documents from custodian of documents on ownership of land are there, was no need of other evidence at all.

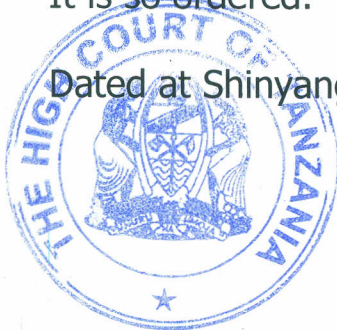
Since there is no proof that appellant own that property. Even after the death of his father nowhere he applied for letters of administration to clear the rights of his father. It has been the argument by Mr. Tuli counsel for the appellant that the evidence of PW1 first Respondent admits that when he bought the plot, he found the house and was told that it belongs to the

appellant, that it should be noted that at the time the houses were constructed the place was a squattier. However, the argument by Mr. Tuli is of no weight enough to warrant overturning of the trial tribunal decision, Therefore, the decision of the trial tribunal was right in that he who alleges has the burden of proving as per section 110 of the Evidence Act cap 6. R. E 2019. In civil cases, the standard of proof is on balance of probabilities. Looking at the trial tribunal judgment and other records, I find that the tribunal was right, the balance weighed more to the respondent. Hence the decision in his favour. In a recent decision of the court of appeal, in **Habiba Ahmadi Nangulukuta and others vs. Hassan Ausi Mchopa and another, Civil Appeal no. 10 of 2022**, Hon. Kerefu J.A, (unreported) the case that have also cited by one of the counsels, the Court of Appeal, at page 21, commenting on the burden of proof, stated that;

'It is again a trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his/hers and burden is not diluted on account of the weakness of the opposite party's case.'

Therefore, since the appellant have not proved his case, and as he failed at the trial tribunal, so is the position of this court that the appeal has no merit. Consequently, the same is hereby dismissed with costs.

It is so ordered.



Dated at Shinyanga this 7th October 2022


V.M. Nongwa
Judge
07/10/2022