

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

**AT SHINYANGA**

**LAND APPEAL NO. 1 OF 2022**

*(Arising from Land Application No. 67 of 2016 of the District Land and Housing  
Tribunal for MASWA)*

**MASANA MALEMI..... APPELLANT**

**VERSUS**

**1. DEDE MAHULA..... RESPONDENT**

**2. SHOTO MAHULA.....RESPONDENT**

**3. MINZA MAGENI.....RESPONDENT**

**JUDGMENT**

*9<sup>th</sup> August & 28<sup>th</sup> October 2022*

**MKWIZU, J.:**

This appeal traces its origin from the land dispute No 67 of 2016 she personally filed against the three respondents at Maswa DLHT claiming inter alia for ownership of a piece of land measuring 3 .5 acres located at Old Maswa Village within Bariadi District estimated at 3500,000/= . The appellant's claim was that the suit land was allocated to her together with her late Husband Mashauri Makula in 1974 and uninterruptedly used it for farming activities to the year 2016 when the respondent encroached to their land. She thus prayed for an eviction order against the respondents.

The appellant's claim was not left intact by the respondent who through their Written Statement of Defence denied every claim stating that the suit land belongs to Mahula Masagija, (a father to the 1<sup>st</sup>& 2<sup>nd</sup> respondent and Applicant's Husband and a grandfather to the 3<sup>rd</sup> Respondents ) who

died intestate in the year 1978. The respondent's claim generally is that the suit land is a clan's land.

Having heard two witnesses for the applicant (now appellant) and three witnesses for the respondents, the trial tribunal was convinced that the application is without merit. It concluded that the suit land is the property of Mahula Masagija and is yet to be distributed to his heirs. The appellant is not happy with that decision. She had through this appeal lodged four grounds of appeal that:

- 1. That, the Trial Tribunal erred in law and fact by not considering the evidence adduced by the appellant regarding how she acquired the land in disputes in 1974.*
- 2. That, the trial tribunal misdirected itself and arrive a wrong and unjustifiable decision by not taking into account that the appellant stayed and used the land in dispute for exactly 42 years without any interruptions from anyone including the respondents.*
- 3. That, the trial tribunal erred in law and fact by arriving at a wrong and unjustifiable decision by relying on the respondent's evidence which was too weak and fabricated.*
- 4. That, the trial tribunal erred in law and fact by arriving at a wrong and unjustifiable decision by relying on the respondent's evidence without any proof from the administrator of the estate of **Mahula Masagija** that the disputed land was the clan land.*

When the appeal came for hearing on 13/7/2022, the appellant who was appearing in person sought and leave was granted for the hearing of the



appeal through written submissions after a no objection response from Mr. Martin Sabini advocate for the respondent. I thank both parties for complying with the written submission's filling schedules.

Submitting for the appeal, Mr. Geoffrey Tuli advocate who is engaged by the appellant for drawing the submissions only argued the 1<sup>st</sup> and 2<sup>nd</sup> grounds together and the 3<sup>rd</sup> and 4<sup>th</sup> grounds also together. On the first two grounds, the trial tribunal was blamed for not considering how the appellant acquired the suit land in 1974 and the incessant occupation and usage. That according to the evidence on the records, the suit land was allocated to the appellant and her husband in 1974 and they have been in an uninterrupted occupation for more than 40 years now. They have developed the land and constructed houses on it. His contention is that the respondent's evidence failed to disclose why they kept quiet all that time leaving the appellant on the suit land if it is truly a clan land subject to division. Appellant's counsel was of the view that the long use without disturbance and the development made by the appellant on the suit land has created a right and interest which needs to be protected. He on this cited to the court the case of **Parkin V Thorold** (1852) 16 Beavs. 59.

Submitting on the 3<sup>rd</sup> and 4<sup>th</sup> grounds of appeal, the appellant's counsel said, the respondent's evidence is insufficient to explain why they did not deal with the deceased land immediately after the death of their father just to wait until this long lapse of time if at all they had interest over it. He also wondered why if the village council could allocate the land to Mahula Masagila as testified by the respondents, was impossible for the same council to allocate the land to the appellant's husband. He also posed a question as to why the respondent did not claim the suit land during the appellant's lifetime just to wait until his demise. He in support

of his argument cited the case of **Abdallah Rajab Vs Saada Abdallah Rajab and Others**, (1994) TLR 132 insisting that censuring the tribunal for not properly assessing the credibility and the weight of the testimonies on the records.

In response to the appeal, Mr Martin Sabin argued that the evidence by the appellant relating to the acquisition of the suit land was weak to be relied upon by the trial tribunal. Neither the neighbours/people with knowledge of the said allocation nor documentary evidence were tendered in court to prove the alleged allocation in 1974. Contrarywise stated Mr Marin Sabini, respondents managed to give credible evidence on how the land was acquired by Mahula Masagija in 1974 before his death in 1978 and how the family members used the suit land since then without disturbances. That Appellant came to the suit land in 1978 and they since then stayed on the suit land- the property of Mahula Masagija with other family members including the 3<sup>rd</sup> respondent and Mahula Masagija's wife using the suit land under the supervision of the clan members.

Refuting the submissions on grounds 3 and 4, Mr. Matin Sabin said there was no allocation of land made to the appellant and his husband in 1974 but the appellant and her husband used the family land after the appellant's husband had lost his job. He insisted that the land belongs to all family members including the appellant and that the dispute arose after she had claimed ownership. He prayed for the dismissal of the appeal.

In his rejoinder, the appellant's counsel forcefully stated that the suit land belongs to the appellant who due to the circumstances pertaining to those days in a rural area, it is difficult for her to find a document evidencing the claimed acquisition. He sought guidance on the foreign decision of



**Records V Bell** (1991) 62 P & CR 192,193 inviting the court to do away with the legal formalities that may end upon denying the appellant the deserving decision. He insisted on his earlier submissions and prayer that the appeal be allowed.

After carefully reviewing the evidence on record and the submissions made by both parties, I am inclined to agree with the position maintained by the appellant. It was her evidence that they were allocated the suit land by the village council in 1978 and they have been in uninterrupted occupation until 2016. Her evidence was well supported by PW2 and the respondents themselves. While claiming the suit land to belong to his father Mahula Masagija, DW1, Dede Mahula, and DW2 Shoto Mahula's testimonies are to the effect that after their father's death, in 1978, the land remained under the care of their brother, the appellant's husband and one Minza Mageni

The rest of the respondent's evidence is full of contradictions on when and who occupied the suit land after the death of their father. The discrepancies appears to have affected the credibility of all the respondent's evidence.

In his evidence in chief, DW1 told the tribunal that the Appellant had occupied the land immediately after the death of Mahula Masagija, during questions by assessors, DW1 at page 27 of the typed proceedings changed the story stating that the appellant began to stay on their father's land in 1996 when she came back from Luguru.

DW1 for instance was at page 26 of the typed proceedings recorded thus:

*"Eneo la Mgogoro ni la Mahula Masabija ambaye ni baba yangu yeye amefariki. Alifariki mwaka 1978. Eneo hili yeye alikatiwa na Kijiji mwaka 1974. Alipofariki eneo lilikuwa chini ya usimamizi wa kaka yetu Mahula na Minza Mageni..."*

And his answers to the assessors were:

*"Misana Malimi alirudi toka Rugulu mwaka 1996. Alirudi akakaa nyumbani kwenye eneo hilo . Baba alifariki mwaka 1978. Hatukuchagua msimamizi kwenye eneo hilo walikuwa wanakaa Masahuri na Minza Mageni..."*

*And that:*

*"Baada ya kufariki baba alikaa mama yetu na sisi. Mashauri hakuwepo baadaye mimi nikahama nikaenda kwenye mahama sababu Ngombe walikuwa wanakula mazao ya watu, Mama alifariki mwaka 2000. Baada ya mimi kuhama mama naye akanifuata."*

The named Minza Mageni is appearing in court as the 3<sup>rd</sup> Respondent. Contrary to the evidence given by the 1<sup>st</sup> and 2<sup>nd</sup> respondents that she has been on the suit land since the death of Mahula Masagija, this witness said the land belongs to her and that it was given to her by her uncles without disclosing the name of the said uncle. During cross-examination by the appellant's counsel, DW3 said, I quote for convenience:

*"...Eneo ni langu kama mwanaukoo alinigawia mjomba wangu na akawaambia ni we na lima pale akaniambia nimletee ngombe na akaswaga ngombe zangu"*



And during re-examination, he confirmed her statement that she was given the suit land by his uncles: She said:

*...Nilipewa eneo na Watoto wa Mahula Masanja..."*

A close evaluation of the entire evidence by the respondents reveals the presence of a sale transaction of the suit land between the Respondents and one Minza Mageni as there was an exchange of the land with the heads of cattle. Can this evidence plus that of the other respondent held credible to justify the trial tribunals' decision? I think not.

There are a lot of questions without answers in the respondent's evidence. The 1<sup>st</sup> question that has failed to get an answer from the respondent's evidence is how could the clan allow the appellant to use the suit land from 1978 to 2016 over four decades without any interruptions, warnings, or even explanation. Why did the interruption have to wait 18 years after the death of the appellant's husband, (1<sup>st</sup> and 2<sup>nd</sup> respondent's brother) who died in 1998?

Even assuming that the suit land is clan land as asserted, which is not, the unexplained delay in subjecting the suit land to the legal administration and distribution of the same to the legal heirs and the respondent's conduct of evicting the appellant from the suit land which she had been in occupancy for a such demonstrated long period without taking any step to allocate her, her husband's share raises doubt on the legality of the respondent's assertion.

It is for the above reasons the court supports the appellant's claim. There is a clear failure by the trial tribunal to properly evaluate the evidence on

the records. As a result, the appeal is allowed by reversing the trial tribunal decision with costs. Order accordingly.

**DATED** at **SHINYANGA** this 28<sup>th</sup> day of **October 2022**.



  
**E.Y. MKWIZU**

**JUDGE**

**28/10/2022**

**COURT:** Right of appeal explained

  
**E.Y. MKWIZU**

**JUDGE**