

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC. LAND APPEAL NO. 21 OF 2022

(Arising from Appeal No. 251 of 2020 District Land and Housing Tribunal for Dodoma at
Dodoma dated 4/3/2022, Originating from the decision of Chikola ward tribunal in Land
Cause No. 60 of 2020 dated 18/11/2020)

BETWEEN

MELINA MALYOSI..... APPELLANT

AND

EZEKIEL MLUCHI RESPONDENT

6/10/2022 & 21/10/2022

JUDGMENT

MASAJU, J

The Appellant, Melina Malyosi unsuccessfully sued the Respondent, Ezekiel Mluchi, in the Chikola Ward Tribunal within Dodoma District. Aggrieved by the decision, the Appellant unsuccessfully appealed to the District Land and Housing Tribunal for Dodoma, at Dodoma hence the appeal in the Court.

The Appellant's Petition of Appeal is made up of two (2) grounds of appeal, thus;

"1. That, the 1st Appellate Tribunal erred in law and in fact by upholding decision of Trial Tribunal to grant the Respondent ownership of the disputed land without considering that he was

an invitee and had not been given the land by the Appellant's deceased husband.

2. That, the 1st Appellate Tribunal erred in law and fact by upholding decision of Trial Tribunal to grant the Respondent full rights to the disputed property despite watertight evidence adduced by the Appellant.

WHEREFORE: The Appellant prays to this Honourable Court to allow the appeal and set aside the decision of the District Land and Housing Tribunal for Dodoma at Dodoma and Declare Appellant as the legal owner of the dispute land."

The appeal was heard *exparte* against the Respondent on the 6th day of October, 2022 because the Respondent had refused service of the Petition of Appeal and the summons. The Appellant, in the service of Christina Mluchi Malyosi, under special power of Attorney, appeared in person and adopted the grounds of appeal to form her submissions in support of the appeal in the Court.

In the trial Tribunal, the Appellant testified that, the Respondent is her step son since the Respondent's late mother was her sister wife married by her late husband as a 2nd wife. That, the land in dispute measuring 4 acres was given to her by her late husband. That, she leased the disputed land to the Respondent's mother as well as the Respondent on an agreement that they would return the land back to her when she needs it. That, the Respondent's mother passed on in 1993 and the Respondent has refused to hand over the land to her. The Appellant had no witness in the trial Tribunal. The Respondent testified to have been given the land by his late father in 1994 after his mother's death. That, he has been using the land from 1994 to 2020. The Respondent's evidence was supported by his two witnesses

who testified in the trial Tribunal. During cross examination in the trial Tribunal the Appellant admitted that the Respondent was given the disputed land by his late father, the Appellant's husband. She also admitted that they once had a dispute over the land before the village chairman where the Respondent won the dispute and the Appellant never appealed against the decision despite being informed of that right.

The Court is of the considered position that, the District Land and Housing Tribunal for Dodoma rightly upheld the trial Tribunal's decision since the Respondent proved his case on the balance of probability as the required standard of proof in civil cases.

The trial Tribunal did visit the "*locus in quo*" and made the right decision basing on the evidence thereto. It is therefore clear basing on the evidence adduced that, the Respondent inherited the suitland from his late father before his passing on as so rightly admitted by the Appellant herself before the trial tribunal. The Appellant's evidence was contradictory since she alleged to have leased the land to the Respondent's mother but when cross examined by the Respondent she admitted that the Respondent had inherited the suitland from his late father. This appeal is therefore devoid of merit.

Thus, the appeal is hereby dismissed for want of merit. The parties shall bear their own costs.



GEORGE M. MASAJU

JUDGE

21/10/2022