

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

**LAND APPEAL NO. 42 OF 2022**

*(Originating from Land Application No. 62 of 2021 District Land and  
Housing Tribunal for Maswa at Maswa)*

**SHALFU SHULE MADUHU.....APPELLANT**

**VERSUS**

**MASANYIWA MAGEMBE .....1<sup>ST</sup> RESPONDENT**

**SAMWEL MSOKA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*15<sup>th</sup> March & 21<sup>st</sup> April, 2023*

**MASSAM, J**

The appellant herein Shalfu Shule Maduhu, being aggrieved with the whole decision of the District Land and Housing Tribunal for Maswa at Maswa (herein DLHT), appealed to this court armed with the following grounds:

- 1. That, the learned Chairman grossly erred in law and fact in entertaining the matter against the weight of evidence from the appellant.*
- 2. That, the Learned Chairman grossly erred in law and fact by dismissing the appellant's case without any contradictions of evidence.*
- 3. That, the Learned Chairman erred in law by declaring the 1<sup>st</sup> respondent as the owner of the disputed land without having sufficient evidence to that effect.*
- 4. That, the Learned Chairman misdirected himself by having wrong argument towards to the decision.*

Therefore, he prayed for the appeal to be allowed and for the decision of Maswa DLHT dated 17<sup>th</sup> June 2022 be quashed, declaration that the appellant is a legal owner of the disputed land, costs of the appeal and any other reliefs as this court may deem fit /convenient to grant.

Briefly, the appellant filed an application at Maswa DLHT for the tribunal to declare him as the lawful owner of the disputed land and to declare that the 1<sup>st</sup> and 2<sup>nd</sup> respondents did invade the disputed land illegally. After hearing both parties and their witnesses, the DLHT

declared the 1<sup>st</sup> respondent as the lawful owner based on the evidence submitted before it.

The said decision aggrieved the appellant who is now before this court challenging the same with four grounds of appeal.

When the appeal was called for hearing on the 15<sup>th</sup> day of March 2023, both the appellant and the respondents appeared in person, unrepresented. The appeal was argued orally.

Supporting his appeal, the appellant told this court that the DLHT did not visit the disputed land before reaching its final decision which is contrary to the law. It was his further submission that the 1<sup>st</sup> respondent told this court that the said land is not his but belongs to his relative but he failed to bring any witness or one of his relative who witnessed the handing over of the disputed land to him and even the 2<sup>nd</sup> respondent did not have any proof that he was given the disputed land by the 1<sup>st</sup> respondent.

He added that even the minutes of their meeting did not have the stamp of the village leaders nor signature of 1<sup>st</sup> respondent was shown. Again appellant said that there was one woman who said that she rented that piece of land but the said woman was not called to testify that she was the one who rented the same.

Objecting to this appeal, the 2<sup>nd</sup> respondent stated that he will argue himself and on behalf of the 1<sup>st</sup> respondent as well. He stated further that the disputed land belonged to his brother (1<sup>st</sup> respondent) who is sick and in 2018 he landed the same to Nyandika who resides at Shigala but when he started to use it the appellant stopped him claiming that he was given the same by the village council. The argument by the appellant that the land was sold is not true, he pray him to give him proof on that but appellant did not have, the letter which appellant tendered was the one which he wrote it himself as a village chairman. Lastly he said that the said land belongs to his brother who lives at shigala and no land was sold to anyone.

In a brief rejoinder, the appellant argued that the 2<sup>nd</sup> respondent started to use the disputed land before the case was determined and the one who was given the land was never called to testify. So he was supposed to stop using it until the said case to be determined.

He added that he never got a letter to stop using that land as the land belongs to Masanyiwa Magembe (1st respondent) who is his brother.

Having heard the submission of both parties, **the main issue for determination is whether the appeal has merit or not.**



Starting with the issue of visiting locus in quo as complained by the appellant, it has to be noted that visiting a locus in quo is not mandatory and depends on the circumstances of each case.

For the aforesaid findings and considering the circumstances at hand this court is of the firm view that there was no need for the District Land and Housing tribunal to visit locus in quo to as there was no any disputes regarding the size or boundaries of the disputes, the disputes was only whether the disputed land was the property of the appellant herein or the 1<sup>st</sup> respondent.

It is trite law that the first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision. The same was described in a persuasive case from the court of Appeal of Kenya, **David Njuguna Wairimu vs. Republic** [2010] eKLR held that:

*"The duty of the first appellate court is to analyse and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending on the facts and circumstances of the case, come to the*

*same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision."*

Being persuaded by the cited decision and after going through the evidence of the trial tribunal, this court is of the firm view that the DLHT did consider the evidence as per the law and they arrived at a correct decision based on the evidence submitted thereto.

This is due to the reasons that the appellant failed to prove that his way of acquiring the said land was legally as it was contrary to Section 8 (5) of **the Village Land**, Cap 114 R.E 2019. The said provision provides that:

*"A village council shall not allocate land or grant a customary right of occupancy without a prior approval of the village assembly."*

There was a piece of evidence which show that appellant after been asked to prove his ownership he brought a letter which he wrote himself as the village chairman, the act of the appellant allocated the

land to himself as the Village Chairman was contrary to the law as decided by the DLHT as he was supposed to follow the procedures prescribed by the law..Also there was a piece of evidence which show that appellant was the one who informed the village council that there was the piece of land which was empty and the village council which was leaded by him allocated the same to him but their witnesses said the different story that appellant was the one who prayed to the village council the said piece of a land and be given, this court finds out that appellant was supposed to bring the prove to the same, and appellant and his witnesses were supposed to bring the same evidence, and not contradictory one as they brought.

At this juncture I think it is pertinent to state the principle governing proof of the case in civil suits, the general rule is that he who alleges must prove ,this finds backing from section 110 and 111 of the law of evidence Act Cap 6 R.E 2002 which among other things state section 110 " *whoever desires any court to give judgment as to any legal right or liability dependant on existence of facts which he asserts must prove that those facts exists.*



*Section 111 the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side"*

See also the cases of **Attorney General and two others versus Eligi Edward Massawe and Others** Civil Appeal no 86 of 2002 ,**Godfrey Sayi vrs Anna Siame Mary Mndwolwa civil appeal no 114 of 2012.**

In civil proceedings the party with legal burden also bears the evidence burden and the standard in each case is on a balance of probabilities.

From the evidence on record there was no doubt that the respondent evidence adduced at Maswa land and Housing Tribunal was heavier evidence than appellant who said that the said land was given by the village council the burden of proof then lied to him the question was that did he successfully discharge his duty?

In record of the tribunal show that appellant said that he was given that land with the village council after being told to bring the proof he brought a letter which was signed by him as the village chairman and in his evidence show that in that council he was a leader who leaded that council who gave him that land, so the evidence show that appellant he



allocated himself that land without following the procedure as the law requires.

For the reasons I have given I find no merit in all grounds. I dismiss this appeal in its entirety, the decision of the District Land and Housing Tribunal of Maswa is left undisturbed.

As this case involving family members, no order for the costs.

It is so ordered.

**DATED** at **SHINYANGA** this 21<sup>th</sup> day of April 2023.



A handwritten signature in blue ink, appearing to read "R.B. Massam", is written over a circular stamp.

**R.B. Massam**  
**JUDGE**  
**21/4/2023**