

IN THE HIGH COURT OF TANZANIA

TABORA SUB REGISTRY

AT TABORA

LAND CASE APPEAL NO.40 OF 2021

*(Arising from Land Application No. 31/2019 of the District Land and
Housing Tribunal for Nzega)*

DAUD PETRO KASAMBULA.....APPELLANT

VERSUS

RASHID SHABOUT.....1ST RESPONDENT

MATANDA THOMAS.....2ND RESPONDENT

JUDGEMENT

Date of Last Order: 21/04/2023

Date of Delivery: 16/05/2023

AMOUR S. KHAMIS, J.

The appellant, Daud Petro Kasambula, lodged this appeal against Judgement and Decree of the District Land and Housing Tribunal for Nzega in Land Application No. 31/2019 delivered on 26/11/2021.

A brief background is significant to appreciate what prompted the filing of this appeal. Daud Petro Kasambula instituted a land dispute against Rashid Shabout and Matanda Thomas in the District Land

and Housing Tribunal for Nzega on a tort of trespass to land through Misc. Land Application No. 31 of 2019).

The trial chairman (Waziri, M. H) dismissed the application with costs for want of merits and misjoinder of parties.

Still desirous to pursue his right, Daud Petro Kasambula filed the present appeal moving this Court to quash and set aside the impugned Judgement and Decree of the trial tribunal.

The appeal was preferred by way of Memorandum of Appeal containing eight (8) grounds of appeal which I see no need of reproducing for the reason that will shortly be apparent.

Before me, Daud Petro Kagambula and Matanda Thomas appeared in person while the Rashid Shabout preferred legal services of Mr. Kelvin Kayaga, learned advocate.

The appeal was canvassed by way of written submissions and both parties complied to the timeline set by the Court.

In support of the appeal, Daud Petro Kasambula briefly averred that the land in dispute identified as NTC/NMGH/IPI/363 at Ipilili Street with no. 48 belongs to the 1st respondent. He further contended that the house structure built inside the fence occupies a portion of the suit land.

In reply, Mr. Kelvin Kayaga asserted that the appellant's submission is based on new grounds other than the grounds raised on the Memorandum of Appeal. He further contended that it is safe

to say that there was no submission in support of the appeal, and argued that in other words, the appellant abandoned his appeal.

Mr. Kelvin Kayaga asserted that the appellant has failed to prove his case as a requisite condition provided for under Sections 100 and 112 of the Evidence Act, Cap 6, R.E 2019.

To advance his contention, he referred to the case of **THE REGISTERED TRUSTEES OF JOY IN THE HARVEST V. HAMZA K. SUNGURA, CIVIL APPEAL NO. 149/2017** (unreported), wherein the Court of Appeal quoted its former decision in **PAULINA SAMSON NDAWAVYA V. THERESIA THOMASI MADAHA, CIVIL APPEAL NO.45/2017** (unreported) and held that:-

“It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his, and that the burden of proof is not diluted on account of the weakness of the opposite party’s case.”

To sum up, Mr. Kelvin Kayaga implored this Court to find the appeal has no merit and dismiss it with costs.

On his part, Matanda Thomas submitted that since he is not associated with the appellant’s allegation in this appeal, he has no interest in this case rather than being involved as a witness in a sale agreement between the late Mwajuma Mbaruku (seller) and Rashid Shabout Said, the purchaser who is the 1st respondent herein.

I have considered the parties rival submissions, despite the assertion that the appellant conducted legal search and discovered

that the suit land makes part of the 1st respondent's premises, there was no proof tendered in the trial tribunal to prove the allegation.

Further to that, the appellant abandoned the other grounds of appeal and therefore I need not make any decision on that. It should be noted that this being an appellate court, it cannot receive fresh evidence from any of the parties without complying to the procedure for leave to tender additional evidence.

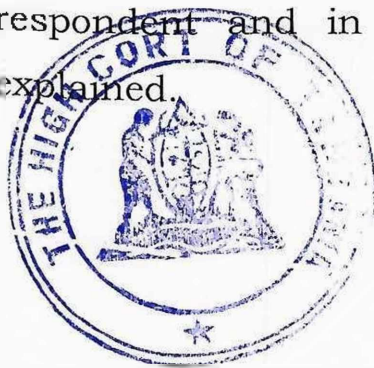
In this regard, I don't see any need to depart from the decision of the trial tribunal which went far by visiting the *locus in quo* at Ipilili and received evidence on who is the rightful owner of the disputed land.

In the upshot, I uphold the Judgment and Decree of the trial tribunal and dismiss this appeal with no order for costs.

It is so ordered

AMOUR S. KHAMIS
JUDGE
16/05/2023

ORDER: Judgment delivered in open Court in presence of Mr. Saikon Justine, Holding Brief of Mr. Kelvin Kayaga, advocate for the first respondent and in absence of the appellant. Right of Appeal explained.



AMOUR S. KHAMIS
JUDGE
16/05/2023