

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

LAND APPEAL NO. 64 OF 2022

*(C/F from Land Application No. 44 of 2021 of Maswa District Land and
Housing Tribunal, dated on 29/7/2022)*

LYDIA JACOB YASIN.....APPELLANT

VERSUS

NGUTU LAURENCE SIMON..... RESPONDENT

JUDGMENT

14th April & 16th June 2023

MASSAM, J:

This appeal arises from the decision of Maswa District and Land Tribunal where the appellant successfully sued the Respondent claiming his land which he bought from the respondent. The land situated at Mwalukonge Street Lamadi ward, Busega District and Simiyu Region. After the case heard at the tribunal, the respondent was declared to be the owner of the case and appellant was ordered to help the respondent in transferring the title deed to his name.

Aggrieved to that decision and orders she appealed to this case with three grounds of appeal as follows

- (1) That the honourable chairperson erred in law and fact by declaring the respondent the lawful owner of the disputed land while he failed to proof his case to the required standard.*
- (2) That the trial court erred in law and fact by failing to analyze and take into consideration the evidence of DW1 the land surveyor officer) who testified to the effect that the land in is registered land of which cannot be divided and sold prior to obtaining an approval from the land registry office.*
- (3) That, the honourable chairperson erred in law and fact by failing to critically analyze the water tight evidence of adduce by the appellant the appellant herein together with her witnesses.*

That the honourable chairperson erred in law and fact by failing to critically analyze the water tight evidence of adduce by the appellant together with her witnesses.

During the hearing of this appeal the appellant appeared in person unrepresented while the respondent was represented by one Laurent Bija the learned advocate. The appeal was argued orally. Supporting the appeal, appellant stated that she appealed to this court as she was aggrieved with the decision given to the dependent as the respondent did not show the

boundary of the claimed land and he said the said land was not registered while it was registered.

She added by saying that tribunal erred by not considering the evidence given by Dw1 who told the court that the said land was registered and it cannot be sold a piece without given a permission from the land office so the buyer was required to make sure that the said land had no any encumbrance before buying it .And the third one was the tribunal did not consider her evidence which was heavier than of the respondent so she pray this appeal to be allowed with costs.

In his reply to the appellants submission Mr. Laurent Bija advocate for respondent said that the appellant claims that he did not mention the boundary in his side confirmed that the boundary was mentioned and sale agreement was tendered to court and admitted as exhibit P1.

He added that by the time of sale the said land was not registered but after the sale the said plot was registered because there was agreement on that. In replying to the issue that the said plot was registered so it can not been sold without land office consent he said that by the time of sell the said land was not registered it was registered after

the sale conducted thus why there was no need of him to get a consent from the land office and thus why his evidence was not considered. And lastly appellant complained that his evidence was not considered while it was heavier than of the respondent in his side said that the evidence of appellant and her husband dw3 was contradictory as in the tribunal she said that she knew the buyer of the land and she introduce him to her husband but Dw3 in his testimony said that he don't know respondent he saw him to the tribunal for the first time, he said that in the sale agreement show that the seller was appellant and the buyer was respondent and the appellants witness in that agreement testified to the court as the respondent witness. So he pray the dismissal of the appeal and upheld the tribunal decision.

In her rejoinder the appellant stated that it's true that her husband don't know the appellant as the said date her husband was not around, and she gave the said respondent title deed as bond in order to be given money to bail her husband.

Having gone through the rival submissions from the appellant and from the respondent advocate, also venturing the documents revolving

around this appeal, the issue for determination is **whether the appeal has merit.**

This court after read over all the grounds of appeal decided to determine it jointly as all challenged the issue of evidence. It is worth noting that this being the first appellate court it is entitled to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny. See the case of **Makubi Dogani vs. Ngodongo Maganga**, Civil Appeal No. 78 of 2019 (CAT - Unreported).

The same position was observed by the Court of Appeal of Tanzania in the case of **Philipo Joseph Lukonde vs. Faraji Ally Saidi**, Civil Appeal No. 74/2019 (CAT – Dodoma Unreported) where it was held that:

"This being a first appeal, this Court has a duty to subject the entire evidence on record to a fresh re-evaluation and come to its own conclusions."

Also this court is aware that it is a cardinal principle in Civil cases that he who alleges must prove the alleged facts this was as it was held in the case of **Lamshoe Limited and J.S. Kinyanjui vs Bazanje K.U.D.K** [1999] TLR 330 that:

"He who alleges a fact has the duty to prove it"

The same was provided under Section 110 of **the Evidence Act**,
Cap 6 R.E 2022 that:

"(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

In our present case, at the trial court the respondent alleged the disputed land was given as a gift by her father and her husband witnessed the same and she showed the exhibit D 1 as the letter which gave her that land and D2 as payment slip for payment of that land. She told the tribunal that she never sell her land but she signed the document where her husband lend money from respondent amounted to Tshs. 500,000/=and later on another money which he don't know the said amount and later on respondent came to ask their land, in the side of respondent said that appellant sold her land to him and he has agreement to prove the same and the said agreement was witnessed by the hamlet leader of that area

for the price of Tshs 7,245,000/=respondent also said that there was another agreement concerning the house which was in that land as there was tenants inside they agreed that the tenancy agreement with that tenant was ending on 15/6/2021 ,so on 20/6/2021 when he went there to be handed his house appellant refused to handle over that land and it's when appellant reported the matter to the village chairman and wrote some letters to appellant to insist her to handle over that land to him after the appellant failed to do so he decided to take the matter to the tribunal, in his side Mr. Kamili Zakayo and Marco Mabula did support the testimony of respondent that there were among people who witnessed that sell agreement together with Mr. Chalya Idaso who was the village hamlet said that as a leader of that areas he witnessed the said sell agreement.

In the side of appellant land officer Busega testified that the said land was a plot no 424 block D which was registered in the name of Lydia Yasin and there was two houses there and he said that it's a procedure that if someone to sell a land which is registered must consult go before buying the same, and he said that respondent never went to their officer to consult them, in replying the same respondent said that he did not went to his office because when he was buying that land was not registered, and

concerning the house which was in that plot he admitted the same and inform the tribunal that there were tenants thus why they signed a separate agreement concerning the said tenants. According to that this court finds out that there is no objection that there was sell agreement which was witnessed by the village hamlet and other two persons and among of them was the witness on the side of the of the appellant so by saying so that proves the ownership of the said land to belong to the respondent, the issue raised by appellant that they lend money to the respondent that's why he ask for their house appellant that piece of evidence has prove to support the same .Also there was a piece of evidence of appellant which is contradictory appellant in her testimony said that he never sell the said land but she signed and agreement of mortgaging their house after her husband land money to respondent and her husband was the one who introduce her to the respondent but her husband in his testimony said that he don't know the respondent he came to know him at the fist time at the tribunal. This court finds out that appellant and her husband were the important witnesses who requires to testify the evidence to prove their claim but they failed to bring the said evidence to prove the same but they brought a contradictory evidence.

Also one Mr. Kamili Zakayo Igenge (PW3) testified that in that sell agreement he was witness on the side of appellant but he came to the tribunal and testify against appellant he was in the scene and the said land had 24feet to 20 and he mention the boundary of that land and the amount of money which that land was sold, this court thought that the said witness was supposed to be on the side of appellant but it was opposite.

So this court finds out that there is no need of disturb the findings of the trial tribunal as the respondent succeeded to prove that he was the owner of that disputed land by bringing the heavier evidence together with exhibits to support the same, there was a piece of evidence which brought by DW3 which show that the said land was registered that evidence was not opposed by respondent who stated that when he bought that land it was not registered but the appellant continued with the process of registering the same after the sell that evidence was never opposed by appellant nor their witnesses, so this court finds out that what respondent testified was true.

Based on the said evidence it is crystal clear that the respondent proved his case on the balance of probabilities due to the fact that he brought the heavier evidence than of appellant.

Therefore, it is the observation of this court that the District Land and Housing Tribunal was correct in its decision that the respondent was lawful owner of the disputed land and appellant is required to shift the ownership from her name to the respondent as she failed to prove its case on the balance of probabilities.

For the stated reasons above this court is hereby do concede with the decision of the trial tribunal which decided in favor of the respondent herein. That said, and on the basis of the reasons stated, this appeal lacks merit and is hereby dismissed with costs.

It is so ordered.



DATED at SHINYANGA this 16th day of June 2023.

R.B. Massam
JUDGE
16/06/2023