

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

**LAND APPEAL NO. 07 OF 2021**

**LUMALA KATUNGE.....APPELLANT**

**VERSUS**

**ADINA JACKSON.....RESPONDENT**

[Appeal from the decision of the District Land and Housing Tribunal of  
Shinyanga.]

**(Hon. P.S. Lekamoi, Chairman.)**

dated the 26<sup>th</sup> day of May, 2021  
in  
**Land Appeal No. 38 of 2020**

-----  
**JUDGMENT**

*18<sup>th</sup> May & 30<sup>th</sup> June, 2023.*

**S.M. KULITA, J.**

This is an appeal from the District Land and Housing Tribunal (DLHT) for Shinyanga. The story behind this appeal in a nut shell is that, the appellant herein, **LUMALA KATUNGE** had instituted a Land case No. 13 of 2020 at the Ngokolo Ward Tribunal. His claim against the respondent was on land boundaries. He claimed that, the respondent's house and its hole/karo were constructed three paces inside his land plot. The case was

heard and finally, victory went to the appellant whereby, the respondent was ordered to remove her hole/karo from the appellant's land. That decision was made on 5<sup>th</sup> November, 2020.

Aggrieved with that decision, the respondent herein, **ADINA JACKSON** appealed to the DLHT which found out that, the appellant failed to know the size, boundaries and the year he had bought his piece of land whose part is in question, alleged to be encroached by the Respondent. On that account, the DLHT concluded that, the appellant failed to prove his case according to the required standard.

Aggrieved with that decision, the appellant has now approached this court with three grounds, **one**, the Chairperson for first appellate tribunal failed to properly re-evaluate the evidence, **two**, the Chairperson for first appellate tribunal wronged for raising *suo motto* the issue of whether the case was proved at the required standard while it was not among the respondent's grounds of appeal and **three**, the Chairperson for first appellate tribunal erred for departing from the opinion of assessors and the ward tribunal's decision.

The appeal was called on for hearing on 18<sup>th</sup> May, 2023. Following non appearance of the respondent, the appeal was heard *ex-parte*. The appellant was unrepresented, thus he proceeded on his own.



Submitting in support of the appeal, the appellant firstly prayed for his grounds of appeal be adopted to form part of his submissions. He also added that, at the DLHT the assessors opined for him but the Chairman did not consider it. He further stated that, the Land Officers' report show that the respondent had encroached his land but the Chairman refused the same to be tendered in court as exhibit. That was the end of submissions.

I have earnestly gone through the appellant's submission and the available records. The issue is whether the appellants' appeal is meritorious. To answer that, I will determine the grounds of appeal one after the other starting with the second one.

In determining the second ground of appeal in which the Appellant alleges that the Chairperson for first appellate tribunal (DLHT) wronged for raising *suo motto* the issue of whether the case at the trial tribunal was proved at the required standard while it was not among the respondent's grounds of appeal, I have this to say; it is not in dispute that, in all civil cases, the land cases being inclusive, the claimant has a burden of proving his/her case at the required standard, which is "balance of probability". See also the case of **M & M FOOD PROCESSORS**

**COMPANY LIMITED V. CRDB BANK LIMITED and 2 OTHERS,**  
**CIVIL APPEAL NO. 273 OF 2020, CAT at DSM** in which it was held;

*"It is trite law and indeed elementary that, he who alleges has a burden of proof, as per the provisions of sections 110 (1), (2) and 111 of the Evidence Act [Cap. 6 RE 2019]. It is equally elementary that, since the dispute between the parties was of civil nature, the standard of proof was on a balance of probabilities, which simply means that the court will sustain such evidence which is more credible than that of the other on a particular fact to be proved."*

What actually the appellant disputes is that the DLHT Chairman raised *suo motto* the issue of standard of proof without the same being part of the respondent's grounds of appeal. To this, I went through the grounds of appeal that were raised by the respondent at the DLHT. The respondent's first ground of appeal reads as hereunder;

*Kwamba Baraza la kata lilikosea kisheria na kimtizamo kwa kumpa ushindi mrufaniwa bila kukaribisha ofisi ya Ardhi ili iweze kuonesha mipaka ya eneo husika.*



This ground of appeal was telling nothing but, the appellant's case at the ward tribunal was not proved at the required standard. For that matter the respondent herein was blaming the ward tribunal for giving victory to the appellant herein who had failed to prove his case at the required standard. With this evidence in record, I am firm that, it was proper for the first appellate tribunal to deal with the issue of proof of the case at the required standard.

Concerning the issue of non-following of the assessors' opinion, section 24 of the Land Disputes Courts Act provides as hereunder;

*"In reaching decisions, the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman shall in the judgment give reasons for differing with such opinion"*

With the above excerpt of law, it is settled that, Chairman of the tribunal is not bound to follow the assessors' opinion. He/she may depart on it, only that he/she is supposed to give reasons for his departure. As for the matter at hand, in his judgment the DLHT Chairman provided the reasons. This ground of appeal too fails.

In the last ground the appellant faults the Chairman for not evaluating properly the evidence adduced by him at the Ward Tribunal. To him, his evidence was enough for him to be declared the owner of the disputed piece of land. With this point, I had to pass through the testimony of the appellant given at the ward tribunal. I will reproduce the whole of it for easy of reference except on the cross examination only of which I will just be referring. The same is as hereunder; -

*MADAI- MPAKA WA KIWANJA.*

*Nyumba ya mama Martha imeingia sehemu ya kiwanja changu na karo, ninavyotaka sasa mipaka ioneshwe. Nataka sheria ifuate mkondo wake, na amekuwa akileta watu wa Ardhi, ki binafsi hofu yangu kutokana na mazungumzo tuliyozungumza serikali ya mtaa nimwachie, alisema mwanaume tuongee kama wanaume, tukaongea lakini hatukukubaliana tungekubaliana mbele ya serikali ya mtaa, matokeo yake wanakuja watu wa Ardhi wanapima wanaondoka.*

*Mdai sgd*

*Katibu sgd*

This was the testimony of the appellant in the ward tribunal proving that his land was encroached by the respondent. With this kind of evidence by the appellant, can we say with certainty that, he has proved his case at the required standard? Definitely not. This is because, for a boundary dispute like this, we expected the appellant to have given oral evidence on the size of his area. He could even produce documentary evidence, if possible, to support the allegation. However, the appellant failed to do so during trial. Had he known the size of his piece of land it could be possible for him to tell the tribunal the extent of the encroachment done by his neighbor (respondent).

The appellant ended up by telling the tribunal that he wanted the boundaries to be shown. This alone cements the notion that, the appellant does not know his boundaries. So, if the appellant does not know his boundaries, how could he know that his neighbor has encroached his land? That is quite impossible.

In the cross examination at the ward tribunal, the appellant showed that he does not know the year he had bought the land whose part is now in dispute. Failure to know important issues like this, concludes that the appellant failed to prove his case at the required standard. On that account, I see no point to fault the first appellate tribunal in its judgment.



On that account, this appeal has failed in its totality, hence I proceed to **dismiss** the same with costs.



**S.M. KULITA**  
**JUDGE**  
**30/06/2023**

**DATED** at **SHINYANGA** this 30<sup>th</sup> day of June, 2023.



**S.M. KULITA**  
**JUDGE**  
**30/06/2023**