

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**IN THE HIGH COURT OF TANZANIA**  
**(MTWARA DISTRICT REGISTRY)**  
**AT MTWARA**  
**LAND APPEAL NO. 4 OF 2023**

(Originating from the District Land and Housing Tribunal for Mtwara at  
Mtwara in Land Application No.86 of 2018)

**HUSSEIN TWALIB SAIDI** (Administrator of the Estate of the Late  
Abdallah Said Livenga)..... **APPELLANT**

*VERSUS*

**AWESA ADAMU**..... **RESPONDENT**

**JUDGMENT**

*18<sup>th</sup> & 27<sup>th</sup> July 2023*

**LALTAIKA, J.**

The appellant herein **HUSSEIN TWALIB SAIDI** suing as **Administrator of the Estate of the Late Abdallah Said Livenga**) is dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara (the DLHT) in Land Application No.86 of 2018. He has appealed to this Court on the following grounds:

- 1. That, trial Tribunal erred in law and fact to hold that the suit farm located at Mkuyuni Village and House located at Chigugu Village do not belong to the Late ABDALLAH SAID LIVENGA.*

2. *That, Trial Tribunal Erred in law and fact to grant the Respondent the suit Farm located at Mkuyuni Village and House located at Chigugu Village basing on fabricated evidence of exhibits D1 and D2.*
3. *The trial Tribunal erred in law and fact to totally disregard the contradictions of the evidence adduced by the Respondent and her witnesses regarding ownership of the suit Farm and House respectively.*

When the appeal was called on for hearing on the 18<sup>th</sup> of May 2023, parties opted for written submission. A schedule to that effect was jointly agreed upon. The same has been complied with effectively. The submissions are summarized in the following paragraphs.

The appellant, in his submission, provided a brief history of the matter. He mentioned that the dispute revolved around a piece of land located at Mkuyuni Village and a house at Chigugu Village, both owned by the late Abdalla Said Livenga. The appellant sued the respondent for various orders, asserting that the properties belonged to the deceased and that the respondent was a trespasser.

During the hearing of the case, the appellant presented three witnesses, including himself, who testified that the disputed properties were owned by the late Abdallah Said Livenga. The respondent, on the other hand, relied on two exhibits, which were improperly admitted without being read out loud after their admission, as per **SAMWEL S/O NYERERE VS THE REPUBLIC, COURT OF APPEAL AT ARUSHA CRIMINAL APPEAL NO. 65 OF 2020.**

The trial tribunal ruled in favor of the respondent, declaring her the owner of the disputed properties based on the exhibits presented. The appellant, dissatisfied with the decision, filed three grounds of appeal. He

argued that the trial tribunal erred in not recognizing the evidence presented by his witnesses, which showed that the properties were owned by the late Abdallah Said Livenga. The appellant emphasized that he was the administrator of the estate of the deceased, as confirmed in Probate Cause No. 17 of 2017 at the Primary Court of Chikundi, and it was his duty to collect the deceased's properties for distribution to the heirs.

The appellant contended that the trial tribunal's decision was mainly based on the exhibit DI, a sale agreement between Abdallah S. Livenga and Yasin Said Livenga, which he claimed was invalid. He argued that the document lacked the necessary signatures and that Abdallah Said Livenga, being illiterate, would have used a thumbprint for identification. Additionally, the appellant challenged the authenticity of exhibit D2, a will allegedly made by Yasin Said Livenga in 2014, arguing that it was invalid because it lacked proper witnesses, and the person who made the will was not a clan member as required by customary law.

The appellant further questioned the fairness of the trial, pointing out procedural irregularities, such as the failure to read out the content of exhibits after their admission, as per **MANJA YOHANA VS. FIKIRINI ATHUMAN, CRIMINAL APPEAL NO. 147 OF 2016 CAT**. He requested the court to expunge the exhibits DI and 2 and find that the disputed properties belonged to the late Abdallah Said Livenga. In conclusion, the appellant submitted his arguments and prayed for the court's consideration of the matter.

**The respondent** on his part, stated that he had carefully reviewed the applicant's Application and found the reasons set forth therein to be baseless. He mentioned that pursuant to the order of the honorable Court issued on 18th May 2023, the appeal was ordered to be argued through written submission. However, on the 1st of June 2023, the appellant submitted new complaints and grounds of appeal that were not previously filed before this honorable court. These new complaints pertained to the validity of the will, the opinion of the assessors, and the admission of exhibits.

The respondent pointed out that the order on 18th May 2023, to argue the appeal did not encompass arguing complaints that were raised later on 1st June 2023 through written submission. He referred to the case of **HADIJA ALLY VS. GEORGE MASUNGA MSINGI, CIVIL APPEAL No.384 Of 2019 CAT**, which held that written submissions should only address the grounds of appeal on record at the time of the order and should not be used to raise new complaints.

The respondent emphasized that the new complaints presented by the appellant should not be considered by this Honorable Court as they were improperly presented, citing the precedent of Hadija Ally's case (*supra*).

He argued that the burden of proof lies with the appellant, who filed a suit against him. PW1, PW2, and PW3, as witnesses, alleged that the late Yasin Saidi Livenga (not a party herein) was invited to stay on the suit properties and not the respondent.

Furthermore, he highlighted a contradiction in the evidence of PW2 and PW3 regarding the ownership of the property. PW2 claimed to be the wife of the late Abdallah Said Livenga, while PW3, the brother of the late Abdallah Saidi Livenga, stated that he did not know her. He also mentioned that PW2 testified that Somoe Bakari informed the late Yasini Said Livenga about the land they were cultivating, but the appellant failed to call Somoe Bakari as a witness to testify. Regarding the property in dispute, he argued that he was able to prove that he had purchased it, and DW2 and DW3 supported his testimony. The respondent prayed that, based on the submission above, the appeal should be dismissed with costs.

**The appellant, in his rejoinder to** his earlier submission, pointed out that the Respondent had argued that he raised new complaints/grounds of appeal, which had not been filed before the Honorable Court. However, the Appellant clarified that he did not bring new complaints/grounds of appeal. Instead, he tested the validity and admissibility of the documents (exhibits) tendered as evidence by the Respondent, which were admitted and relied upon by the trial tribunal in its judgment.

According to the Appellant, the trial tribunal's judgment relied on two documents, namely exhibits D1 and D2, which were tendered as evidence by the Respondent during the hearing of the matter (refer to pages 6 & 7 of the trial tribunal typed judgment). It is a legal principle that the first appellant court, when determining an appeal at the first instance, has a statutory duty to revisit the entire proceedings, evidence, and any other records admitted in court during the trial, with a view to understanding the nature of the evidence and procedures used to arrive at the conclusion. The Appellant

cited the case of **LEONARD MWANASHOKA VS. R.** CRIMINAL APPEAL NO. 226 Of 2014 (unreported), where the court held:

*"The first appellate court should have treated evidence as a whole to a fresh and exhaustive scrutiny which the appellant was entitled to expect. It was therefore expected of the first appellate court, to not only summarize but also to objectively evaluate the gist and value of the defense evidence and weigh it against the prosecution case. This is what evaluation is all about."*

Since this court is the first appellate court, the reevaluation of the entire evidence recorded by the trial tribunal is inevitable to determine the validity of exhibits D1 and D2. Therefore, there are no new complaints raised by the Respondent herein. The Appellant prayed that the Honorable Court expunged the exhibits D1 and D2 and make a finding that the suit Shamba and house in dispute were owned by the late Abdallah Saidi Livenga.

I have dispassionately considered the rival submissions and carefully examined the lower court records. I entertain no doubt in my mind that the lower tribunal had analyzed the evidence presented before it. The art and craft of evaluating evidence, which is not peculiar to courts involves evaluating, among other things:

- (i) *The source of the evidence (where it comes from, who took over from who and who has tendered it in court)*
- (ii) *The nature of the evidence (whether primary or secondary)*
- (iii) *How the evidence compares with the rest of evidence in the same transaction/matter (whether there is corroboration)*
- (iv) *How current is the evidence (whether it is still valid, or another evidence makes it redundant),*

- (v) *The scope of the evidence (whether it proves a specific or a general item, direct versus circumstantial aspects)*
- (vi) *What the evidence suggests (inference)*
- (vii) *Whether the evidence is a part of common knowledge or new scientific/technological findings.*

(See generally Damaska, Mirjan *Evaluation of Evidence: Pre-Modern and Modern Approaches* (Cambridge: Cambridge University Press 2019).

Like the trial Tribunal, I find no merit at all in the appeal. The appellant who is the Administrator of the Estate of the Late Abdallah Said Livenga is trying to bring up things which are unlikely to be true. He is claiming that the respondent, a widow, was supposed to return the house and farm she had been using for many years because her husband was only temporarily given them by the family of the late Abdallah Said Livenga. This is an attempt, to use the words of the learned Chairman of the Tribunal to "rob the poor widow" in broad daylight.

Premised on the above, I dismiss the appeal in its entirety for lack of merit.



  
**E.I. LALTAIKA**  
**JUDGE**  
**27.07.2023**

### Court

This judgement is delivered today in the presence both the appellant and respondent who have appeared in person, unrepresented.



  
**E.I. LALTAIKA**  
**JUDGE**  
**27.07.2023**

**Court**

The right to appeal to the Court of Appeal fully explained.



  
**E.I. LALTAIKA**  
**JUDGE**  
**27.07.2023**