

**UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
HIGH COURT OF TANZANIA  
MOROGORO DISTRICT REGISTRY  
AT MOROGORO  
LAND APPEAL NO. 101 OF 2022**

*(Arising from Land case no. 88 of 2016 at District Land Housing Tribunal (DLHT) for  
Kilombero at Ifakara)*

**HADIJA ADAM SAID MALIWATA ..... APPELLANT**

**VERSUS**

**1. ASIGA ABAS**

**2. AWETU ABAS**

**3. HAMAD ABAS**

**4. FATUMA HALIFA**

**5. ZENA ABAS**

**..... RESPONDENTS**

**JUDGMENT**

Date of last order: 31/05/2023

Date of Judgement: 14/07/2023

**MALATA, J**

Land as an utmost object to the eyes of God. Theological God's first fundamental work of creation started with Heaven and Earth. This is gathered from the Holy Bible in the Book of Genesis 1:1-3 and 1:9-10 state what God created first; I quote;

*1. In the beginning God created Heaven and **Earth**.*

Based on the above reference, one can agree without hesitation that, God valued land (Earth) as the first and most important item and that without it, there could be no residence for placing things created, in particular living and non-living organism, human being inclusive. It is after such formation and as the Earth was empty and unoccupied, God continued placing all what were being created from time to time on the Earth. This is assembled from the Holy Bible in the Book of Genesis 1:2,3, 9 and 10 provide that;

*2. But the Earth was **empty and unoccupied** and darkness were over the face of the abyss; and so, the spirit of God was brought over the waters*

*3. And God said, "let there be light" And light became.*

In Genesis 1:9-10 it is stated that;

*9. Truly God said "let the waters that are under heaven be gathered together into one place; and let the land appear" And so it became.*

*10. And God called the dry land, 'Earth,' and he called the gathering of the waters, 'Seas', And God saw that it was good."*

It is clear, therefore that, after formation of Earth (Land), God started to put all what he wanted to be on Earth. This is echoed by the above cited verses from the Book of Genesis showing how God proceeded after creation of Earth and what he did thereon. In other words, the way we are, what we see and use is reflection of what God wanted it to be.

This makes land as first and most important item he created for his holy work on the Earth as without it, there could be no place to lay the God's outcomes from his work of creation. Therefore, Land is a sensitive and valuable item even in the God's eyes.

In that regard, since the issue of land touches all living and non-living organisms, human being inclusive regardless of their wealth, status or impoverishment and that, no development can be effected without land, thus, land has become nothing but the first and most important thing to any living and non-living creature and human development. In other words, no Earth no living and non-living organism, and therefore no life.

Given the afore stated position from the Bible, Tanzania as country has taken such sensitivity and put land as special thing in which its

ownership, use, management and conservation are Constitutionally and legally regulated.

Just to cite few examples, the land laws in Tanzania provide for how land should be regulated. **Section 4 of the Land Act, Cap.113**

**R.E.2019** states that;

*(1) All land in Tanzania shall continue to be public land and remain vested in the President as trustee for and on behalf of all the citizens of Tanzania.*

*(2) The President and every person to whom the President may delegate any of his functions under this Act, and any person exercising powers under this Act, shall at all times exercise those functions and powers and discharge duties as a trustee of all the land in Tanzania so as to advance the economic and social welfare of the citizens.*

*(3) Every person lawfully occupying land, whether under a right of occupancy, wherever that right of occupancy was granted, or deemed to have been granted, or under customary tenure, occupies and has always occupied that land, the occupation of such land shall be deemed to be*

*property and include the use of land from time to time for depasturing stock under customary tenure.*

*(4) For the purposes of the management of land under this Act and all other laws applicable to land, public land shall be in the following categories—*

*(a) general land;*

*(b) village land;*

*(c) reserved land.*

It is on that basis, the courts have also taken similar root of ensuring that, all issues pertaining to land dispute have to be given special attention and proof. This is due to unbecoming behaviour of some of the people pampering into fraud, forgery, cheating, trespassing over one's land and invading the reserved land. In view thereof, courts have called upon disputes on ownership of land to be proved strictly. This is intended to satisfy the court as to who is really the legal owner of land in dispute. Left such proof to the balance of probability like any other civil suit involving other object could leave some of unscrupulous people to win cases through fabricated evidence. This is mostly done by haves against have nots, the inferior ones.

Before me there is a land appeal which need to be decided in the spirit of what is stated herein above. This judgement is in respect of appeal by the appellant herein challenging the decision of the District Land and Housing Tribunal (DLHT) for Kilombero at Ifakara in Application no. 88 of 2016.

The appellant herein lodged land application no. 88 of 2016 before the DLHT claiming for ownership of the dispute land against the respondents. Secondly, prayed for orders of vacant possession from the land in dispute, general damages and costs of the suit. The appellant is claiming as administratrix of the estate of late Adam Said Maliwata, who was her beloved father. The late Adam Said Maliwata passed away in 1999.

That, in 1974, the deceased partitioned the land and give part of his land to his young brother, Abbas Said Maliwata, who is the husband of the 4<sup>th</sup> respondent and father of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents herein. Abbas Said Maliwata settled on the said land since 1974 and built a permanent house and lived peacefully with his family until his demise in a year 2014.

Now, the dispute arose between the appellant (administratrix) stepping into the shoes of late Adam Said Maliwata and the family of late Abbas

Said Maliwata over a piece of land that was given to Abbas Said Maliwata by his brother. The allegations by appellant is to the effect that; one, Abbas Said Maliwata was just an invitee to Adam Said Maliwata, two, that Abbas Said Maliwata was given land by Adam Said Maliwata just for using it not for ownership as claimed by respondent, three, the land given to Abbas Said Maliwata is different from the land in dispute, four, that Abbas Said Maliwata built house in the land not allocated to him to own it, five, that the alleged land belongs to the late Adam Said Maliwata but trespassed by Abbas Said Maliwata and his family, the respondents.

The appellant being administratrix of the deceased estate of Adam Said Maliwata claims that, the land in question is part of the estate of late Adam Said Maliwata and insist that, the respondents were mere invitees on the land in dispute. The respondents on the other hand insisted that, the suit land is their property as it forms part of the land that was permanently given to their late father Abbas Said Maliwata by his brother, the late Adam Said Maliwata in 1974.

That, upon demise of the late Adam Said Maliwata in 1999, Abbas Said Maliwata continued to live peaceful. The dispute on the land arose in

2014 upon death of Abbas Said Maliwata which led to institution of land application No. 88 of 2016 in the DLHT.

The DLHT decided in favour of the respondents, the appellant appealed to the High Court, Land Division vide Land Appeal no. 71 of 2019, nullified the judgement and decree of the DLHT with an order that, the DLHT visit the locus in quo with view of ascertaining the land in dispute and finally compose the Judgement.

The case file was remitted back to the DLHT. The DLHT visited the locus in quo and determine the land application no.88 of 2016 in favour of the respondents.

Dissatisfied thereof, the appellant lodged the present appeal and advanced one ground of appeal, that is;

*"That, the trial tribunal erred in law and in fact when it decided that making permanent improvements and staying for a long time in the land makes an invitee a lawful owner of the said land."*

The appellant prayed for the appeal to be allowed and declaration that the appellant is the lawful owner of the disputed land.



When this appeal came for hearing, the appellant appeared in person unrepresented, while the respondents were represented by Mr. January Kambamwene, learned counsel.

Both parties made their submissions for and against the appeal.

Arguing in support of the appeal, Hadija Adam Said Maliwata, the appellant stated that Abbas Said Maliwata was an invitee by his brother, and that he was not given the land in dispute to own but just to use it. Abbas Said Maliwata was given the land in dispute to use since 1974 the land he used up to his death in 2014. However, there is no written document to that effect. The appellant further submitted that, before this case there was a case between the late Adam Said Maliwata and one Kijika on the same disputed land, in that case Abbas was one of the witnesses of Adam Said Maliwata and not the owner. She further stated that they sold part of the land while Abbas was alive and nothing transpired but upon the death there was a conflict between the family of Adam and Abas on ownership of land which essentially belonged to Adam. However, there is no sale agreement to that, effect.

Abbas built a house before 1999 and before the death of Adam Said Maliwata. As Abbas was an invitee thereafter was given another land to own and live, then he can't claim to own the land which was not

surrendered to him and an invitee can't acquire ownership of land no matter how longer he lived thereon. Further there was probate and administration cause no 30 of 2010 of the late Adam Said Maliwata and the land in dispute was part of it and it is referred to as two acres.

Finally, the appellant asked the court to declare that the land belongs to Adam Said Maliwata and that Abbas Said Maliwata was just an invitee.

Replying to the submission made by the appellant, Mr. Kambamwene stated that, Adam Said Maliwata approached the Village for allocation of land in 1974 as per PW3's testimony. Adam Said Maliwata was allocated land by Village. PW3 testified that Adam allocated part of the land to Abbas in 1974 and that Abbas Said Maliwata was on that land since 1974. DW2 the wife of Abbas testified in support of the same position. That, Abbas Said Maliwata and 4<sup>th</sup> respondent-built house where they started to live from 1974 to date.

PW2 Hamisi Nakapala, PW3 Hamisi Ngolangu and DW2. Adam and Abbas with their families lived peaceful without any quarrels until the death of Abbas in 2014. There was no dispute up to 2014 when Abbas passed away. In 2010 the appellant was granted a letter of administration of Adam while Abbas was alive, and when Abbas passed away on 2014 there was no dispute on the said land.

In 2016, the appellant instituted the case, Land Application no 88 of 2016 regarding the land in dispute, the evidence on record as per PW2, PW3 and DW2 testified that, Abbas was in ownership of land since 1974 upon being allocated by Adam.

It was Mr. Kambamwene further submission that, DLHT correctly decided the case and that Abbas is the rightful owner of the Land in dispute who acquired the title through gift from his brother Adam Said Maliwata, there is no evidence that Abbas was just given the land in dispute temporarily. It is the duty of the appellant who alleges that Abbas was allocated land to use for a short time and bears a duty to prove existence of such fact.

The case between Adam and Kijika can't be the basis to declare that Abbas had no ownership. DLHT correctly arrived to the decision by declaring that Abbas is the lawful owner in the absence evidence proving that Abbas was just given such land to mainly to use it with view of returning back to Adam Said Maliwata. Finally, the learned counsel prayed for dismissal of the suit with costs.

By way of rejoinder, the appellant stated that, the evidence is in the case of Adam vs. Kijika, also there is evidence by PW2, PW3 proved the

same, thus the DLHT was not correct to hold that Abbas is the lawful owner of the land in dispute.

With the arguments of both sides being submitted and considered by this court, the crucial question for determination is;

1. Who is the lawful owner of the land in dispute,
2. Whether the DLHT wrongly arrived to the impugned decision in land application no.88 of 2016
3. What is the fate of the present appeal

To start with, it is trite law that, whoever desires any court to give judgement as to any legal rights or liability dependent on the existence of facts which he asserts must prove that those facts exist. This is echoed by sections 110, 112, 115 of the Law of Evidence Act, Cap 6, R.E 2022.

Section 110 provides that;

*(1) Whoever desires any court to give judgement 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."*

Section 112 provides that;

***"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person."***

Section 115 provides that;

***"In civil proceedings when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."***

Under the laws of Tanzania, ownership of land can be acquired through various ways, these are; **one**, by allocation through Government authority, **two**, purchase, **three**, inheritance, **four**, gift, **five**, adverse possession, **six**, clearing of unoccupied bush

Courts have, given special consideration to some of the civil suits and placed under strict proof by whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, such person must prove that those facts exist. In such special cases, the proof has been settled to be strict. A good example is on civil cases for claim of special damages, in the case of

**Bamprass Star Service Station Limited vs. Mrs Fatuma Mwale,**

[2000] T. L. R 390 Rutakangwa J, had this to say.

*"It is trite law that special damages being "exceptional in their character" and which may consist of "off-pocket expenses and loss of earnings incurred down to the date of trial" must not only be claimed specifically but also "strictly proved".*

Further in the case of **British Transport Commission v. Courley**

[1956] AC 185 at 206 where it was held:

*"In an action for personal injuries the damages are always divided into two main parts. First, there is what is referred to as **special damages, which has to be specifically pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of the trial and is generally capable of substantially exact calculation.** Secondly there is general damages which the law implies and is not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such that as to lead*

*continuing or permanent disability, compensation for loss of earning power in the future."*

This court has in a number of authorities principled that, proof ownership of land must be strict. This is based on sensitivity of land issue in Tanzania. In the case of **Ramadhani Rashidi Kuhuka vs Jela Maiko Meja And 44 Others, Land Case No.25/2022**

*"The property involved being land which is peculiar and sensitive one, its ownership must be proved strictly not by mere words. In other words, there must be sufficient evidence to prove ownership strictly."*

Placing proof of ownership like any other normal civil suits, regardless of its sensitivity of land find is not plausible for fighting against on-going frauds by haves against inferior ones.

This court as the first appellate court has duty to re-evaluate the entire evidence adduced at the trial tribunal and subject it to critical scrutiny and arrive at its independent decision, see the decision of the court of appeal in **Future Century Limited vs. Tanesco**, Civil Appeal no. 5 of 2009, **Leopold Mutembei vs. Principal Assistant Registrar of Titles; Ministry of Lands, Housing and Urban Development and the Attorney General**, Civil Appeal no. 57 of 2017 and **Makubi**

**Dogani vs. Ngodongo Maganga**, Civil Appeal no. 78 of 2019 (all unreported).

As far as, I am aware no invitee can exclude his host whatever the length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited see the case of **Samson Mwambene vs. Edson James** [2001] TLR 1, **Makofia Meriananga vs. Aisha Ndisia** [1969] HCD No. 204.

In the present appeal, both parties are in agreement that the appellant's father the late Adam Said Maliwata gave the land to the late Abbas Said Maliwata but the difference is that while appellant claims that the land in dispute was given to the late Abbas Said Maliwata just for using as an invitee and not to own it, the respondents claim that, the late Abbas Said Maliwata was given such land in 1974 to own it not for usage only, thus, the dispute.

The appellant, therefore, bears a duty to prove strictly that, the late Abbas Said Maliwata was given such land just for usage only with intention to demand back.

At the DLHT the appellant testified that;



*"By then the respondent's father was living on to suit premises temporarily preparing himself living into a premise my father had given him permanently."*

PW2 testified that;

*"Abbas was given a plot/ farm much as a bit far from his premise while Ally Maliwata got a farm nearby his premise, Abbas did build a house in this farm premise but he also built a house nearby the house of Mwl Adam and that is where he was staying, but he shifted from that house immediately after the death of his brother Mwl. Adam."*

PW3 testified that;

*"In 1974 there was water flood at Lipangalala and we took an area which was a farm area but conducive for residence and we gave a plot to Mwl Adam which was about one acre, then later he gave it to his young brother Abbas for his family residence and then Abbas shift from where he was staying with Adam and went to live in that area."*

The testimony of PW2 and PW3 shows that, they know the nature of the relationship between two brothers and how the respondents' father

came to possess the land in dispute but either knows if it was for temporal use or otherwise. As stated herein above, the duty to prove that the respondents' father was an invitee and just given land for usage only from 1974 to when he passed away in 2014 lies on the appellant. This is an obligation imposed under sections 110, 112 and 115 of the Evidence Act.

In principle, this court was expecting to get evidence, that Adam Said Maliwata gave the land in dispute to Abbas Said Maliwata for use only not to own it. I have critically analysed the evidence on record and gathered no evidence proving strictly that the land in dispute was given to Abbas Said Maliwata on basis of the terms portrayed by the Appellant herein. The appellant testified that, in 1974 she was two years old thus knew as to what were terms of ownership of land. The evidence by appellant's witnesses in particular PW2 and PW3 are to the effect that, the land was given to Abbas Said without any condition of returning it back.

Further, from 1974 to 1999 when Adam Said Maliwata passed away, there was no claim that, Abbas Said Maliwata had to return the land in dispute. The appellant stated that, he was told such condition of returning the land by the late Adam Said Maliwata, however, this were

just words from the bar as they are without any proof or support let alone attempt. The land has been in occupation and developed by Abbas Said Maliwata since it was given to him in 1974 and the dispute arose in 2014 between the heirs of the two families, after death of Abbas Said Maliwata.

Based on the evidence on record, I am satisfied beyond sane of doubt that, the appellant has miserably failed to discharge the duty of proof of what she alleged as required by **sections 110, 112 and 115 of the Evidence Act.**

Neither oral nor written evidence has been presented to the satisfaction of the court that, Adam Said Maliwata has at point in time gave condition to Abbas Said Maliwata that, the land given to Abbas shall be returned at any point in time. Mere words from the appellant cannot, in my view firmly withstand and prove ownership of land against Abbas Said Maliwata who has been in ownership of the said land since 1974 to date.

Having so said, I am thus holding that, the appellant's version is without proof for the given reasons, as such, the appellant has failed to prove ownership of land. **This marks the end of discussion in respect to issue no. 1 here above.**


The above conclusion takes to the second issue on whether the trial tribunal wrongly arrived to the impugned decision. Making reference to what brought to the conclusion on issue no.1 herein above, I am of the settled view that, the DLHT correctly arrived to its decision that, the appellant failed to prove ownership of land as required by law. I thus share similar position. **This marks the end of discussion in respect to issue no.2 here above.**

Based on the above enumerated facts, it is clear that the evidence adduced by the appellant did not prove case to the standard requirement in civil case, including on the balance of probability.

All said and done, I hereby hold that, the appeal is devoid of merits. Consequently, the appeal is accordingly dismissed. Cost to follow the event.

**IT IS SO ORDERED**

**DATED at MOROGORO** this 14<sup>th</sup> July, 2023

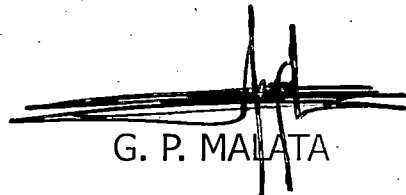


G. P. MALATA

JUDGE

14/07/2023

**DELIVERED** at **MOROGORO** this 14<sup>th</sup> July, 2023.

A handwritten signature in black ink, appearing to be 'G. P. Malata', is written over a horizontal line.

G. P. MALATA

**JUDGE**

14/07/2023