

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND APPEAL NO. 154 OF 2022

(C/F District Land and Housing Tribunal for Babati at Babati in
Application No. 70 of 2020)

REGINA JOHN..... APPELLANT

VERSUS

EDNA PETER.....RESPONDENT

JUDGMENT

07/08/2023 & 29/08/2023

MWASEBA, J.

Being aggrieved by the whole decision of District Land and Housing Tribunal for Babati at Babati, the appellant appealed to this court based on the following grounds:

- 1. That, the trial tribunal Chairman erred in law and fact in deciding in favour of the respondent while the respondent did not prove her ownership over the disputed land before the tribunal.*
- 2. That, the trial Tribunal Chairman erred in law and fact by deciding that the Respondent is a lawfully owner of the disputed land and*



yet again states that the land in dispute belongs to the Respondent's late husband.

3. That, the trial Tribunal erred in law and facts for failure to evaluate properly the evidence before it as it was contradictory.

4. That the Trial Tribunal erred in Law and fact for delivering the judgment which is bias.

Briefly, the appellant filed an application at the District Land and Housing Tribunal of Babati at Babati (DLHT) claiming to be the lawful owner of the disputed land since 1996 and she build a house in 1998. However, as she was living in Moshi, she gave his young brother who is a deceased now to live on the said house. Unfortunately, when his young brother died, her wife claimed that the house belongs to his husband who died in 2020. Having heard both parties, DLHT decided that the respondent is the lawful owner of the disputed land together with the house therein. Aggrieved, the appellant is now before this court challenging the same based on the grounds advanced herein above.

During the hearing of an appeal which was done by way of written submission, Messrs Caroli J. Chami, and Paschal Peter, both learned advocates represented the appellant and respondent respectively.



Amplifying on the 1st ground of appeal, Mr. Chami submitted that the appellant herein proved that she is the owner of the disputed land by purchasing it from Yusuph Juma Ninga in 1996 who was called as a witness. He submitted further that the same was proved by the young brother of the appellant one Benedict John Nombo who testified on the same and that the respondent's husband was given it temporarily. Further, although the respondent alleged that they bought the land from Yusuph Juma Ninga, when he was testifying that he sold the land to the appellant, they never questioned him.

It was his further submission that the proceedings at the trial tribunal was biased, when Hon. Mwiha took over to adjudicate the case he never gave the appellant a chance to submit his primary evidence. He was of the view that the appellant proved his case on the balance of probabilities.

On the 2nd ground of appeal, Mr. Chami submitted that it was wrong for the trial tribunal to depart from the raised issues and declare the disputed land to belong to the late husband of the respondent. He submitted further that, the respondent alleged that she bought the disputed land with her late husband. So, it is not clear who is the owner between the respondent and her late husband.



Coming to the 3rd ground of appeal, Mr. Chami complained that the evidence of the respondent was full of contradiction. He submitted so for the reason that the respondent alleged he registered the land to street leader in 2011 and it is the time it became her property. However, at the same time she said she bought the land from Yusuph Juma Ninga in 2011. Thus, his evidence ought not to be trusted, and the trial tribunal unreasonable relied to such evidence.

Regarding the 4th ground of appeal, Mr. Chami submitted what has already been submitted on the third ground of appeal that the trial tribunal was biased against the appellant. He submitted so for the reason that although the trial Chairman departed from the opinion of the assessors his opinion and reasons was not recorded.

Opposing the appeal, on the 1st and 3rd grounds of appeal, Mr. Peter submitted that the trial tribunal was correct to enter judgment in favour of the respondent as she managed to prove her ownership over the disputed land. He argued further that the respondent tendered exhibit R1 (Government exchequer receipts) and Exhibit R2 (Hati ya Kumilikishwa eneo) and the same were never challenged by the appellant. He argued further that the appellant failed to submit her evidence despite of several adjournment done by Hon. Chairman to wait




for her documents if any. As for the issue of change of chairman the same when a new Chairman was taking over, they were asked to start afresh or to proceed and they both agreed to proceed, thus, he prayed for these grounds to be rejected with costs.

Coming to the 2nd ground of appeal, Mr. Peter replied that the trial Chairman never departed from the determination of the issues as the main issue was who is the lawful owner of the disputed land. Having heard the parties the trial tribunal decided that the respondent is the owner of the disputed property due to co-ownership of the husband and wife. Thus, this grounds too has no merit.

Concerning the 4th ground of appeal, Mr. Peter responded that the trial tribunal was never biased and when the trial Chairman departed from the opinion of assessors, he gave reasons why he departed. Therefore, this ground needs to be dismissed for want of merit. In the end, he prayed for the appeal to be dismissed with costs.

In brief rejoinder, the appellant reiterated what has been submitted in his submission in chief and added that exhibit R1 as a fabricated document and Exhibit R2 by itself cannot prove the ownership of the disputed land.



Having gone through the judgment and proceedings of the trial tribunal in line with the grounds of appeal and the rival submissions, it appears that the main issue to be determined by this court is whether the appeal before me is meritorious.

Starting with the 1st and 3rd grounds, the appellant complained that her case was proved on the balance of probabilities compared to the respondent who was declared the lawfully owner by the trial tribunal.

It is a trite law in civil cases that a proof of the claim is on the balance of probabilities and he who alleges has a burden to proof. The same was held in the case of **Africarriers Limited v. Millenium Logistics Limited**, Civil Appeal No. 185 of 2018 (CAT at Dar es Salaam, Unreported) that:

"The burden of proof in a civil case lies with the one who alleges."

In our present case, the appellant submitted that she purchased the disputed land from Yusuph Juma Ninga and the same was testified by her witnesses. However, no evidence was submitted to prove that she purchased the disputed land from Mr. Yusuph Juma Ninga. On her side, the respondent alleged that she purchased the disputed land together with her late husband from the same person Yusuph Juma Ninga, and

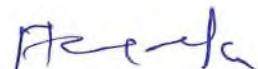
she submitted the proof of ownership of the disputed land together with the proof of payment of rent over the disputed land which is R1 and R2 respectively. Therefore, as clearly submitted by Mr. Peter, this court is of the firm view that, the respondent proved her claim on the balance of probabilities. Hence, the 1st and 3rd grounds of appeal have no merit.

Regarding the 2nd ground of appeal, Mr. Chami complained that the appellant departed from the issues raised by the parties herein and declared the respondent as the lawful owner. However, on his side, Mr. Peter submitted that the trial tribunal determined the issues raised and it never departed from the raised issues.

In determining this ground, I have gone through the records of the trial tribunal and noted that the issues which were raised for determination were:

- a) Ni nani baina ya mleta maombi na mume wa mjibu maombi, marehemu Mathias alinunua nyumba yenye mgogoro.*
- b) Ni nafuu zipi wadaawa wanastahili.*

And during the determination of the application the trial tribunal determined the raised issues and based on the evidence submitted by both parties the tribunal declared the respondent as the lawful owner of



the disputed land. Thus, the argument that the trial Chairman departed from the raised issues is an afterthought. So, this ground too is found with no merit.

Coming to the 4th ground of appeal, Mr. Chami complained that the trial chairman departed from the opinion of assessors without recording reasons for so doing. However, the same was not supported with the respondent's counsel who submitted that a reason was given by the trial chairman when he was departing from the opinion of the assessors.

Upon revisitation on the trial tribunal's records this court noted that on 5/8/2022 the opinion of assessors was read aloud before the tribunal and at page 4 of the trial tribunal's judgment, Hon. Chairman stated that:

"Aidha, kwa mujibu wa sheria ya Madai sura ya 33 marejeo ya mwaka 2019 pamoja na kesi iliyonukuliwa hapo juu natofautiana na maoni na washauri wa Baraza hili hivyo, kwa mujibu wa Ushahidi uliotolewa pamoja na viecelelezo vilivyopelekewa eneo bishaniwa na nyumba iliyopo ni mali ya maehemu Mathias mume wa Mjibu Maombi."

Thus, based on the cited paragraph it is crystal clear that Hon. Chairman gave reasons as to why he departed from the opinion of the assessors. Thus, this ground has no merit.




That being said and done, this appeal is without merit, it is thus dismissed. The judgment and decree of the trial tribunal are hereby confirmed. Given the circumstances of this case, each party shall bear the costs of the appeal.

It is so ordered.

DATED and **DELIVERED** at **ARUSHA** this 29th August, 2023.




N.R. MWASEBA
JUDGE