

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
SUB REGISTRY OF SHINYANGA  
AT SHINYANGA**

**CONSOLIDATED LAND APPEAL NO. 68 AND 70 OF 2023**

*(Arising from decision of the District Land and Housing Tribunal of Maswa in Land Application No. 30 of 2023 dated 31/8/2023 before Hon. Chairman J.T. Kaare)*

**BETWEEN**

**JULIANA ROBO KASUKA .....APPELLANT/RESPONDENT**

*(Administrator of the Estate of the Late Robo Kasuka Mabula)*

**VERSUS**

**ANTHONIA ANGELO.....RESPONDENT/APPELLANT**

**JUDGMENT**

*12<sup>th</sup> March & 17<sup>th</sup> May 2024*

**MASSAM, J.:**

The appellant and respondent herein being aggrieved by the decision of the District and Housing Tribunal for Maswa (herein referred as the trial tribunal) they both preferred the present appeal. In Land Appeal No. 68 of 2023 the Appellant/Respondent's brought grounds of appeal as follows:

- 1. That, the learned Chairman erred in law to entertain the land dispute without to consider that the appellant didn't join the necessary parties who are the sellers of the land in dispute.*
- 2. That, the learned Chairman erred in law for entertain and reading judgment of the dispute without to consider that the appellant*

*joined the respondent mistakenly who is a wrong party and cannot be sued in the eyes of the law since she is not the legal representative of her late husband.*

- 3. That the learned Chairman erred in law to entertain the dispute and declaring a judgment by favour of the respondent on eight acres (shamba) without considering that the respondent has no locus stand on the disputes lands since she is not the legal representative of her late husband.*
- 4. That, the learned Chairman erred both in law and fact to declare judgment by favouring respondent on eight (8) acres (shamba) by relying on weak evidence without considering that there are necessary witnesses who are the seller of land who the respondent didn't bring them to testify the dispute and the respondent declared them alive.*
- 5. That the learned Chairman erred in law and fact by failure to consider the strong evidence from the appellant that her late father acquired the disputed land by clearing virgin land since 1958 and no any dispute arose to date.*
- 6. That the learned Chairman erred in law and fact for relying on the weak evidence of the respondent concerning the annexure AA1 and AA2 without to consider that these agreements are made*

*falsely (forged) since they provide confirmation of sales and not years of sale.*

In Land Appeal No. 70 of 2023, the respondent/Appellant raised only one ground to wit:

- 1. That, trial tribunal erred in law and fact in holding that only (8) acres belong to the appellant and the remaining 2 acres belong to the late Robo Kasuka Mabula, against the weight of the evidence on the record.*

To appreciate the context of this appeal, it is important to *albeit* briefly, the background of this matter. The Appellant/Respondent filed an application at the trial tribunal for her to be declared the lawful owner of the disputed land and the respondent/appellant be declared a trespasser and to vacate on it. She also prayed for the costs of the case. The appellant/respondent alleged that the disputed land had 10 acres whereby 10 acres located at Lakalangwa ward in Nyasosi Village and 2 acres located at Madukani ward in Ngulyati Village within Bariadi District in Simiyu Region. She alleged further that the disputed land was once the property of her late father Robo Kasuka Mabula who cleared the virgin forest. And that after his death he was buried on two acres plot together with his two grandsons. She submitted that the disputed land



was under the care of the Mabula's clan until 2019 when the respondent/appellant trespassed to it by alleging that it belonged to her. They reported the matter at the ward and Village offices, but they failed to settle the matter amicably that's why the same was preferred to the trial tribunal.

On his side, the respondent/appellant denying having trespassed to the disputed land. She said that the disputed land is the property of the late Malimi Nkimbili (her husband) who bought it from two people. She added that the late Malimi Nkimbili bought 1 ½ acres from John Sangali on 10/2/2006 and on 7/12/2004 he bought 6 ½ acres from Paul Ditu for Tshs. 510,000/= . And for the remaining 2 acres she said that her husband was given by Village leaders in 1989 after being abandoned for a long time. Among others, the respondent/ appellant sought for reliefs that, the application to be dismissed and to be declared the lawful owner of the disputed land.

At the conclusion of the trial, the trial tribunal decided that the 2 acres belong to the appellant/respondent herein and the remaining 8 acres belong to the respondent/ appellant. They both aggrieved with the decision hence this appeal.

On 12/ 3 /2024 it was agreed by the parties and ordered by the court that the appeal be argued by way of filing written submission and both sides complied with an order. Mr. Deus Richard learned counsel appeared for the respondent/appellant and the appellant/respondent fought solo, unrepresented. I commend both parties for their submissions which shall be considered when determining the merit of the appeal.

In his submission in chief in Land Appeal No. 68 of 2023, the appellant started with the 6<sup>th</sup> ground of appeal. She submitted that it was wrong for the trial Chairman to rely on annexure AA1 and AA2 as they were not sale agreement but confirmation of sale without a year the said sale was done. She was of the view that the same could have been forged and the date be backdated. Thus, they were not enough evidence to prove that the disputed land belongs to the respondent/appellant herein.

On his side Mr. Deus, learned counsel for the respondent/appellant strongly opposed the appeal. Starting with the 6th ground of appeal he submitted that if the appellant/respondent wishes the trial tribunal to decide in her favour she was supposed to have submitted proof that the disputed land belong to her late husband as per **Section 110 (1) of**

**the law of Evidence Act**, Cap 6 R.E 2022. He submitted further that the appellant/respondent was supposed to prove that the sale agreement tendered as an exhibit D1 and D2 was forged, and they were not genuine, failure to do so her allegations become empty words. It was his further submission that the respondent/appellant's husband has been in occupation of the dispute land since 2004 when he bought it, and he has been using it without any disturbance until this dispute arose.

It is a trite law in criminal cases that a party on whom the onus lies has a duty to prove his case on balance of probabilities. See the **Section 110 (1) of the Law of Evidence Act**, Cap 6 R.E 2022. At the trial tribunal the appellant/respondent herein alleged that the 10 acres was the property of his late father Robo Kasuka Mabula and his witness particularly PW2 testified that they were allocated 2 acres for pastoralism in 1974. While the respondent/appellant submitted Exhibit D1 and Exhibit D2 which proved that he bought the disputed land in 2004 from Paulo Ditu and in 2006 from John Sangalali. As it was held in the case of **Bright Technical Systems & General Supplies Limited v. Institute Of Finance Management**, Civil Appeal No. 12 Of 2020 (CAT at Dar Es Salaam) (Reported at Tanzlii) that:



*“The court must be satisfied that the plaintiff has discharged his burden of proof on the required standard before entering judgment in his favour”.*

Regarding the issue of forgery, it was the duty of the appellant/respondent to prove that the same was a forged, failure to do so the allegation became an empty word. Thus, based on the evidence submitted at the trial court and the exhibit tendered, as it was rightly held by the trial tribunal, the appellant/ respondent failed to prove her claim on the balance of probabilities. Thus, there is no merit on this ground.

As for the 1<sup>st</sup> ground of appeal, the appellant/respondent submitted that it was wrong for the trial tribunal to entertain the application while the necessary parties were not joined as per **order 1 Rule 1 of the Civil Procedure Code**, R.E 2019. She added that the said necessary parties were the ones who sold the land to the respondent/appellant herein.

Responding to the 1<sup>st</sup>ground of appeal, Mr. Deus submitted that the persons who sold the land to the respondent/appellant herein was not the necessary party as they had no interest on the disputed land. Further, he said it is the appellant/respondent who filed an application at

the trial tribunal, and she had a choice to sue the person she wants; thus, she cannot lament at this stage for the failure of joining the persons who sold the land to the respondent/ appellant at this stage. He cited the case of **Mussa Chabde Jape v. Moza Mohammed Salim**, Civil Appeal No. 141 of 2008 (CAT at Zanzibar) to support his argument.

The issue of a necessary party was emphasized in a case of **Abdullatif Mohamed Hamis v. Mehboob Yusuf Osman and Another**, Civil Revision No.6 of 2017 (unreported), when faced with an akin situation, that: -

*"The determination as to who is a necessary party to a suit would vary from a case to case depending upon the facts and circumstances of each particular case. Among **the relevant factors for such determination include the particulars of the non-joined party, the nature of relief claimed as well as whether or not, in the absence of the party, an executable decree may be passed.**"* (Emphasis is mine).

In our case at hand, this court finds out that the appellant/respondent filed an application at the trial tribunal against the respondent/appellant seeking to be declared the lawful owner of the



the land to the respondent/appellant were not necessary party as the decree could have been executed in their absence. Further to that as it was well submitted by the respondent/appellant herein, DW6 testified that the respondent/appellant bought 8 acres of the disputed land in 2004 and 2006 as evidenced by exhibit D1 and D2 respectively. Subsequently, they had nothing to do with the appellant/respondent. Therefore, the allegation does not hold water and the ground is dismissed for want of merit.

Regarding to the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal, she complained that it was wrong for the trial tribunal to entertain the application while the respondent/appellant had no locus stand to be sued. Thus, she said it was wrong for the disputed land to be declared her property as she said it was once belonged to the late husband and she is not even his administrator. She supported her argument by citing the case of **Lujuna Shubi Balonzi, Senior v. Registered Trustees of Chama cha Mapinduzi** (1995) T Z H C II1996 TLR 203 where the court held that the one who claim his right should prove that he has interest on subject matter. It was her view that the respondent/appellant was not entitled the disputed land.

Responding on the 2<sup>nd</sup> and 3<sup>rd</sup> ground of appeal, Mr. Deus submitted that the issue of locus stand lies to the appellant/respondent and not the respondent/appellant as he was the one who sued the respondent/appellant at the tribunal. He added that the decision of the trial tribunal was proper by declaring the 8 acres of land to belong to the respondent/appellant herein and it did not violated any principles of the law. Thus, he prayed for this appeal to be dismissed with costs.

I am aware that an applicant or appellant need to show that he/she has the locus stand to bring the suit before the Court to protect his/her interest. As it was held in the case of **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi**, (Supra) that:-

*"...in this country, locus standi is governed by common law. According to that law, in order to maintain proceedings successfully, **a plaintiff or an applicant must show not only that the court has power to determine the issue, but also that he is entitled to bring the matter before the court**". [Emphasis is mine].*

In this case, it was the appellant/respondent who filed an application against the respondent/defendant herein and he is the one

who is now claiming that the respondent/ appellant had no locus stand to be sued. This court is also puzzled that if the appellant/respondent was aware that the respondent/appellant had no locus to be sued why did she sued her. Further to that it is the appellant/respondent's duty to prove that he/she had a locus to file an application or a suit. For that reasons I find this ground baseless and lacking merit.

On the 4<sup>th</sup> ground of appeal, she lamented that as the respondent/appellant failed to bring some of the seller to testify, her evidence was so weak and not enough to allow the 8 acres to be declared her property. Further as she said the land was the property of her late husband the respondent/appellant was not entitled to be declared the lawfully owner.

It was Mr. Deus's reply on the 4<sup>th</sup> ground of appeal that, this ground is baseless and is misleading the court since the respondent/appellant did bring the sellers to testify at the trial tribunal together with the people who witnessed the said sale in favour of the respondent/appellant.

I will not use much of my time in determining this ground as it has already been determined in the 2<sup>nd</sup> and 3<sup>rd</sup> ground of appeal. Further DW6 who was the witness when the respondent/appellant's husband



appellant came into possession of the disputed land. Thus, this ground is baseless and the same is dismissed.

Lastly, on the 5<sup>th</sup> ground the appellant/respondent lamented that his late father was allocated the disputed land since 1974 by Village Council and he was using the same until the application was filed at the trial tribunal. Thus, as he used it for more than 12 years without any disturbance the same became his lawfully property. She supported his argument by citing the English case of **Moses v. Lolegrove** [1952] 2QB 533 where the court held that by using the land for more than 12 years the person using it become the lawfully owner.

As for this ground of appeal, Mr. Deus replied that there is nowhere in the records of the trial tribunal where the appellant/respondent testified that her late father acquired the 8 acres by clearing the virgin land since 1958. He added that after the evaluation of the evidence submitted at the trial tribunal, the tribunal found that the evidence of the appellant was weaker compared to that of the respondent, that's why the respondent was declared the rightful owner of the said 8 acres.

As I have already explained on the 6<sup>th</sup> ground of appeal herein, the appellant/ respondent herein failed to prove how her late father acquired 10 acres of the disputed land. The appellant/ respondent and her witnesses particularly PW2 proved that the appellant/respondent's late father was allocated 2 acres of land in 1974 where they buried him and his two grandsons. The respondent/appellant herein proved that he bought 8 acres of the disputed land from Paul Ditu and John Sangali by tendered Exhibit D1 and D2 and the same was confirmed by the persons who sold it to her late husband by testifying at the trial tribunal. Therefore, this ground lacks merit.

Turning into Land appeal No. 70 of 2023, where the respondent/appellant raised only one ground, Mr. Deus his counsel submitted that at the trial tribunal the appellant/respondent did not submit any proof to prove his ownership over the disputed land. He submitted further that as per **Section 31 (30 of the Village Land Act, Cap 114 R.E 2019** in any disposition of the land, the law requires an approval of a village council even if it was done orally.

He submitted further that the appellant/respondent did not submit any evidence on how her father became the owner of the 2 acres of the disputed land. And even the leaders of the village did not recognize the

land. He challenged the reasoning that as the appellant/respondent's father was buried on 2 acres of land then the same belong to him as a person can be buried anywhere. Further to that as the respondent/appellant's husband was allocated the land since 1989 and used it for more than 30 years then the doctrine of adverse possession could have been applied by the chairman and dismiss the dispute. Thus, he prayed for his appeal to be allowed with costs.

The appellant/respondent did not reply to this ground of appeal for the reasons best known to herself. However, as I have already explained herein above, regarding the 2 acres of the disputed land, the appellant/respondent submitted that her late father was allocated in 1974 for pastoralism. She added that on the same land her father was buried together with his two grandsons, the evidence which was supported by PW2 and PW3. Although the respondent/appellant's counsel was of the view that a person can be buried in the land which it is not his property, her argument is baseless. In our culture it is difficult for a person to be buried into another person's land unless their close



relatives. For that reasons this court did not find any merit on this ground and the same is dismissed.

In the upshot, I find no merit in both appeal No. 68 and 70 of 2023 and the same are dismissed with no order as to costs. The decision of Maswa District Land and Housing Tribunal is left undisturbed.

Ordered accordingly.

**DATED** at **SHINYANGA** this 17<sup>th</sup> day of May 2024.



**R.B. Massam**

**JUDGE**

**17/05/2024**

Right of appeal explained.



**R.B. Massam**

**JUDGE**

**17/05/2024**

