

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

LAND APPEAL NO. 22 OF 2023

*(Arising from Land Application No. 107 of 2018 of Kahama District Land
and Housing Tribunal)*

BETWEEN

**CHARLES MASHIMBA (Administrator of the Estate of
the late Mwinjenja Mianzo)APPELLANT**

VERSUS

MPANYA MACHIMU.....RESPONDENT

JUDGMENT

30th November 2023 & 16th February 2024

MASSAM, J.:

Dissatisfied with the decision of the District Land and Housing Tribunal for Kahama, the appellant has filed this appeal with a total of five (5) grounds of appeal as depicted from the memorandum of appeal.

Before going to the merit of the appeal, it is apposite to briefly state the background-giving rise to this appeal. Basically, the appellant filed an application at Kahama DLHT in order to recover the suit land which was the property of the late Mwinjenja Mianzo. He alleged further that the late Mwinjenja Mianzo invited the respondent to his land in

2008 and on 2009 the respondent without the consent of the deceased person, lease the disputed land to one Tito Gimi claiming the same to be his property. However, in 2012 the late Mwinjenja Mianzo passed away without recovering the disputed property to the respondent.

Following the death of the late Mwinjenja Mianzo the applicant filed an application to Ngogwa ward Tribunal and the same was decided in favour of the respondent, he filed an appeal at Shinyanga DLHT and the same was dismissed for want of locus stand as the applicant was not an administrator of the estate of the deceased.

The appellant alleged further that, after that he went and petition to be appointed as the administrator of the estate of the late Mwinjenja Mianzo, after being appointed he went to file this application at Kahama DLHT claiming the disputed property. On his side, the respondent submitted that the application was a res judicata as it was already determined up to the High Court and he was appointed as the lawful owner of the dispute property. Thus, he prayed for the same to be dismissed with costs.

After hearing of both parties, the DLHT decided in favour of the respondent herein as the appellant failed to prove that the disputed property belong to the late Mwinjenja Mianzo. Being aggrieved, the

appellant preferred the present appeal armed with the grounds as depicted from the memorandum of appeal.

When the matter was called on for hearing, advocate M.M.P. Mutongore represented the appellant from Human Right and Legal Clinic Organization (HLC), on the other hand, the respondent fought solo, unrepresented. The appeal was heard orally.

Starting with the 1st ground of appeal, Mr. Mutongore stated that, the respondent and his witness proved that the disputed property belong to the late Mwinjenja Mianzo as the respondent admitted that he bought the same from the deceased in 1999. He stated further that, SU3 said that the respondent bought the disputed land for Tsh70,000/= but he never paid the said amount to the late Mwinjenja Mianzo, therefore the said evidence proved that the land belongs to the late Mwinjenja Mianzo and not the respondent herein.

Coming to the 2nd ground of appeal, Mr. Mutongore stated that, it was not true the late Mwinjanja Mianzo never complained about the disputed property as Village chairman stated that, he once received a complaint from the deceased regarding the disputed property before her death.

Regarding the 3rd ground of appeal, Mr. Mutongore complained that it was wrong for the tribunal to declare the respondent as the lawful owner despite of the allegation that he was just an invitee to the disputed land. He added further that, the respondent had no prove that he bought the disputed land from the late Mwinjenja Mianzo. He referred this court to the case of **Swalehe v. Salum** (1972) HCD No. 140 where the case of **Mkakofia Meria Nanga v. Asha Medisia** (1969) E.A 20 was cited and the court insisted that, an invitee cannot allowed to be the owner.

On the 4th ground of appeal, Mr. Mutongore prayed for the court to consider Exhibits which were tendered at the tribunal that is, Land Dispute No. 9/2021 before Ngogwa Ward Tribunal to remain as it is.

On the last ground of appeal, Mr. Mutongore stated that the DLHT failed to evaluate the evidence adduced by the appellant that the dispute arose in 2009 and 2011 while SM2 testified that the dispute arose in the year 2012 when the deceased lodged a complaint before her death in 2012.

The respondent replied to all the grounds jointly, by praying to the court to peruse the records of the DLHT together with its exhibits which proved that he was the owner of the disputed property. He added, that

after their case with his mother ended, he went to file execution at the DLHT, but the appellant went to object after being appointed as an administrator of the estate of his late mother who passed away on 2/2/2012. It was his father submission that, when the appellant petition to be appointed as administrator he lied that her mother passed away on 23/3/2012 and the dispute arose in 2009 and 2011.

The respondent also prayed for the appellant to be arrested for misleading the court as he uses fake documents regarding the land he owned since 1999 and if there is any claim the same could have been done before the death of her late Mother. In the end he prayed for the appeal to be dismissed with costs.

Having considered the rival submissions from both parties, this court is generally called upon to determine **whether the trial tribunal was justified to hold that, the respondent herein is the lawful owner of the disputed land.** All the grounds of appeal will be determined jointly.

To prove the claim raised by the appellant at the tribunal, the tribunal raised the following issues:

1. Je eneo la Mgogoro ni mali ya Marehemu Mwijanja Mianzo.
2. Je Mjibu maombi ni mvamizi katika eneo lenye mgogoro.

3. Nafuu gani wadaawa wanastahili.

It is a trite law in civil cases that the one who alleges must prove. See **Section 110 (1) of the Law of Evidence Act, Cap 6 R. E 2019, and the case of Pauline Samson Ndawavya v. Theresia Thomas Madaha**, Civil Appeal No. 45 of 2017 (unreported).

In order to prove his claim at the tribunal, the appellant testified that in 2011 while in Zanzibar he received a phone call from her mother that she gave the respondent a plot for horticulture but he took another plot which was not in their agreement, she tried to stop him but he refused. In 2012 she went to report to Chairman hamlet, but she died before her complaint was heard. After the death of her mother, they filed a case at the ward tribunal, and it declared that the farm belongs to her late mother and after 45 days he went back to Zanzibar. Surprisingly after one year he heard that the respondent went to file an execution, he came back and the case went to the high court where it was noted that the decision of DLHT was nullified and the respondent was ordered to proceed to use the disputed area. After being appointed as administrator of the estate of her late mother he filed the present case.

His evidence was supported by the evidence of SM2 who also stated that the respondent rented 10 acres from the late Mwinjanja Mianzo and late on he refused to vacate from the disputed land.

On his side, the respondent testified that he bought the disputed land in 1999 from the late Mwinjanja Mianzo. He paid the said money two times, first time he paid Tsh 20,000/= and the second times he paid Tsh 30000. He tendered Appeal No. 75 of 2016 between himself and the appellant herein which was admitted as exhibit SUA1. The respondent also tendered exhibit SUA4, **Fomu ya Uteuzi wa Mirathi ya tarehe 8/10/2018**, Exhibit SUA6 **Barua ya Mtendaji wa Kijiji Ngulu ya tarehe 2/8/2014 and Hukumu ya Mahakama ya Mwanzo Jinai No. 154/2015**). He also added that the appellant created this case in order to deprive his rights as he owns the disputed land since 1999.

His evidence was supported by the evidence of SU2, Su3, and SU4 who alleged that respondent bought two acres from the late Mwinjenja Mianzo, later on he came to them in order to help them to settle the matter and the said land to be divided equally. The dispute arose when the respondent told the appellant and his relatives to give him Tsh. 70,000/= so as to return the disputed property but they never paid

such amount. Both witnesses testified that the respondent bought two acres only.

Having perused the records of the DLHT together with the exhibits tendered by the respondent this court noted that the respondent bought part of the land of the late Mwinjenja Mianzo which is two acres in 1999. Although both the appellant and the respondent alleged the disputed property is ten acres, but the evidence revealed otherwise. Further to that in Appeal No. 75 of 2016 which was between the appellant herein (in his personal capacity) and the respondent, High court of Tanzania at Shinyanga held that it was wrong for the DLHT to order the re-trial of the matter at the execution stage since the appellant did not pray to set aside ex-parte judgment delivered by the DLHT, for that reasons Misc. Land Application No. 52 of 2016 was quashed and set aside.

Further to that, this court do support the decision of the DLHT for Kahama that the appellant had no proof that the disputed property still belong to her late mother as she had already sold it to the respondent herein. It was the finding of this court that there is no proof submitted that the late Mwinjenja Mianzo filed any claim against the respondent herein nor reported him to any authority despite of using the disputed land since 1999. As it was already explained herein above that the duty


of proving the claim lies on the one who alleges and the same never shifted to the respondent, it is the firm view of this court that the appellant failed to prove his claim on the balance of probabilities as required in civil cases. See the case of **Cooperative and Rural Development Bank v. M/s Desai & Co. Limited**, Civil Appeal No. 51 of 1999 (unreported).

The above said, I find no merit in the appeal at hand. Consequently, it is hereby dismissed with costs. The decision of the trial tribunal is left undisturbed.

It is so ordered.

DATED at **SHINYANGA** this 16th day of February, 2024.




R.B. Massam
JUDGE
16/2/2024