

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**SONGEA SUB - REGISTRY**

**AT SONGEA**

**(LAND DIVISION)**

**LAND CASE APPEAL NO. 26115 OF 2023**

*(Originating from the Judgment of the District Land and Housing Tribunal for Mbinga  
at Mbinga in Land Application No. 32 of 2023)*

**IMAKULATA SANGANA ..... APPELLANT**

**VERSUS**

**UPENDO NYIRENDA ..... RESPONDENT**

**JUDGMENT**

Date of Last Order: 22/02/2024

Date of Judgment: 29/02/2024

**U. E. Madeha, J.**

Before the District Land and Housing Tribunal for Mbinga (the trial Tribunal), the Appellant filed Land Application No. 32 of 2023 claiming to be declared the lawful owner of two acres of land located at Songambebe Village, Kihagara Ward within Nyasa District. The Appellant also claimed for the Respondent to be declared a trespasser on the disputed land.

The testimony given by the Appellant before the trial Tribunal shows that, she left her land and went to live at Songea for a long time and when she returned back, she found the Respondent has trespassed

on it by using for farming activities. As a matter of fact, the Appellant told the trial Tribunal that the disputed land was owned by her father.

On the other hand, the Respondent in her testimony told the trial Tribunal that she bought the disputed land from Chihuru family in 15<sup>th</sup> August, 2016 and she was surprised to find the Appellant claiming to be the owner of the disputed land. Her testimony was collaborated by the testimonies given by DW2 (Elizabeth Thomas Chihuru) who told the trial Tribunal that the Respondent bought the disputed land from her family and the land was the property of their late father. DW2 told the trial Tribunal that she was present when the Respondent bought the land and she witnessed the sale processes.

DW3 who was the hamlet Chairman and he told the trial Tribunal that he knows the disputed land for more than fifteen years and on 15<sup>th</sup> August, 2016, DW2 sold that land to the Respondent for the price of two hundred and fifty thousand (TZS. 250,000.00). The trial Tribunal found the Appellant to failed to prove her claims and declared the Respondent to be the lawful owner of the disputed land and he was ordered to pay costs. Dissatisfied with that decision she preferred this appeal which comprised five grounds of appeal, which are reproduced hereunder:

- i. *That's, the trial Tribunal erred in law and fact in determining the case in favour of the Respondent without properly evaluating the evidence adduced in the tribunal by the Appellant and her witness.*
- ii. *That, the trial Tribunal erred in law and fact to decide in favour of the Respondent, relying on minor and immaterial discrepancies found in the Appellant's case.*
- iii. *That, the trial Tribunal erred in law and fact in deciding in favour of the Respondent by relaying on the ground that the Respondent has stayed on the disputed land for eight (08) years, which entitles the Respondent to be declared the lawful owner of the disputed land.*
- iv. *That, the trial Tribunal erred in law and fact by disregarding the Appellant's evidence, since she proved her case to the required standard specifically on when and how she acquired the disputed land, judgement entered in favour of the Respondent.*
- v. *That, the Trial tribunal erred in law and, in fact, in determining the matter in favour of the Respondent, contrary to the law.*

At the hearing of this appeal, both parties were unrepresented. Submitting in support of her appeal, the Appellant told this Court that the Respondent trespassed on her father's land. She added that on the disputed land there are trees, banana trees in the area and two houses which were built on her father's compound. The Appellant contended that the trial tribunal erred in law by deciding in favour of the Respondent while knowing that it is her land. Finally, prayed for this

appeal to be allowed and this Court declare her to be the lawful owner of the disputed land.

On the contrary, the Respondent contended that, it is true that the Appellant owns the mentioned houses but they are not in the disputed land. She added that, the banana trees are not in the Appellant's land. In her rejoinder submission, the Appellant stated that the Respondent didn't buy the land with banana trees on it.

As far as I am concerned, going through all grounds of appeal raised, I find there is only one issue, which is whether the case was proved to the required standard of proving on the balance of probabilities. On my perusal on the original records from the trial Tribunal, I find the evidence given before the trial Tribunal was not sufficient.

In her evidence the Appellant told the trial Court that she travelled to Songea for a long time. Surprisingly, when she returned, she found that the Respondent had invaded on the land which was the property of her father. The evidence given by the Respondent is to the effect that, the land was sold to the Respondent by DW3 (Elizabeth Thomas Chihuru) who told the trial Tribunal that the Respondent bought the

disputed land from her family and the land was the property of their late father.

From the evidence given by both parties in this case, I find no one between the parties proved to have a good title over the disputed land. While the Appellant told the trial Tribunal that the land was the property of her father, the evidence given by the Respondent and her witnesses shows that the land was bought from the family of DW3 and it was the property of their late father. Even the sale agreement which was admitted during trial also shows that the land was sold by DW3 as the family property being the property of their late father. In such circumstances DW3 was required to show whether she was the administrator of the estate of her late father. On party of the Appellant, the evidence is silent as to whether her father is alive or not.

Digesting as a whole the evidence given by the parties at the trial Tribunal, it is not certain on balance of probabilities as to who exactly owns the disputed land. The findings of the trial Tribunal that the Respondent is the lawful owner of the disputed land is not supported by good and cogent evidence. The Appellant's evidence is that she acquired the disputed land through purchase from DW3. In fact I am aware that, in Tanzania there are several ways in which a person can acquire land including through purchase. But the purchase must be from a person

with good title over it. It is my view that, the trial Tribunal erred both in law and facts by ordering the Respondent to be the lawful owner of the disputed land since there was no evidence to prove that the ownership was derived from the lawful owner since DW3 told the trial Tribunal that the land was the property of her late father and she has no letters of administratrix to prove that he has capacity to sale the disputed land. In the circumstances, I have warned myself on what will be the effect of decreeing either of the parties herein as a lawful owner of the suit land of which I find the available evidence is not sufficient to prove ownership of the land by either of the parties.

In the final event, I partly allow this appeal by quashing the proceedings and setting aside the decision and orders of the trial Tribunal on the ground that there was no one among the parties who proved to be the lawful owner of the disputed land. The interested party is at liberty to take any legal steps to prove her ownership. Each party to bear its own costs. It is so ordered.

DATE and DELIVERED at **SONGEA** this 29<sup>th</sup> day of February, 2024.



  
**U. E. MADEHA**

**JUDGE**

**29/02/2024**

**COURT:** Judgment is delivered in the presence of the Appellant and the Respondent. Right of appeal is explained.



A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

**U. E. MADEHA**

**JUDGE**

**29/02/2024**