

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

LAND APPEAL NO. 43 OF 2023

*(Arising from the judgment and orders of the District land and housing
Tribunal of Kahama at Kahama in Land Application
No 95 of 2022)*

RASIMU LEOPARD..... APPELLANT

VERSUS

**1. MASHAKA MISANA }
2. PATRICIA CHEYO }..... RESPONDENTS**

JUDGMENT

7th December 2023 & 1st March, 2024.

MASSAM, J.:

In this appeal, the appellant before the District Land and Housing Tribunal of Kahama at Kahama in Land Application No, 95 of 2022, sued the respondents, claiming to be declared as the owner of a suit property, 25 x 31 feet with a building located at Mhongolo–Kahama after he had bought it from the 1st Respondent in the year 2019 for a tune of Tsh. 400,000/=, and also the trial tribunal to declare that the respondents are the trespasser of that disputed property.

The trial tribunal heard the matter against the 1st respondent and held in favour of the 2nd respondent, by declaring that, she is the real

owner of the disputed land property and the respondents are strictly prohibited from distressing the 2nd respondent.

Being aggrieved by the decision and orders of the trial tribunal, the appellant appealed to this court based on six grounds of appeal as advanced in the petition of appeal to the effect that, the matter before the trial tribunal was not proved to the required standard.

When the matter was called for hearing, it was argued orally and both parties appeared in person unrepresented.

Submitting in support of his grounds of appeal, the appellant claimed that, he was not satisfied with the decision of the trial tribunal since the evidence tendered on his side including the exhibits were enough to prove his case against the respondents. He added that, even the accessors gave their opinions that, the disputed land belongs to him but the Chairman disregarded their opinions despite having the sale agreement and bringing witnesses who supported his testimony.

On his side, the 1st respondent admitted that, way back in the year 2018, he sold the disputed land to the appellant for a tune of Tsh 400,000/= before the leaders of Muongolo Street where they also wrote a sale agreement and witnessed by both parties, until 2022 when this dispute arose. He added that, before selling the land, it belonged to his father one Ngodole and when he passed away, they distributed it among

the family members in the year 2016, later he decided to sell his parcel to the appellant and at that time there was no any dispute.

The 2nd respondent submitted that, she is the rightfully owner of the disputed land as his brother one Edwin Clement gave it to her after he bought it from Misana Ngodole in the year 1999 and on the same year he offered it to her. In 2017 the land was surveyed and she decided to hand over to one Mzee Seba who is now a deceased for the purposes of taking care of it.

Later one she was informed that, there are some people who want to sell that property but they were chased away for the reasons that, it has been sold by Mzee Misana who is the father of the 1st respondent.

They decided to go to the street office for conciliation and the 1st respondent admitted to sell the disputed land unlawfully to the appellant, and both the appellant and the 1st respondent agreed to compensate her with two pieces of land but unsuccessfully. The appellant decided to go to the Ward Tribunal for settlement where by the 1st respondent and the appellant were again ordered to compensate her but instead the appellant appealed to the DLHT of Kahama and the matter was held on her favour, that she is the owner of that property,

the appellant was then dissatisfied as he is insisting that to be the owner of that property.

On his rejoinder submissions, the appellant insisted to have lawfully bought the disputed land from the 1st respondent and the said Misana did not sell it to the brother of the 2nd respondent as alleged. Yet again, the 1st respondent was forced by the leaders of the ward street to confess, thus he prayed to this court to declare him as the legal owner of the disputed land.

After going through the arguments from both sides, the records and the law, and now the issue for determination is **"whether the 2nd respondent adduced sufficient evidence to warrant the tribunal to held on her favour"**

In all civil matters, it is clear under the provisions of section 110 and 111 of The Evidence Act, Cap. 6 R.E 2019 that,

110.-(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exists.

(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.

On whom burden of proof lies,

111. The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side.

The above principle of law was also detailed by the legendary authors of Sarkar on Sarkar's Laws of Evidence, 18 Edn., M.C. Sarkar, S.C. Sarkar, and P.C. Sarkar, published by Lexis Nexis, posted the following comments at page 1896,

"... the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it, for negative is usually incapable of proof"

The same was emphasized in **Hemed Said v Mohamed Mbilu** [1984] TLR 113 to the effect that ***"the person whose evidence is heavier than that of the other is the one who must win.***

In this dispute, both the appellant and the 2nd respondent claimed to be rightful owner of the suit hence they invited this court to acknowledge their prayers.

To commerce with, this court will make analysis of the whole evidence tendered before the tribunal in order for this court to resolve this dispute.

From the evidence on record, it was from the appellant that, he bought the disputed property from the 1st respondent who appeared as SM4 way back in 2018, which worth Tsh. 400,000/= before the ward street and as per exhibit SMA-1, after he inherited it from his father Misana Ngodole, the evidence which was supported by SM2 and SM3.

On her side, the 2nd respondent also claimed that both the 1st respondent and the appellant are the trespasser of the disputed property as they trespassed it long time ago, but she come to realize that on 2021. She testified that, she was given that plot of land by her father through Edwin Clement Cheyo in the year 1999 and it has been surveyed.

On the other hand, SU2 testified that, way back in 1999 his father sends him money to buy that piece of land and later on he handed it to his sisters for distribution as part of inheritance and the plot was surveyed. Again, SU3 admitted to know the 2nd respondent as the owner of the disputed property.

From the above observations this court is of the view that, the evidence testified by the appellant was strong than that of the 2nd respondent, due to the fact that, he managed to testify on how he got that land by purchasing it from the 1st respondent on the year 2018 with amount of Tsh. 400,000/= and as per exhibit SMA-1, which was

witnessed. That evidence was also supported by SM2 and SM3, where by both at Pg 11 and 16 of the court proceedings testified to be witnesses during the conclusion of exhibit SMA-1.

Further to that, even when the appellant started to develop that land by building a house in the year 2019, no one claimed to be the owner of that property until 2022 when the dispute arose, and this is according to his testimony at Pg 6 of the trial court proceedings.

Likewise, even the opinion of the assessors at Pg 36 and 37 of the court proceedings reveals that, the evidence testified by the appellant was strong enough to proof that the disputed property belong to him as his testimony was heavier than that of the 2nd respondent.

In the same way, this court made analysis on the reasons by the trial Tribunal to disregard the evidence of the appellant on the issue of size of the disputed property as it was contradictory, since the evidence testified shows, the property has 25x30 feet, while on his application it has 25X31, SM2 testify to have 25X31, SM3 -31X25 and SM4 31X25, thus the evidence on the issue of size was opposing each other. This court thinks that, this was not a valid reasons to disregard it because even the 2nd respondent on her evidence regarding the size of the said plot was contradictory at Pg 24 when she testified that, it has a size of 3 acres and SU2 at Pg 28 said that the plot has 2 and 1/2 acres.

Again, on the issue of different dates from the contract, this court is of the view that, the same were cleared by SM1 at Pg 8 that, the contract was prepared on 27/12/2018 but the leaders who was required to witness it was not around thus why the same was witnessed by the ward street on 28/12/2018 and that is what is seen in that exhibit SMA-1.

Apart from observing all of the above, the 2nd respondent had nothing new to convince the trial tribunal to held on her favour, as her evidence raises a lot of doubts and even the trial tribunal when composing the judgment, did not make analysis of that evidence to show how strong it was to make him held on her favour.

Moreover, it was from the 2nd respondent's testimony that the land was surveyed, but nothing was brought to support her evidence including documentary evidence or any land officer who surveyed that land. Additionally, she claimed to be given that land in the year 1999, and she used to visit it frequently, if that was true, how could she fail to observe the trespassing done by the Appellant in the year 2019 when he started to develop it until 2021.

As well, the evidence of SU2 who claimed to buy that property on behalf of his father was weak because it was not supported by any witness including the neighbors or any documentary evidence.

From the above meticulously findings, and in applying the principles cited earlier, this court observed that, the appellant's evidence was stronger than that of the 2nd respondent, and I do not think if the tribunal was right to held that, the 2nd respondent was the real owner of the said property. I therefore hold that, the appellant's grounds of appeal are meritorious.

Consequently, this appeal is allowed, to the extent explained above, and the appellant is declared to be the legal owner of the disputed property. No orders as to costs.

It so ordered

DATED at **SHINYANGA** this 1st day of March, 2024.




R. B. Massam
JUDGE
01/03/2024