

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND APPEAL NO.283 OF 2021

*(From Land Application No. 05 of 2020, by the District Land and Housing
Tribunal for Kibaha.)*

**ASHA SHAWEJI (Administrator of the Estate of the late
SHAWEJI MOHAMED).....APPELLANT
VERSUS**

**ADAM OTHUMAN SUMINI.....1ST RESPONDENT
ALLY RASHID MBEGU.....2ND RESPONDENT
BABY OTHUMANI SUMUNI.....3RD RESPONDENT
MARIAM SHAWEJI.....4TH RESPONDENT
BEATRICE ELINEEMA NYANGE.....5TH RESPONDENT
ARNOLD REMMY.....6TH RESPONDENT
HEMED SENKONDO.....7TH RESPONDENT
CLEMENCE MBARUKU.....8TH RESPONDENT
AMONI A. MCHOMVU.....9TH RESPONDENT
ERNEUS PASCHAL MCHOMVU.....10TH RESPONDENT**

J U D G M E N T

Date of Last Order: 20.09.2022

Date of Judgment: 27. 09.2022

T. N. MWENEGOHA, J.

The appeal arose from the decision of the District Land and Housing Tribunal of Kibaha District, herein the trial Tribunal. The dispute is over a land, measuring 3.5 acres, located at Kibaha Area, within the Coast region. The said land has been trespassed upon by the respondents. The trial tribunal dismissed the case in favour of the respondents; hence this appeal was filed by the appellant, based on the following grounds; -

- 1. That, the trial tribunal erred in law and fact by holding that the appellant did not adduce enough evidence to prove that the disputed land belongs to the late Shaweji Mohamed.**
- 2. That, the trial tribunal erred in law and fact in holding failure by the appellant to summon the local leadership and other witness.**
- 3. That, the trial tribunal erred in law and in fact by failing to make findings that the evidence of PW2 was credible and therefore admissible.**
- 4. That, the trial tribunal erred in both law and fact by holding that the appellant didn't not prove her case to the balance of probabilities.**
- 5. That, the trial tribunal erred in both law and fact by failing to consider and analyse well the evidence adduced during trial.**

The appeal was heard by written submissions and exparte against the 1st, 2nd, 3rd, 5th, 6th and 9th respondents. The appellant was represented by advocate Nehemia Godfrey. The 4th, 7th 8th and 10th respondents appeared in person.

In my judgment, I will consolidate all five grounds of appeal and discuss them together. I do so in consideration of the fact that, all of them are based on evaluation and analysis of evidence. Generally, the appellant has faulted the trial tribunal for its failure to make a proper analysis and evaluation of the evidence before it hence wrongly decided the matter against her.

In her written submissions as presented by Advocate Nehemia, the appellant maintained that, the evidence of PW1 and PW2 was ignored by the trial tribunal. The said testimony proves that the suit land forms part of the estate of the late Shaweji Mohamed. Further, it was argued that, the local leaders were supposed to be called by the trial tribunal to testify before it as they are fully aware of the fact that, the suit land is the property of the late Shaweji Mohamed.

The 4th, 7th, 8th and 10th Respondents filed their submission however, the same will not be considered as per explanations below

Having gone through the submissions of parties as shown herein above, the question for determination is whether the appeal has merits or not. I have noted from the records at hand that, the case at the trial tribunal was heard *ex parte* against all of the above listed respondents. Hence, they do not have audience in this Court.

The appellant who was the claimant at the said tribunal, produced two witnesses. PW1, the appellant herself and one Haji Ahmad Omary as PW2.

At page 11 of the typed proceedings, the appellant who testified as PW1 was recorded stating the following facts; -

"Ninachojua, baba yangu alinunua eneo hilo miaka mingi kweli, mimi nikiwa bado mdogo sana."

This statement was an answer to "Mzee Ubwa", one of the trial tribunal's assessors. However, the appellant did not produce any document to back up her statement, considering the circumstances that, she did not witness the sale of the said land to his late father at that material time. She was very young as she said in her testimony.

Apart from PW1's testimony, also there is a testimony of PW2. The same did not corroborate well the testimony of PW1. In his testimony, PW2 claimed to know the suit land as the same belonged to his late father, the late Shaweji Mohamed. At the same time, he stated that, PW1 is her mother. But the same PW1 is the daughter of the late Shaweji Mohamed. In other words, the testimony of PW2 was unconvincing. It raised questions rather than proving the case of the appellant before the tribunal.

It is provided under Sections 101, 102 and 103 of the Evidence Act, Cap 6 R. E. 2019, that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. Moreover, in civil cases, the standard of proof is on balance of probabilities.

In the case at hand, the burden of proof was on the appellant. She is the one who instituted the claim against the respondents at the trial tribunal. She was supposed to prove that, on balance of probabilities her claims are true, that the respondents are trespassers to the suit land as the same belongs to the estate of their late father, Shaweji Mohamed. This means that, her evidence was to be good enough to satisfy the trial tribunal that, there is a likelihood that, the late Mohamed Shaweji bought the land from *"an identified person"*.

In absence of showing such likelihood, her case cannot succeed and the respondents will take it all as winners. It is because on balance of probabilities, there is a very minor difference between succeeding and failing. This is what was happened at the trial tribunal. It is a trite law in balance of probabilities rule that, if the evidence is such that the court or

tribunal can say "we think it is more probable than not" the case succeeds, but if it is otherwise then the case fails.

For clarity on how the rule of balance of probabilities in civil cases works, I will dwell on the explanations given in **H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563, 586D-H**, where Lord Nicholls of Birkenhead stated:

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."

Moreover, in **B v Chief Constable of Avon and Somerset Constabulary [2001] 1 WLR 340**, Lord Bingham CJ said:-

"...the civil standard of proof does not invariably mean a bare balance of probability. ...The civil standard is a flexible standard to be applied with greater or lesser strictness according to the seriousness of what has to be proved and the implications of proving those matters"

Applying these principles to the records of the case at hand, I am highly convinced that the evidence given by the appellant had failed to prove in the balance of probabilities that the disputed land belonged to her father.

Hence the tribunal arrived to the conclusion that the claims by the appellant over the suit land are baseless. After examining the records and in consideration of the submissions of the parties I find no reason to error the tribunal's findings. Therefore, I find that the findings, decision and orders of the trial tribunal were correct. The same are hereby upheld.

Having so said, I find all the five grounds of this appeal to be lacking merits and proceed to reject them accordingly. Consequently, the entire appeal is dismissed

No order as to costs.




T. N. MWENEGOHA

JUDGE

20/09/2022