

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

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL CASE NO. 310 OF 2023**

*(Originating from District Land and Housing Tribunal of Temeke, Land  
Application No.121 of 2021, dated 08-06-2023)*

**ASIA SHABANI SALEHE.....APPELLANT**

**VERSUS**

**MAULID ABDALLAH PAUL.....1<sup>ST</sup> RESPONDENT**

**MBARAK AYUBU MZINGA.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*30<sup>th</sup> October, 2023 & 22<sup>nd</sup> November, 2023*

**L. HEMED, J.**

The disputed landed property is a house situated at Vijibweni area, Kigamboni District, in Dar es Salaam. The Appellant, **ASIA SHABAN SALEHE** and the 1<sup>st</sup> Respondent **MAULID ABDALLAH PAUL** were formerly wife and husband. They are now divorcees *vide* Kigamboni Primary Court Cause No. 13 of 2018, Civil Appeal No. 07/2018 – Kigamboni District Court and PC Civil Appeal No. 87 of 2018, High Court of the United Republic of Tanzania. The 2<sup>nd</sup> Respondent, **MBARAKA AYUBU MZINGA** is the

purchaser of the suit property, alleged to have been sold to him by the 1<sup>st</sup> Respondent. It should be noted that, the matter was instituted at the District Land and Housing Tribunal for Temeke and later on, after the establishment of the District Land and Housing Tribunal of Kigamboni, the matter was transferred there to where it was determined to its finality.

At the District Land and Housing Tribunal, the Appellant herein, instituted a suit against the respondents claiming that the suit land is a matrimonial property, acquired jointly by the Appellant and the 1<sup>st</sup> Respondent during subsistence of their marriage. Before the trial Tribunal she sought for the following reliefs: -

- (i) For declaration that the House situated at Vijibweni area, Kigamboni District, in Dar es Salaam is a matrimonial property jointly acquired by the Appellant and the 1<sup>st</sup> Respondent.*
- (ii) The 2<sup>nd</sup> Respondent be declared trespasser to the suit property.*
- (iii) For declaration that the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> Respondent is null and void for lack of the Appellant's consent.*

- (iv) For an order that the 2<sup>nd</sup> Respondent to hand over the disputed house to the Applicant and the 1<sup>st</sup> Respondent.*
- (v) For payment of general damages amounting to five million Tanzanian shillings.*

Having deliberated on the matter, the trial Tribunal found in favour of the 2<sup>nd</sup> Respondent who was declared the lawful owner of the disputed land by purchasing it from the 1<sup>st</sup> Respondent. The Tribunal dismissed the appellants claims. The appellant was aggrieved by the said decision hence the instantaneous appeal on the following grounds which were presented in Swahili language: -

*“1. Kwamba, Baraza la Ardhi na Nyumba la Wilaya ya Kigamboni, linaloketi Kigamboni, limekosea Kisheria na Kimantiki kwa kutamka ya kwamba Mjibu rufaa Na. 2 ni mmiliki halali wa Eneo lenye mgogoro lililopo vijibweni wilaya ya Kigamboni, Mkoa wa Dar es Salaam.*

*2. Kwamba, Baraza la Ardhi Na Nyumba la wilaya ya Kigamboni, linaloketi Kigamboni limekosea kisheria na kimantiki kwa kuzingatia kwamba nyumba hiyo ya Kigamboni ni mali kati ya mleta rufaa Na. 1.”*

The appeal was argued by way of written submissions. The parties who were appearing in person promptly filed their submissions as per the schedule directed by the Court.

In her submissions in chief, the appellant could not argue the grounds of appeal separately. She submitted that at the trial Tribunal she had adduced that the respondent had stolen all documents concerning the suit piece of land. She insisted that the respondents had conspired to deprive the appellant her right over the suit landed property.

It was also asserted by the Appellant that, before the trial Tribunal she had given evidence on how the suit land was acquired and the extent of her contribution towards the acquisition of the suit property.

In their joint written submission in reply thereof, the respondents contended that the appellant did not prove her claims over the suit landed property. With regard to the allegation that the respondent had stolen the document concerning the acquisition of the suit landed property, they stated that it was an after thought as there was no proof. To bolster their arguments, they referred to section 110 and 111 of the Evidence Act, [Cap 6 RE 2019] and the decision in the case of **East African Road – services**

**Ltd vs J.S. Davis & Co. Ltd** (1965) EA 676 at page 677 on the duty of the person who alleges to prove.

Having gone through the submissions made by both parties it is now apt to make an analysis as to whether the appeal is meritorious. In her appeal, the Appellant is challenging the decision of the trial Tribunal to declare the 2<sup>nd</sup> Respondent owner of the disputed land and for failure to find that the suit landed property is a property of the Appellant and the 1<sup>st</sup> Respondent.

I took time to peruse the records of the trial Tribunal to find out if at all the appellant managed to prove her interests over the suit landed property. Evidence on records shows that the suit landed property was acquired solely by the 1<sup>st</sup> Respondent and was in his name prior to disposing it by sale to the 2<sup>nd</sup> respondent.

As aforesaid, before the trial Tribunal, the appellant was claiming interests over the suit property. According to section 110(1) of the Evidence Act, [Cap 6 RE 2019] the person who alleges is duty bound to prove. It provides thus: -

*"whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

In the instant case, the appellant never adduced on how she participated in the acquisition of the suit property. There is also no evidence on record on how she developed her interests over the property. She never called witnesses who could testify on how she acquired interests over the suit landed property. I must cement right at the out set that the duty of the appellant to prove her claims of interests over the suit land was on her shoulders and could never be shifted as it was held in **The Registered Trustees of Joy in the Harvest vs Hamza K. Sungwa**, Civil Appeal No. 149/2017, that: -

*"It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his, and that the burden of proof is not diluted on account of the weakness of the opposite party's case."*

In the instant matter, the appellant did not discharge her duty of proving her case. Before this court, the appellant tried to assert that when the matter was at the trial Tribunal, she gave evidence that the respondents had stolen the documents concerning the suit property. However, this

assertion could not be substantiated by evidence that she reported the alleged incidence to the police. I have ventured all over her evidence, I could not see anywhere having told the trial Tribunal that she reported the matter to Police. In the case like the one at hand, the Appellant was expected to tender RB to signify that she reported the alleged incidence of stealing documents concerning the suit property. Having failed to prove on how she acquired and the extent of her interest over the suit land, I am firm to find that the trial Chairman was justified to dismiss the appellant's claims.

In the 2<sup>nd</sup> ground of appeal, the appellant is blaming the trial Tribunal to declare the 2<sup>nd</sup> Respondent owner of the disputed property. Evidence adduced by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents was to the effect that the property which was formerly owned by the 1<sup>st</sup> Respondent was sold to the 2<sup>nd</sup> Respondent in 2005, prior to the appellant marrying the 1<sup>st</sup> respondent. In **Hemed Said vs Mohamed Mbilu** (1984) TLR 113, it was held that the party whose evidence is heavier than the other is the one who must win. In the instant case, evidence on record heavily shows that the suit property is currently owned by the 2<sup>nd</sup> respondent. It was thus proper for the trial Tribunal to declare him owner of the suit landed property.

In the final analysis, I find all the grounds of appeal to have no merits. I thus proceed to dismiss the entire appeal. The fact that the appellant was under legal aid, each party to bear its own costs. Order accordingly.

**DATED** at **DAR ES SALAAM** this 22<sup>nd</sup> November, 2023.



  
L. HEMED

**JUDGE**