

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA**

AT SHINYANGA

MISC. LAND APPEAL NO. 97 OF 2021

(Arising from Land Application No. 45 of 2020 of the Shinyanga District Land & Housing Tribunal)

MASWA SHIJA LUGENDOAPPELLANT

VERSUS

TABU SHIJA LUGENDO..... RESPONDENT

JUDGMENT

2nd June & 15th July 2022

MKWIZU, J:

This appeal traces its origin from the Land Application No.45 of 2020 before Shinyanga District Land and Housing Tribunal, filed by Appellant Maswa Shija Lugendo against his sister Tabu Shija Lugendo, sharing a father. Parties and their witnesses were heard, and the tribunal decision was in favour of the respondent. Dissatisfied, Appellant Maswa Shija Lugendo has appealed to this court on three grounds of an appeal raising one complaint based on the failure of the trial tribunal to analyse evidence on the records.

Both parties were in person at the hearing of the appeal without legal representation. Arguing in support of the appeal appellant said the respondent had at the trial tribunal admitted that the land is owned by One Pendo Ngasa and therefore she ought to have given an account of how she acquired the same.

On his party, the respondent supported the trial tribunal's decision. He prayed for its confirmation without more.

I have given the matter thorough scrutiny. The issue is on the ownership of the suit land. Parties are of different positions. According to the appellant, the land belongs to his mother's (Pendo Ngasa) estate, and the respondent was only given the land for temporary use while the Respondent claimed ownership after she was allocated the same by her father (Pendo Ngasa's husband).

This is a civil matter where the duty to prove the claim is on the person who alleges. This is reflected under sections 110 (1) and (2) of the Evidence Act (Cap 6 R.E 2019) : -

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 exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof ties on that person".

And the standard of proof is on the balance of probability. See, section 3(2)(b) of the Evidence Act, Cap. 6 RE 2019. This standard of proof is always measured according to the strength of the parties' evidence and not otherwise. Thus, a party with heavier evidence wins the case. See, for instance, in the case of **Hemedi Saidi v. Mohamedi Mbilu** [1984] TLR 113, the Court stated that:

"According to the law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win."

The establishment of the appellant's claim was only subject to cogent evidence on how the respondent and /or her husband were given the land to live on. In this case, the appellant claims that the land belongs to his late mother Pendo Ngasa who invited the respondent and her husband for a temporary stay. Eight witnesses testified for the appellant, the original complainant. They all supported the appellant's claim. Their evidence could not, however, come clear on the ownership of the land by Pendo Ngasa and the alleged respondent's invitation for temporary use. During cross-examination, the appellant admitted that the respondent's husband, Mchoma Mbulu was invited to the suit land by **Mzee Shija**. His evidence was recorded thus:

"Mchoma Mbulu ndio aliomba kukaa kwa muda; aliyempa eneo hilo ni Mzee Shija lakini siwezi kujelewa kwa nini alikupa ila mumeo alipewa aishi kwa muda...Alipewa kusihia eneo hilo miaka ya 1990's lakini alimaliza kujenga 1992..."

His evidence is also silence on the acquisition of the suit land by his late mother, Pendo Ngasa .SU2 was also unaware of how Pendo Ngasa owned the suit land. When answering questions by assessors, SU2 said

"mimi ni mtoto wa 2 kuzaliwa katika uzao wa pendo. Tulikaa kikao na kuona kuwa mzaliwa wa nyumba ndogo hana haki ya kurithi mali za wazazi wake"

His evidence was in support of the appellant's evidence who disclosed during questions by assessors on page 15 of the records that he was

directed by the family members to claim the suit land. His evidence is worded thus:

"Kipindi cha arobaini ya marehemu Pendo Ngasa ndio nilielekezwa na wanafamilia ni dai"

None of the appellant's witnesses witnessed the named Pendo Ngasa handing over the Suitland to the respondent. They all gave hearsay evidence on this point.

On her part, the respondent alleged that she was allocated land by her father Shija Lugendo in 1989 and that she has been in a peaceful occupation since then. She, in elaboration, explained that Pendo Ngasa and Shija Lugendo were husband and wife, and that Pendo Ngasa (her stepmother) has never owned land. SR2, SR3, and SR4 testimonies established their presence when the respondent was allocated the said land by his father Shija Lugendo.

My observation in this appeal is, that the appellant's claim was based on a mere myth that the senior wife's family members are entitled to the family properties more than the other as expressly indicated in their evidence. The rest of the appellant's evidence is hearsay which is not in law capable of supporting any claim.

And as rightly observed by the trial tribunal, the respondent had remained in use of the suit land from 1990 uninterrupted until the death of the alleged Pendo Ngasa in 2020. To say the least, the evidence presented supports the respondent's position clearer than that of the appellant.

In view of the above, the appellants' appeal is without merit. This court has no basis for faulting the judgment and decree of the trial Tribunal. The appeal is accordingly dismissed with costs. It is ordered.

DATED at **Shinyanga** this **15th** day of **July** 2022.



E.Y. Mkwizu
E.Y. MKWIZU

JUDGE

15/07/2022

COURT: Right of appeal explained

E.Y. Mkwizu
E.Y. MKWIZU

JUDGE

15/07/2022