

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 415 OF 2023**

*(Originating from Land Application No. 08 Of 2023 that was before Hon.  
N.M.Ntumengwa, Chairman in the District Land and Housing Tribunal for Bagamoyo  
District at Bagamoyo)*

**DEVORTA KHALID KITALIMA (the Administratrix  
of the late SIBILINA STANSLAUS KAPTEN) .....APPELANT**

**VERSUS**

**MARY MGONJA .....RESPONDENT**

*Date of Last order: 12/02/2024*

*Date of the Ruling: 21/02/2024*

**JUDGMENT**

**A. MSAFIRI, J.**

This is an appeal against the decision of the District Land and Housing Tribunal for Bagamoyo at Bagamoyo (herein as the trial Tribunal), in Land Application No. 08 of 2023 delivered on 19/9/2023 by Hon. N. M. Ntumengwa Chairperson. The decision was in favour of the respondent.

The brief history of the dispute is that, the appellant had instituted a suit in Land Application No. 08 of 2023 claiming to be the lawful owner of the unsurveyed piece of land measuring six (6) acres situated at Kerege, Kilemela within Bagamoyo District. The appellant claimed

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ownership of the disputed land vide her appointment as administratrix of the estate of the late Sibilina Stanslaus Kapten who was the legal owner of the disputed land. The appellant claimed to be the daughter of the late Sibilina and stated that the late Sibilina purchased the disputed land on 25/6/2004 from one Juma Abdalamani, Kondo Saidi and Juma Daudi Komba who were the previous owners of the disputed land.

The appellant claimed that in 2014, the respondent without any colour of right, invaded the appellant's land claiming to be hers. At the trial Tribunal, among other things, the appellant prayed for a declaratory order that she, as the administratrix of the estate of the late Sibilina Stanslaus Kapten, was the rightful owner of the suit land and the respondent was a mere trespasser.

After hearing, the appellant lost the case on the ground that she failed to prove her ownership on the required standards in civil suits. Aggrieved with such decision of the trial Tribunal, the appellant knocked the doors of this Court seeking for her ownership right over the suit property against the respondent on the following grounds of appeal;-

- 1. That the learned Trial Chairman erred in law and fact for failure to make proper analysis of both documentary and oral evidence given in the tribunal, leading to injustice on part of the Appellant.*



- 2. That the learned Trial Chairman erred in law and fact for failure to take note that under the principle of adverse possession, the disputed land belongs to the Appellant.*
- 3. That the learned Trial Chairman erred in law and fact for assuming that the respondent was excluded from proving how she got ownership of the disputed land before the same land is awarded to the respondent.*

The appellant prayed for the appeal to be allowed with costs and the decision of the trial Tribunal to be quashed and set aside.

The hearing of the appeal was by way of written submissions and both parties complied with the schedule order of the court. Both parties were legally represented whereas, the appellant was legally represented by Mr. Nickson Ludovick, learned counsel, while the respondent enjoyed the legal services of Mr. Eliya Ahsante Mwingira, learned counsel.

On his submission on the first ground, Mr. Ludovick stated that the evidence in the trial Tribunal was not properly evaluated by the trial Chairperson in determining Land Application No. 08 of 2023 on the ground that the appellant had proved on how the suit land of six acres had been obtained by her late mother in 2004 as per Exhibit M3 dated 25/6/2004.

He further stated that the suit property was given to the respondent without any proof contrary to the principles of proof of ownership

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discussed in the case of **National Agricultural and Food Corporation vs Mulbadaw Village Council and Others**, [1985] TLR 88 (CA).

On the second ground Mr. Ludovick submitted that the law under Part I of item 22 of the Law of Limitation Act, Cap 89 R.E 2019 and in the case of **Emmanuel Ikoki vs Henry Bundal**, Land Appeal No. 216 of 2022 at page 5 and 7, provides that where one occupies the land for about 12 years unclaimed, that person becomes the owner of that land. He argued that, the appellant's mother occupied the suit land in 2004 and lived on the same undisturbed for 17 years, hence the trial Tribunal ought to have decided in favour of the appellant as per adverse possession principle.

On the 3<sup>rd</sup> ground, Mr Ludovick submitted that for one to be declared owner of the suit property, one must prove how that person obtained the suit property. And that the issue framed in the trial Tribunal was; *who is the lawful owner of the disputed land?*

Mr. Ludovick stated that from the above framed issue, the trial Chairperson excluded the respondent from proving on how she acquired the suit property as per the trial Tribunal judgment at page 10 and 11. That this was contrary to the principles of proof of ownership discussed

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in the case of **Metthuselah Paul Nyagwaswa vs Christopher Mbote Nyirabu** (1985) TLR 103.

Mr Ludovick submitted further that if the appellant had failed to prove the case, the remedy was to dismiss the case and not awarding the suit land to the respondent as there was no counter claim. He prayed for the appeal to be allowed with costs.

In reply, Mr. Mwingira learned counsel for the respondent submitted that the trial Chairperson was right in determining the Land Application No. 08 of 2023 and that the evidence on both sides were correctly evaluated, he added that the appellant's evidence was contradictory between the witnesses SM1 and SM2.


He said that the proceedings and judgment of the trial Tribunal are very clear on how the respondent became the owner of the suit property. That that the burden of proof lied to the appellant as per the case of **Antony M Masanga vs Penina (Mama Mgesi)** Civil Appeal No. 118 of 2014 and Section 110 and 111 of the Evidence Act Cap 6 R.E. 2022. He further stated that the appellant failed to prove her case before the trial Tribunal, hence she cannot benefit from something she did not own. *Alls.*



On the second ground, Mr. Mwingira contended that the appellant had never stayed in the suit property even once, instead that the respondent has been legally occupying the suit property from 2014.

On the third ground, Mr. Mwingira stated that, the respondent managed to prove her ownership of the suit property after proving the proper chain on how she became owner of the suit property that is from the serikali ya Kijiji to Balali from Balali to Yusuf Matimbwa who sold it to the respondent as per Exhibits U1, U2 and U3.

He urged this Court to re visit the trial Tribunal proceedings and judgment to identify the truth, and that the truth reveals that this appeal lacks merit, therefore it should be dismissed.

Having gone through the grounds of appeal and submissions of the parties, it is clear that the major issue of contention between the parties is on the failure or success of the trial Tribunal to properly analyse the evidence which was adduced before it. The appellant claiming that she successfully proved her ownership of suit property but the trial Chairperson failed to make proper analysis of the evidence, while the respondent arguing that the trial Chairperson did proper analysis of the evidence and arrived to right conclusion that the appellant failed to prove her case as the required standards of proof in civil suits. 

Being the court of first appeal, I have power to go through the evidence, make re- analysis and arrive to my own conclusion. And guided by that, I will consolidate the two grounds of appeal and determine them jointly while I will determine the third ground separately. But first, I will go through the evidence and see whether the appellant who was the applicant at the trial Tribunal managed to establish her case as per the required standard.

The required standards of proof in civil suits are set in our law under Sections 110, 111 and 112 of the Evidence Act, Cap 6 R.E. 2022 which provides; -

*1) 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 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.*

*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.*

*112. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person.*

This principle is further embedded in litany of cases both of this Court and the Court of Appeal. Among the cases is one of **Godfrey Sayi vs.**

*Alb.*

**Anna Siame as legal representative of the late of Mary Mndolwa,**  
Civil Appeal No. 114 of 2014 (unreported) where the Court of Appeal held  
that;

*"It is a principle of law that generally in civil cases, the burden of proof lies on the party who alleges anything in his favour. We are fortified in our view by the provisions of Law of Evidence which among other things states that 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. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person".*

The similar observation was made by the same Court of Appeal in the case of **Ernest Sebastian Mbele vs. Sebastian Mbele and others,** Civil Appeal No. 66 of 2019, CAT at Iringa (Unreported).

Basing on that requirement of the law, in the present case, it was the duty of the applicant (now the appellant) who had to prove her case on the balance of probability. The burden of proof was upon the appellant and not the respondent as it was well evaluated by the trial Chairperson at pages 10 and 11 of the judgment.

*ALLS.*



During the trial, the framed issues were first; who is the lawful owner of the suit land measured six (6) acres situated at Kerege, Kilemela, Bagamoyo?, the second issue was the reliefs entitled to the parties.

The now appellant testified as SM1 that she is the administratrix of the late Sibilina Stanslaus and that the respondent has trespassed into the suit land claiming to be hers. She said that the suit land belongs to the late Sibilina who is her mother who died in 2010. The appellant said that the late Sabilina purchased the suit land in 2004 from the three villagers namely Juma Liwelo Komba, Mzee Bwege, and Juma Daudi for consideration of TZS 720,000/=. She produces a sale agreement which was admitted as exhibit M3. That her late mother Sibilina showed her the suit land in March 2007. And the appellant travelled on official duty in 2019 and when she asked one Richard Shiyumbi who was a care taker of the area, she was told that the area has been purchased by someone else. That she unsuccessfully complained to the Hamlet Office and she did not get any help hence she filed complaint at the Ward Tribunal. And the Ward Tribunal issued a temporary injunction on the suit land.

In cross examination, she said that when her late mother was purchasing the suit land she was not present, she did not witness the

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transaction. That she saw the suit land for the first time in 2007 while her mother purchased it in 2004.

SM2 was one Richard James Shiyumbi. He said that he knows the appellant since 2019 through the mutual neighbour and he was told that the appellant has another area which is in dispute and that the area was being taken care by one Miraji. During cross examination, SM2 said that he know the land in dispute since 2012 and 2013 but he didn't know the owner of the said land. He repeated that he has known the appellant when he saw her in 2019. He said that he did not know the appellant or appellant's mother prior the dispute and that he had never seen the appellant and her mother on the land in dispute.

SM3 was Juma Daudi who testified that he with Juma Abdallah Amani and Kondo Said (Bwege) sold the area in dispute to Mama Sibilina Stanslaus in 2004. That he heard that Abdallah Amani is now deceased and Kondo-Said is very old. He said that they got the area in dispute from the Village Government in 2000 by a letter. He produced a letter from Village Government which was admitted as exhibit M6. In cross examination, the witness SM3 said that they were granted eight (8) acres piece of land from the Village Government but they sold only six (6) acres

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to the appellant's mother. That the document was signed by two people among them is Juma Daudi.

I have read exhibits M3 and M6. Exhibit M3 is the sale agreement which shows that Juma Abdalamani, Kondo Saidi and Juma Daudi as vendors, sold a piece of land to one Sibilinah Stanslaus Kapten. The land measured six acres. The location of the land is not specified/named but it shows that the land neighbours on north side with Bawe la Kijiji, on the south it neighbours with Samend Manyori, on the east it neighbours with Bawe la Kijiji and on the west it borders with Nachingwea Road. The agreement was witnessed by the Village Council of Matumbi, Bagamoyo. It was stamped by the official stamp of Village Executive Officer (VEO) of Matumbi Village, Bagamoyo. It shows that the sale agreement was entered in 25/6/2004.


SM3 Juma Abdalla testified that he and other two people were the one who sold the disputed land to Sibilina, the mother of the appellant. That they were granted that land by the Village Government in 2000. Throughout his examination in chief, the witness did not name the Village which granted them the disputed land. Later in cross examination, he named one Abas Chamwamba as the Chairman of Ikelege Village who signed the village minutes of the meeting which allocated them the

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disputed land. He tendered exhibit M6 as the letter which granted them the disputed land.

I have also read exhibit M6. It shows that on 20/12/2000, the Village Council of Kerege, Bagamoyo, granted/ allocated a piece of land measured eight acres (8) to Juma Abdallamani, Kondo Said (bwege) and Juma Daudi Komba, the land was given for agriculture purposes. The location of the land is not specifically named. It was signed and stamped with the official rubber stamp of Village Chairman of Kerege Village. In her application, the appellant (then applicant) claimed to be the legal owner of a piece of unsurveyed piece of land measured six acres, situated at Kerege, Kilemela, within Bagamoyo District.

Meanwhile, it is the evidence of the respondent who testified as SU2 that she bought a total of 19 acres of land which includes the land in dispute, in 2014 from one Yusuph Shabani Matimbwa. The land is located in Nyakahamba Hamlet. She tendered a sale agreement as exhibit U3.

The respondent's evidence was supported by SU1 Yusuph Shabani Matimbwa who confirmed that he sold the land in dispute to the respondent who also bought the said land from one Natalie Balali in 2011. He produced the sale agreement which was admitted as exhibit U1. 

Again, I read exhibit U1, the first sale agreement between Elizabeth Balali and Yusuph Shabani Matimbwa, it shows that Elizabeth is selling a piece of land to Yusuph Matimbwa. The land is located at Nyakahamba, Kerege, Bagamoyo.

Exhibit U3 is the second sale agreement between Yusuph Shabani Matimbwa and Dr. Mary Mgonja. It shows that Yusuph Shabani Matimbwa is selling a piece of land to Mary Mgonja, the land which is located at Nyakahamba, Kerege, Bagamoyo.

Having analysed the evidence both oral and documentary which was given by the parties to the dispute during the trial, I find myself agreeing with the evidence adduced by SU4 Pazi Kitwana Udugu, the Chairman of Kimele Hamlet and SU5 Mikidadi Ali Swalehe who said that the area claimed by the appellant is different from the area which belongs to the respondent. From the evidence, I have seen that the area which SM3 Juma Abdalla and other two people sold to the appellant's mother seems to be located in Matumbi/ Kwa Matumbi Village, Bagamoyo. The records does not show whether this Matumbi Village is the same village which is known as Kerege Village which Juma Abdalla and his fellows claimed to have been allocated land by the Village Government.

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To sum up, according to the evidence of the appellant, she claimed that her mother the late Sibilina is the lawful owner of a piece of land situated at Kerege, Kilemela, within Bagamoyo District. She tendered a sale agreement which shows that the late Sibilina purchased a piece of land from Juma Abdalamani and two others but the land is within Matumbi Village, Bagamoyo District. I believe that Kerege, Kilemela is different from Matumbi Village. Furthermore, Matumbi Village is different from Kerege, Nyakahamba, Bagamoyo District.

The evidence shows that the appellant's land is within Matumbi Village, Bagamoyo while the respondent's land is at Nyakahamba, Kerege, Bagamoyo. I find that these are two different places and the appellant failed to prove that she is the lawful owner of the land she claimed to own. The exhibit M3 which was relied upon by the appellant to prove the ownership of the disputed area show the different area altogether.

On the principle of adverse possession which was raised by the appellant in the second ground of appeal, I find that the appellant failed to prove that she or her late mother Sibilina have possessed the disputed land for the 12 years consecutively. This is for the reason explained above that the appellant failed in the first place to prove that the land she claimed, legally belonged to her. Furthermore, as said earlier, there was


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evidence from SM2, who said that he had never seen the appellant or her mother on the suit land. Also witnesses SM2, SU4 and SU5 stated that the land the appellant was claiming is different from the land owned by the respondent.

On the respondent's side, she managed to prove that she bought her piece of land from Yusuph Shabani Matimbwa and she produced a sale agreement exhibit U3. Also Shabani Matimbwa proved that he got a disputed area from purchasing it from the previous owners one Elizabeth Timothy Balali and Natalis Timothy Balali and produced exhibit SU1.

In that regard, the principle of adverse possession was not proved either.

Following that analysis, I join hands with the trial Chairperson that the appellant did not prove her case on the required standard in civil matters i.e. on balance of probability.

In the third ground of appeal, the counsel for the appellant submitted that the trial Chairman erred for assuming that the respondent was excluded from proving how she got the ownership of the disputed land. That, after finding that the appellant did not prove her case, then the Tribunal was supposed to dismiss the case and not to award the ownership to the respondent as she did not raise a counter claim nor did she prove her ownership. 

It is the principle of law that parties are bound by their own pleadings and I am not disputing that. However the circumstances of this matter during the trial made the trial Chairperson to arrive at the decision of declaring the respondent the owner of the disputed property. This position was initiated from the framing of issues where the first issue was, ***who is the lawful owner of the disputed land?*** And second issue was on the reliefs. The first issue was designated in a way that the trial Tribunal was to determine and then decide on who is the owner of the suit land between the two disputing parties. Ultimately, the trial Tribunal basing on the evidence adduced by parties, made a finding that the respondent is the owner of the suit property despite the fact that there was no counter claim.

In that regard, the trial Chairperson was right in declaring the respondent lawful owner of the suit property because there was no way in determining such issue without declaring one between the two as owner of the suit property, upon weighing the evidence of the parties whereas, the respondent appeared to have heavier evidence compared to the appellant on the proof of ownership of the suit property. Furthermore, again the respondent managed to establish her ownership by producing a chain of ownership. She established that she purchased the suit property

*Allu.*

from Yusufu Shabani Matimbwa, who purchased the same from Elizabeth Timothy Balali. The trial Chairperson was satisfied that the chain of ownership was enough to prove the legal ownership of the suit property by the respondent.

As said earlier, I see no reason to fault or differ with the findings of the trial Chairperson. Hence, it is my finding that this appeal lacks merit. I dismiss it with costs.

Right of further appeal explained.

It is so ordered.



  
**A. MSAFIRI**  
**JUDGE**

**21/02/2024**