

IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA

MISC LAND CASE APPEAL NO. 22 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for
Kondoa at Kondoa Land Application No. 8 of 2017)

1. SHABANI ATHUMANI GWADI }
2. IDRISSA WAZIRI } **APPELLANTS**

VERSUS

JUMANNE ISSA WAZIRI **RESPONDENT**

6/10/2020 & 9/11/2020

JUDGMENT

MASAJU, J

The Respondent, Jumanne Issa Waziri, successfully sued the Appellants, Shabani Athumani Gwadi and Idrissa Issa Waziri in the District Land and Housing Tribunal for Kondoa at Kondoa in Land Application No. 8 of 2017.

The Appellants who were aggrieved with the decision of the trial Tribunal filed the appeal in the Court vide the joint Memorandum of Appeal which carries three (3) grounds of appeal, thus;

- "1. That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent without considering that the land in dispute is legally owned by the 1st Appellant who purchased the same from the 2nd Appellant since 2012 and has been developing the same up to date.*
- 2. That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent without considering that he is a beneficiary of the estates and not administrator hence no inventory to prove that the land in dispute was distributed to him.*
- 3. That, the Honourable Chairman erred in law and in fact for deciding in favour of the Respondent basing on weak, wrong and nugatory evidence adduced by Respondent and his witnesses."*

The Appellants prayed the Court to allow the appeal with costs.

At the hearing of the appeal both parties appeared unrepresented and prayed to adopt their Memorandum of Appeal and Reply to the Memorandum of Appeal to form part of the submissions in support of and against the appeal in the Court respectively.

The trial Tribunal's record of proceedings show that the Respondent brought four (4) witnesses including the 2nd Appellant and the Respondent's mother, Tatu Ally (PW2) and the administrator of the estates of their late father, Hassan Issa Waziri (PW4) who is also their biological brother. Both Respondents' witnesses testified that, the land in dispute

was distributed to the Respondent as part of the inheritance from his late father's estates in the year 2001. That, the 2nd Respondent was only a custodian of his brother's (the Respondent's) land and he decided to sell it to the 1st Appellant in the year 2012. PW2 who is the mother to the 2nd Appellant and the Respondent testified to that effect in favour of the Respondent and added that even the 2nd Appellant had his inheritance from the estates of his late father and had sold his piece of land. PW4 testified to have been appointed the administrator of the estates of the late Issa Waziri and he tendered exhibit P2 to be proof of his appointment. PW2 also tendered a copy of clan meeting minutes (Exhibit P1) as proof of distribution of the estate including the land in dispute which was inherited by the Respondent.

The 2nd Appellant was present and he signed the minutes. On their side, the 1st Appellant alleged to have bought the land in dispute from the 2nd Appellant and to have developed it. That, they allegedly entered into a written sale agreement witnessed by village Chairman, Ally Issa Mgunda (DW3), who stamped the agreement. The 2nd Appellant agreed to have sold the land in dispute to the 1st Appellant claiming to be the legal owner of the land. The alleged sale agreement was not tendered in the trial Tribunal. The 2nd Appellant also admitted to have attended and signed the clan meeting minutes.

The trial Tribunal's records show that, the land in dispute was distributed to the Respondent in the clan meeting which the 2nd Appellant also attended and signed. If he was not satisfied with the distribution he ought to have taken any legal action against it. But the 2nd Appellant

decided not to do so, even in his testimony in the trial Tribunal he admitted to have not objected anywhere against the distribution of the estates of his late father. Therefore he impliedly agreed to the distribution.

The Court is of the considered position that the trial Tribunal so rightly decided the Application based on the balance of probability as the required standard of proof in civil matters. The Respondent also rightly filed the Application in the trial Tribunal since the land in dispute had already been administered and distributed to him as his part of inheritance.

The appeal is hereby dismissed for want of merit. The parties shall bear their own costs.



A handwritten signature in blue ink, appearing to read "George M. Masaju", is written over a horizontal line.

GEORGE M. MASAJU

JUDGE

9/11/2020