

**IN THE COURT OF APPEAL OF TANZANIA
AT MBEYA**

(CORAM: NDIKA, J.A., MASOUD, J.A., And MLYAMBINA, J.A.)

CIVIL APPEAL NO. 357 OF 2024

ADIMINI LALATA	FIRST APPELLANT
WASIWASI ADIMINI	SECOND APPELLANT
RIZIKI ADIMINI	THIRD APPELLANT
DIKILAKA MBEMBELA	FOURTH APPELLANT
BARAKA SIMKOKO	FIFTH APPELLANT
EMMANUEL JESTAD	SIXTH APPELLANT
KIDUNA MBISA	SEVENTH APPELLANT

VERSUS

TABIA MLALAMI HAONGA	RESPONDENT
(Appeal from the Judgment and Decree of the High Court of Tanzania at Mbeya)	

(Ndunguru, J.)

dated the 10th day of October 2023

in

Land Appeal No. 29 of 2023

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JUDGMENT OF THE COURT

13th & 17th August 2026

NDIKA, J.A.:

Tabia Mlalami Haonga, the respondent, was unsuccessful in her pursuit of ownership and possession of a seven-acre parcel of land situated in Halungu Village within the Mbozi District at the District Land and Housing Tribunal for Mbeya, henceforth "the tribunal." The claim was against Adimini Lalata, Wasiwasi Adimini, Riziki Adimini, Dikilaka Mbembela, Baraka Simkoko, Emmanuel Jestad, and Kinuda Mbisa,

henceforth “the first, second, third, fourth, fifth, sixth, and seventh appellants” respectively. The appellants are now contesting her successful appeal to the High Court of Tanzania at Mbeya before this Court.

The primary figures in this appeal are immediate relatives. The respondent is the mother of the first appellant, while the second and third appellants are the sons of the first appellant. Furthermore, the three witnesses presented by the respondent – PW1 Prisca Lalata, PW2 Amri Lalata Msangawale, and PW3 Furaha Lalata – are her offspring, signifying that they are siblings of the first appellant.

According to PW1, the property in dispute had been the respondent’s land and that the first appellant intruded onto it in 2003. She claimed that her father, who had passed away, had given the respondent the land, even though she admitted she did not know when the respondent got it. However, both PW2 and PW3 adduced that Hamisi Juma, a court broker, seized the contested land in 2003 following a court order to enforce a decree in favour of the first appellant against Selina Lalata, a daughter of the respondent and sibling of the first appellant.

Conversely, the first appellant, testifying as DW1, asserted that he prevailed over his sibling, Seliha Lalata, at the Igamba Primary Court and subsequently on appeal in the District Court. In executing the decree,

Hamisi Juma, the court broker, attached and advertised the property for sale but no buyer turned up. In the circumstances, the broker handed over the land to the first appellant in 2003. He submitted as evidence the attachment order and the handover document (exhibit D1), revealing that he acquired and assumed control of the property in 2003. He claimed that the respondent filed no objection proceedings following the attachment of the property and that he had held the property for more than fifteen years until the respondent initiated legal action against the appellants in 2018.

DW2 Alfred Kasobile, who claimed to have served as the *Kitongoji* Chairman in the relevant area in 2003, stated that he was aware of the property's attachment and subsequent disposition. He attested that the respondent and Selina Lalata observed the auction, culminating in the first appellant acquiring 4.25 acres. DW3 Riziki Adimini Lalata alleged that he obtained a parcel of land from the first appellant, his father, which was subdivided from the land he purchased in 2003. Meanwhile, DW4 Dikilaka Mbembela, DW5 Baraka Simkoko, and DW6 Emmanuel Jestad each claimed to have acquired small portions from the first appellant in 2010, also derived from the same land purchased in 2003. In 2015, DW6 sold his land to DW7 Kinuda Mbisa.

The tribunal was entirely unpersuaded by the respondent's assertion. It rejected her suit and subsequently affirmed the appellants as legitimate proprietors of the contested property. The respondent prevailed in the High Court, which determined that the attachment order and the handover note did not constitute evidence of ownership. Favouring the respondent's account over that of the appellants, the court adjudged her the lawful owner of the property.

Mr. Moses T. Mwampashe, learned counsel, lodged four grounds of appeal on behalf of the appellants. In essence, the said grounds raise two complaints: firstly, that the High Court wrongly shifted the burden of proof to the first appellant who was the first respondent before the tribunal. Secondly, that the High Court erred in law and fact for wrongly re-appraising the evidence on record thereby ignoring the fact that the first appellant bought the land in dispute during execution of the court decree.

On behalf of the appellants, Mr. Mwampashe moved the Court, in accordance with rule 105 (2) of the Tanzania Court of Appeal Rules, 2009, to continue the hearing without the respondent, who died on 8th August 2024, noting that no application had been submitted by any interested party under rule 105 (1) to include the legal representative of the deceased's estate in the proceedings. We granted the prayer after

confirming that the respondent died on 8th August 2024, as evidenced by the death certificate number 6550301A dated 12th August 2026, and that the twelve-month limitation period mandated by sub-rule (2) for her estate to adhere to sub-rule (1) lapsed around 7th August 2025.

Nonetheless, since the respondent had on 13th June 2024 lodged her written submissions in opposition to the appeal, we are enjoined to consider them in determination of the appeal.

As indicated above, the first grievance is the contention that the High Court erroneously shifted the burden of proof to the first appellant who was the first respondent before the tribunal.

In support of the above ground, Mr. Mwampashe argued, citing **Paulina Samson Ndawavya v. Theresia Thomasi Madaha** [2019] TZCA 453, that the burden of proof never shifts to the opposite party until the party on whom the onus of proof lies discharges his burden. It was additionally argued that, despite the respondent failing to provide evidence about the acquisition of the contested land, the High Court reversed its stance against the first appellant as if he had the onus of proof by asserting that exhibit D1, which he presented as evidence, did not substantiate his claim of title to the land.

Conversely, the respondent was unwavering that the first appellant bore the burden of proving that he had occupied the land continuously for fifteen years, as claimed, at the time the lawsuit was filed in 2018. Consequently, it was asserted that he did not fulfil his obligation to provide evidence.

In addressing the current matter, we believe it is essential to emphasise the fundamental principle that the party making an allegation bears the burden of proof according to section 117 of the Evidence Act, Cap. 6 R.E. 2023. Equally important is the perspective that the burden of proof in a civil action rests on a preponderance of probabilities, indicating that the court will uphold evidence that is more convincing than its counterpart about a fact to be established – refer to **Paulina Samson Ndawavya** (*supra*). In that case, the Court clarified that the onus to prove does not shift to the opposing party until the party bearing the burden fulfils his duty, and that the burden of proof remains intact notwithstanding the frailty of the opposing party's argument.

It is apparent from the impugned judgment of the High Court that, after the learned judge had acknowledged the principle that "*who alleges must prove*", he did not examine the respondent's case to determine if

the respondent had fulfilled her burden of proof. Instead, the learned judge dashed to the first appellant's case remarking as follows:

"... the 1st respondent (DW1) [the first appellant herein] just tendered exhibit D1 (i.e., the attachment order issued by [the] Igamba Primary Court) to prove his ownership of the suit land. There was no any other evidence explaining what the said case which led to the attachment order was all about. [...] Then the question arises, does the attachment order and the handing over note prove transfer of land? I think the answer is in the negative. [...] In the circumstances, it is axiomatic to say that the first respondent's evidence falls short."

Then, the learned judge found it significant that the first appellant had not denied that the disputed land belonged to the respondent.

We concur with Mr. Mwampashe that the learned judge's approach of examining the first appellant's evidence prior to assessing the evidence presented by the respondent, the claimant in the matter, was a palpable error. It clearly transferred the onus of proof to the first appellant prior to the court evaluating the respondent's case and confirming that the burden had been fulfilled by the respondent. We, therefore, find merit in the first grievance.

The second ground of appeal faults the High Court's reappraisal of evidence; that it led to the determination of the appeal against the weight of the evidence.

The documented evidence, as outlined previously, reveals that PW1 claimed the contested land belonged to the respondent, although she failed to present any proof about the manner and timing of its acquisition. Despite PW1 asserting that the first appellant encroached into the land in 2003, the respondent's own witnesses – PW2 and PW3 – conceded that the first appellant acquired the land through a court-mandated public auction in compliance with the judgment against Selina Lalata. The accounts of the two witnesses align with the testimonies of DW1, DW2, and DW3. Even if it were presumed that the first appellant has been an intruder since 2003, what perplexes us is that the respondent dawdled for fifteen years before initiating the land recovery action in the tribunal. We acknowledge that no argument was presented in the lower courts and in this Court on whether her claim was stale; whether it had been extinguished by the effluxion of time.

Assuming, for the sake of argument, that the respondent owned the property, she failed to initiate any objection proceedings to contest the attachment and eventual handing over, despite her awareness of the

execution proceedings and her presence at the auction as indicated by PW2. The first appellant and his two witnesses provided comprehensive testimonies regarding the case against Selina Lalata, which resulted in the handing over of the land in dispute to satisfy the decree. Consequently, the learned judge's holding that there was an inadequate explanation for the case against Selina Lalata, together with the ensuing attachment and sale, is clearly in conflict with the record.

We indicated earlier that the learned judge took the view that the attachment order and the handing over note (exhibit D1) did not constitute "*proof of transfer of title*." He further questioned the rationale behind the court broker transferring the contested land to the first appellant when no purchaser appeared at the auction. Although we concur with the learned judge's perspective, we think that it was the responsibility of the respondent to contest the legitimacy of the execution proceedings conducted by the court broker, particularly regarding his choice to hand over the property to the first appellant to satisfy the decree. We already noted that the respondent procrastinated for fifteen years without taking any action.

On this basis, we find it preponderant that the respondent failed to prove her case that the first appellant was an invader on the property in dispute. Accordingly, we uphold the second ground of appeal.

As a result, we find merit in the appeal, which we allow. On this basis, we reverse the High Court's decision and reinstate the tribunal's judgment. Given that the matter involves close relatives, we make no order as to costs.

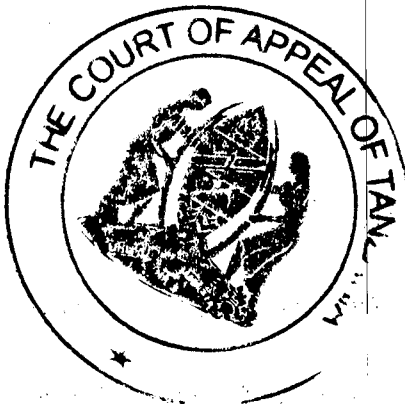
DATED at MBEYA this 15th day of August 2026.

G. A. M. NDIKA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

Y. J. MLYAMBINA
JUSTICE OF APPEAL

Judgment delivered this 17th day of August, 2026 in the absent appellants and respondent and Mr. Musa A. Kassim, Court Clerk; is hereby certified as a true copy of the original.




B. A. MPEPO
DEPUTY REGISTRAR
COURT OF APPEAL