

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO.100 OF 2001**

**MARGARETH GAMA..... APPELLANT**

**VERSUS**

**MALMO MONTE CONSULT..... RESPONDENT**

**JUDGMENT**

**KIMARO, J:**

The facts giving rise to this appeal are fairly easy. The parties to this appeal, that is Margareth Gama and MALMO MONTE CONSULT who are the appellant and respondent respectively, were the defendant and the plaintiff respectively in the trial court. They are advocated by the same advocates who advocated for them in the subordinate court.

Learned Mr Rutabingwa Advocate represented the plaintiff/respondent, while Learned Mr Maftah Advocate represented the appellant/defendant.

From what is pleaded in the plaint which was filed in the trial court and the evidence which was tendered during the trial, the appellant was an employee of the respondent. She was recruited in the plaintiff company in 1980s. It is averred in the plaint that the appellant defendant was assigned by the plaintiff to look for a residential house for purchase. The appellant did the assignment. She identified a house on plot No.209 block C Mikocheni. It is averred in the plaint that upon inquiry with the land office the appellant/defendant was informed that it was not possible to transfer the said house to a foreign company. That upon this advice to the respondent plaintiff, the respondent plaintiff sanctioned the transfer of the house into the appellant's, name

on temporary basis until conditions allowed for a transfer to a foreign company. In the meantime, the house was recorded to be among the assets of the company in the company records. The transfer was then processed from the vendor - one Charles Jacob Mkomea to the appellant. There is no dispute that the money for the purchase of the house came from the respondent company.

After processing the relevant documentation and upon vender giving vacant possession the house was occupied by the appellant.

Things went wrong in 1998 when the plaintiff's Managing Director required the appellant to effect a transfer of the said house from herself to the respondent's company. She refused. It is on record that the documents were processed by the relevant ministry in 1999 after the filing of the proceedings in the trial court and a certificate of title issued to the appellant.

What the respondent claimed for in the trial court was a declaration that the house on plot No. 209 Block C Mikocheni is the property of the respondent company and an order of the court that the appellant transfers the same to the respondent.

The defendant/appellant claimed that the property belongs to the plaintiff/respondents. She asserted that she is the lawful owner of the property after the same had been lawfully transferred to her on 15th September, 1988. The appellant asserted that the respondent purchased the house for her upon her request to the respondent and that the respondent's conduct for the whole period under which the property remained in her name, is an acknowledgement by the respondent that the transfer of the house to her was in no doubt.

After a full trial was conducted by the trial court judgment was entered for the respondent.

The appellant was aggrieved and she filed this appeal.

The appellant filed five grounds of appeal, but all the five grounds can be considered as only one ground of appeal. The trial magistrate is faulted for holding that the appellant was not allowed to transfer the property in her own name and that she took the advantage of the officers of the respondents being foreigners to register the premises into her own name.

It is not my intention to go into the detailed submissions made by the Learned advocates in this appeal. It suffices to have them informed that the efforts made by both of them in the preparation of the submissions is acknowledged.

My focus in this appeal will be on the crucial issue which was before the trial court and that is whether the respondent company had allowed the appellant to transfer the suit premises into her own name. During the trial there was no dispute that the suit house was purchased from money issued by the respondent company.

Having gone through the pleadings and the evidence which was tendered during the trial, I hold that the trial magistrate erred in holding that the respondent company did not sanction the transfer of the suit house in the appellant's name. The reasons are as follows:

No matter how trustworthy the appellant could have been a reasonable person cannot believe that the respondent could have acted on the trustworthy of the appellant and forgot how a legal entity operates. The respondent cannot simply contend that is what happened. I say so because the appellant was not the best source of such information if the respondent was serious that it wanted to purchase the house in the company's name. Services of a lawyer would have convinced the court that is what the respondent had intended to do from the moment the appellant was given the assignment of identifying the house to be purchased.

As clearly pointed out by the learned Mr Maftah Advocate, the respondent is a legal entity. If at all the intention was to have the premises be purchased and transferred to the


company, a written record sanctioning the transaction would have been available and it should have explained in very clear terms that the registration of the property was to be temporarily in the name of the appellant for future transfer to the respondent. An agreement to that effect was supposed to be part of the company's record. The respondent ought to have known that they were dealing with real property. The Law requires all real property transactions be documented. This requirement is even more important when legal entities are involved. The case of Sikh Saw Mill Ltd v. Mohamed Hayat (High Court) Tanga Registry) unreported) confirms this position. It therefore follows that if the documents are in the name of the appellant and not the respondent, then that is what the respondent sanctioned.

Another point which strengthens the appellant's case is the long period which elapsed between the property being transferred to the appellant and the period when the appellant was required to transfer the same to the respondent. No explanation at all was offered why such a long period should have lapsed. The explanation given that all the time the suit has always appeared in the records of the company as one of the assets of the company is not in itself a reasonable explanation because there is no evidence to show that asset belongs to the company.

All the above three reasons considered, makes the proof on the balance of probabilities heavier on the appellant than the respondent.

I allow the appeal and set aside the order of the trial court which granted the respondent judgment. I substitute it with an order for the dismissal of the plaintiff's claim with costs. Costs in this appeal to follow events.



  
 N.P. Kimaro  
 JUDGE.  
 21/08/2001