

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DODOMA

LAND CASE APPEAL NO. 6 OF 2007

MAHAMUDU HATIBUAPPELLANT

VERSUS

MWANAHAWA MOHAMEDRESPONDENT

JUDGMENT

FIKIRINI, J:

Aggrieved by the decision of the Singida District Land and Housing Tribunal, Mahamudu Hatibu hereinafter referred as the appellant appealed to this court. The appeal was contested by Mwanahawa Mohamed hereinafter referred as the respondent.

Before the District Land tribunal, the appellant had a number of grounds of appeal to wit: That the trial Tribunal erred in fact and law for holding in favour of the

respondent who never applied for the plot in dispute at the same time neither the appellant nor the respondent did produce receipts proving costs incurred during construction of the house on the said plot.

The Tribunal further erred in not addressing the issue of the respondent having two identical title deeds for the same suit premises without sufficient explanation. Likewise, the said Tribunal erred by rejecting to acknowledge a title deed in the appellant's name and hence arrived at its decision erroneously and unjustly.

The tribunal was as well found to have been biased and erred in holding that the appellant had applied for the plot on behalf of the respondent while there was no proof of a representative capacity.

The appeal was argued by way of written submissions. In his written submission the appellant alleged to have been allocated the said plot No. 6 Block "D" in Singida way back in 1970 as exhibited by a document marked as MH1 date not clearly shown. The appellant alleged to start developing the said land immediately and at the same time start processing for title as exhibited by MH2 a document dated 7th May, 1969. Later or sometime in 2006, a dispute arose and the appellant filed an application before the Singida District Land Tribunal which is application No. 12 of 2006 whereby the respondent was declared the legal owner of the disputed land. The appellant challenged this by stating that the said plot was initially owned by one Mohamed Hassan who later transferred it to Hasina Binti

Ally Omary. He however, challenges this transfer to be forgery.

As raised in his ground of appeal, the appellant contended that the Tribunal did not consider the contradicting evidence of the respondent such as owning two title deeds in her name for one and the same plot. The only difference being one title was issued in 1971 while the other one in June, 2007. According to the appellant the titles were forged. The appellant attached a copy of the said as MH3. Further in his submission the appellant challenged the Tribunal's decision by rejecting the letters of offer issued in his name way back in 1970 by the Ministry of Lands. He contended that the said letter was valid to date as it has never been challenged in any court of law.

The appellant as well refuted the suggestion that he applied for the title deed of the disputed plot on behalf of the respondent. He went on by submitting that the law was very clear that where there is double allocation on a piece of land, the court always directs its mind on the original owner. At this juncture he cited the case of Colonel Kashimbi v. Naginder Singh Matharu, TLR 163 1988 CAT. The appellant compared the cited case to the one between him and the respondent and insinuated the existence of corrupt official in the government. Otherwise he claimed to have bought the plot through a tender of which he is a bona fide purchaser. He therefore cannot be denied the plot and the house on it.

The respondent challenged the appellant's case to be mere allegation without any proof. She further contended that the fact there were correspondence between the appellant and the land Division and a receipt for water connection which was in the appellant's name were not enough evidence to prove that the disputed plot was allocated to the appellant. The respondent as well highlighted the fact that she is illiterate therefore all matters concerning her were being handled by the appellant who happened to be her husband. The appellant took advantage of the situation and started skimming an idea of swindling the respondent of her plot.

Further in her submission the respondent submitted that all along the plot had belonged to her despite the fact that the land division personnel got to deal with the appellant. The respondent got the said plot from her auntie one Hasina Binti Ali Omary and she later applied for a title deed which was issued in her name way back in 1971. And that is why even when the land office were giving order such as the stop order issued on 28th April, 2004 the said order was directed to her since she was the legal owner of the said plot. To further prove her case, the respondent submitted that she filed a case in 2003 in the District court seeking the order that the appellant surrender the title deed to the respondent, by then it was already 34 years since the appellant was granted the legal ownership. The respondent won in that case.

Regarding the respondent having two copies of same title, it was her explanation that one was the copy tendered through Ambrose Mahoo the Land Officer in Civil Case No.

12 of 2003 after the copy filed in the court record went missing. Both copies were however in the respondent's name though one copy was in the appellant's custody for many years. The appellant was said to have been handling all the documents and correspondence pertaining to the plot all along. However, there has never existed a title deed in the appellant's name in respect of the disputed plot or at least he has not furnished one to the court, tribunal or even now in this appeal.

As for the case cited, it was the respondent's submission that the case is not relevant to the one at hand, as the former was in relation to double allocation which is not the case in this one. In conclusion, it was the respondent's prayer that the appeal be dismissed in its entirety with costs.

In a brief rejoinder, the appellant maintained his earlier submission. In addition, he submitted that the plot belonged to him after he applied for the same in 1969 and won the tender. However, it was wrongly allocated to the respondent who happened to be his wife. The appellant challenged the respondent's submission and implied fraud for her having two copies of the title deed in relation to the same disputed plot. He as well submitted that the respondent had failed to prove transfer of title from Hasina Binti Ally to her despite claiming to be given the said plot on love and affection.

Finally, the appellant asked the court not to show sympathy on the fact that the respondent is illiterate but

adhered to procedure and law. Otherwise the respondent's submission in the appellant's view lacked merit and therefore prayed for the District Land Tribunal decision to be set aside and decision made in favour of the appellant.

After careful evaluation of the submissions by the parties and the District Land Tribunal proceedings and judgment, I am without doubt that the District Land Tribunal properly looked at the case and finally arrived at a fair and just decision. The reasons of saying so are the appellant despite insisting that the disputed plot was legally his, but has failed to substantiate that. He initially alleged to have been allocated the same after applying for title and he referred this court to MH1 which was a document purporting to show boundaries of the disputed plot (Hati ya Kukubali Mawe ya Mpaka).

The date on the document is not legible, but again the document, first it is not a title deed or something akin to it. It is just a document intended to inform whomever as to the boundaries of a particular plot. So anyone can be asked to go and verify the same on behalf of the owner. The appellant might have gone on behalf of the owner who happened to be his wife and the respondent in this appeal. This court can therefore not rely on it as a document establishing the appellant's ownership of the disputed plot.

Coming to the issue of two identical title deeds in respect of the same plot, Mr. Ambrose Mahoo a land officer has well informed the District Court in the civil case No. 12 of 2003, whereby the respondent was suing the appellant for the

surrender of her title deed. That the two titles, one is the original and other is a copy after the one in the court record went missing. So in essence the two are correctly the same documents in respect of the same plot. This did not read as forgery to this court and indeed I will not conclude so.

The appellant had all along been handling matters pertaining to the disputed plot on behalf of the respondent since she could not read or write. The appellant does not dispute that. Though he refuted the fact that he applied for the title deed on behalf of the respondent and indeed the title deed in respect of the disputed plot was issued in the respondent's name. Of course on the record there was evidence of him applying for the title as well but again there is no proof that he that he was granted title in respect of the disputed plot and that is why the issue of double allocation does not arise in this appeal. The cited case of for Colonel Kashimbi (*supra*) does not therefore apply in the present appeal.

My further perusal of the record could not find and/or sense any bias as raised by the appellant. There might be slight errors here and there but generally speaking there was no bias as alleged by the appellant. Apparently appellant is never and was never owner of plot No.6 Block "D" Singida at any time in his life and may be that is something he did not want to hear and consequently branded it bias. The appellant was caretaker of the said plot on behalf of his wife who could not read or write. The Civil case No. 12 of 2003 is very clear as to who was the owner of the disputed plot after the respondent had filed

praying for the appellant to surrender her title deed which was in his custody.

For the foregoing, I do not find any good reason to disturb the District Land Tribunal decision. The appeal lacks merit and I hereby dismiss it with costs.

It is so ordered.

P. S. FIKIRINI

JUDGE

7TH AUGUST, 2012