

IN THE HIGH COURT OF TANZANIA

AT MWANZA

(LAND DIVISION)

LAND APPEAL NO. 11 OF 2010

(Appeal from the Judgment of the District Land and Housing Tribunal for
Mwanza at Mwanza in Land Application No. 44/2008)

EUNICE JOHN.....APPELANT

(The Administrator of the
Estates of the late John Enock)

VERSUS

FATUMA IDDI BIKONYA.....RESPONDENT

JUDGEMENT

Latifa Mansoor, J.

The Appellant is represented by Advocate Mhingo and the Respondent is represented by Advocate Nasimire.

The factual background of this matter is that on 2/2/2006, the late John Enock sold a piece of land to the Respondent for Tshs 300,000. The sale agreement was in writing and witnessed by several witnesses including the leaders of that area. The Respondent claims that the late John Enock gave him another piece of land on 14/2/2006 as compensation after having realized that the land sold to her on 2/2/2006 was already sold to another person. The second agreement was not in writing but the Respondent claims that the second agreement was witnessed by several witnesses.

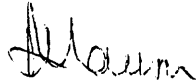
The Counsel for the Appellant as well as that of the Respondent do not know the exact measurement of the piece of land sold to the Respondent on 2/2/2006, and the measurement of the land given to the Respondent on 14/2/2006 as compensation. The Counsel for the Respondent conceded that the Respondent has not built anything in the land. He however stated that the Respondent has surveyed both pieces of land and combined them as one land, and they are already in her name.

There is a contradictory submission by the Respondent. She says the land sold to her by John Enock on 2/2/2006 was not handed over to her, and instead she was given another land as compensation. At the same time she admits that she has surveyed both pieces of land in her name, which means that she is in occupation of the land sold to her on 2/2/2006, as well as the land given to her as compensation on 14/2/2006.

As the evidence before the lower Tribunal was not enough to prove the Appellant's case as well as that of the Respondent and furthermore, the parties do not know the exact measurements of the land sold to the Respondent by the late John Enock on 2/2/2006, and whether or not this land was not handed over to the Respondent, it is right that the proceedings and judgment of the District Land and Housing Tribunal reached without proper and satisfactory evidence be quashed. It was admitted that the value of this land and the property is below Tsh 3,000,000, and the matter should have started before the ward Tribunal.

Since there is no ample evidence adduced by either the Appellant or the Respondent to warrant the Court to decide on either party's favor, the proceedings and judgment of the District Land and Housing Tribunal, are hereby quashed, and the matter to start de novo before the Ward Tribunal having territorial and pecuniary jurisdiction of the subject matter.

It is so ordered.



Latifa Mansoor

JUDGE

02 NOVEMBER 2012