

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL NO 9 OF 2012

(From the D cision of Mwanza District Land and Housing Tribunal

Application No. 123 of 2010)

THEREZA PATRICK.....APPELLANT

VERSUS

SAIDA SHAABAN KASHAKALA.....RESPONDENT

JUDGEMENT

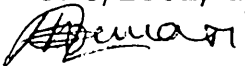
13/8 & 12/10/2012

SUMARI, J.

The appellant was married to one Ndebeto Buchanja before they divorced in 2004. Up to the moment of their divorce the appellant was leaving in the disputed premises located at Plot No. 40 Old Plan, Nyanguge within Magu District. The facts on record suggests that the disputed premises belonged to one Magesa Ndaki, who is the mother of the appellant's husband.

It is in evidence that, Magesa Ndaki bought the disputed premises from Salim A. Mohamed on 02/03/1990 but later decided to sell it to the respondent on consideration of 2,000,000/=.

The record shows further that, the appellant's husband petitioned for divorce in the case No. 5/2002, the divorce which was



granted in 2004. It is also in evidence that the appellant later unsuccessfully filed for distribution of matrimonial assets. Being aggrieved she appealed to this court which ordered retrial, to which the case is still pending.

After purchasing the disputed piece of land the respondent successfully referred the matter to the District Land and Housing Tribunal of Mwanza claiming for the declaration that she (applicant) is a legal owner of the disputed premises, eviction order, specific and general damages.

Having being aggrieved by the decision of the District Tribunal the appellant filed her petition of appeal setting three grounds as follows:

1. *That the learned Chairperson erred in law and fact in deciding that the property in dispute belongs to the respondent.*
2. *That the learned Chairperson erred in law and in fact for not considering the appellant to pay 1,800,000/= being mesne profits and 500,000/= being general damages.*
3. *That the learned Chairperson erred in law and in fact in not considering and evaluating any evidence learned by the Defense witness.*

During the hearing of this appeal both the appellant and respondent appeared in their persons unrepresented.

On the first ground of appeal, that is, the learned Chairperson erred in law and fact in deciding that the property in dispute belongs to the respondent, the appellant submitted that the disputed house is a matrimonial house. That his husband changed the names in the

documents of the house to show that it belonged to his mother from Ndebeto Buchenja to Masesa Ndaki Kizengele so as to facilitate his mission to sell the same. She contended that her evidence was supported by Dw2 and Dw3 respectively.

The respondent Saida Shaban Kashakala vehemently contended that, the house in dispute was not a matrimonial home and the appellant was only utilizing the same on permission by her mother in law " **aliifadhiwa tu**". She contended further that she went to the land office of Magu and conducted an official search which showed that the plot formerly belonged to Mohamed Salum and sold to Magesa Ndaki who sold the plot to the respondent. That the names of Thereza Patrick and Ndebeto Buchenja do not appear anywhere the document in relation to the disputed premises.

I have carefully perused the documents tendered in this case. In so doing I have noted that, the respondent tendered "annexture P1 B titled **HATI YA MAUZIANAO YA NYUMBA** "dated 02/03/1990 purporting to be a sale agreement. I'm however, not convinced that that document is genuine one. This is simply because the document is prepared in a computerized typing system. I am asking myself whether such sophisticated typing system were used in our country and particularly Government's offices, the registrar of titles in those early days of 1990s. My answer to this is in the negative (emphasis supplied).

In those days contracts and documents were prepared by either type writer or handwritten. So it is very doubtful as to how the

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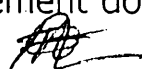
said Salim Ahmed Mohamed and Magesa Ndaki Kizengele managed to prepare such a document in a computer typing system in 1990.

Under such circumstances, I tend to believe and agree with the appellant's argument that her husband tempered with the document and changed the ownership so as to smoothen him to sale the same to the respondent.

Though it is not doubtful that the respondent bought the disputed premises, this court finds that certainty of the consideration price of the same is highly questionable. While in the transfer of Right of Occupancy it is shown that the respondent bought the house in a consideration of 1,000,000/= the testimonies of the respondent and annexure P1 titled. **"HATI YA KIAPO"**, suggest that the consideration price for the Suitland is 2,000,000/=. These surrounding circumstances also make me believe that the purported sale transaction was dubious. If any sale existed as stated by the respondent I believe the same was tainted by, if not fraud, dubiously.

Notwithstanding what I have stated above, the respondent also Exhibited **"MKATABA WA KUJENGA NYUMBA"** between Magesa Ndaki Kizengele and Sekei Msangwa Jaha. I take as a fact that this document was annexed for the purpose of showing that the disputed premises belonged to the appellant's mother in law.

After taking a close look of the said document, I have noted that the same does not show the date upon which the agreement was reached apart from showing that it was certified on 24.02.2004. That being not enough the said agreement does not state specifically




which piece of land Mr. Sekei Msangwa was contracted to erect a building; as it only states that, "*.....anijengee kwenye kiwarija changu, also "Nyumba ipo Nyanguge wilaya ya Magu...."*". It is therefore not certain whether the disputed piece of land was the land referred thereto, as there are many pieces of land and houses in Nyanguge.

I am also so surprised that, the said Magesa Ndaki Kizengele was not called to testify to support the respondent's version of the story, even the said Sekei Msangwa whom seems to have entered the contract with the respondent in the disputed piece of land was not brought to support what the respondent was alleging.

With this analysis this first issue of this appeal has merits and that alone suffice to fault the decision reached by Mwanza District Land and Housing Tribunal.

From the above premises therefore, I quash the decision of the Trial Tribunal and declare that the purported sell and transfer between the respondent and one Magesa Ndaki Kizengele is null and void.

This appeal is therefore allowed with costs, to the extent explained above.


A.N.M. SUMARI
JUDGE.

Delivered in presence of the parties

At Mwanza
12/10/2012.

