

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT TABORA

LAND CASE APPEAL NO. 15 OF 2012

(Arising from Shinyanga DLHT Land Application No. 6/2011)

ALLY JAFARIAPPELLANT

VERSUS

PASKALI MHANGWARESPONDENT

JUDGMENT

23/8 & 02/9/2013

S.M.RUMANYIKA, J.

The appellant is aggrieved with the judgment and decree of the district land and housing tribunal – Shinyanga (DLHT). Meted on him on 30th January, 2012. Whereby the disputed 2 ¹/₂ acres of land at Nyakato area, Kahama (disputed land) went to the respondent.

He had seven (7) grounds of appeal which are likely to boil down to only three (3). The main points being:-

- (a) Error by the DLHT to evaluate the evidence improperly.
- (b) Error by the DLHT deciding on the matter biased against the appellant.

- (c) Error in law and in fact by relying on an uncorroborated evidence of the respondent's members of family only.

Parties appear unrepresented.

When the appeal was called on for hearing, the respondent argued a two - ground preliminary objection (p.o). Namely no decree was attached to the memorandum of appeal and also, like saying the appeal was time barred. Liable to be dismissed with costs. He submitted.

On his part, the respondent simply submitted that he would have appealed in time, but for copy of the impugned decree which was not, but supplied to him on 5th March, 2012. Having the judge personally intervened. Then he lodged the appeal two days later (07 – 03 – 2012). He submitted.

However, on reflection that everything was in time and order, the respondent withdrew the p.o and it was marked as such.

It is read loudly from the records that whereas the appellant alleges that he purchased the disputed land in several portions from different vendors, he only brought out of four, only one and he testified from that end. However, the appellant could not establish when, and at what price he had purchased each individual portions. Without difficulties. Irrespective of a big number of witnesses he had in court with him.

The respondent said that he had the four acres including the disputed land allocated to him in 1957 by the sub – Chief Maziku Mwanailola. Shortly submitted the elderly respondent.

Grounding his decision, the DLHT put it straight forward very correctly I think, that:-

.....the applicants (respondent's) case can at least be believedbecause thoughappears to be scanty, the same proves what have been alleged in applicants' pleadingit is clear from entire evidence on record that the respondent did not prove that he purchased suit land as alleged in his pleading.

However, I do not subscribe to the DLHT's stand that every sale agreement was to be reduced in writings. Provided that whenever one opts to an oral agreement, the evidence should be upright, reasonable and believable.

It follows therefore, that of the two, the respondent's case comparatively meets such standards. It is not a question of plain words of the purchase. Because nobody is incapable of uttering the words. But rational, substantive, irresistible allegations on date of sale, size, descriptions of property sold and the sale price. And all this needs be consistent with the material pleadings. That one the respondent did sufficiently. I do not see the appellant bothered to challenge the respondents pleadings. Case of Messrs Trojan & Co. Vs.