

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT MTWARA

LAND APPEAL NO. 15 OF 2013

*[From the decision of the District Land and Housing Tribunal  
of Lindi District at Lindi]*

ABDALLAH MASUDI ..... APPELLANT

VERSUS

KHADIJA JAMALDINI ..... RESPONDENT

---

Date of last order – 11/09/2013

Date of Judgment - 13/09/2013

**JUDGMENT**

**KIBELLA, J.**

In application No.28 of 2010 before the District Land and Housing Tribunal of Lindi the appellant sued the Respondent claiming ownership of Plot No.111, Block "DD" situated at Mtanda area, Lindi Municipality. That the Respondent trespassed into the suit plot, and built a residential house therein. Hence he prayed for the demolition of whatever structure built by the Respondent on the suit plot, and the Respondent to be ordered to pay Tshs.10,000,000/= as general damages.

The brief background of the dispute is that the appellant was allocated the suit land by relevant authority in 1994 vide certificate of title

No.284025/76 [Exhibit P1]. For the reason known to himself, the suit plot was left undeveloped. In 2001 the same suit plot was allocated to Saidi Athuman Lihame [DW.2] by the Lindi town Council vide letter of Offer, dated 27/7/2004 [Exhibit D1]. After being allocated the said Saidi Athuman Lihame [DW.2] who was not made party to the case but appeared as witness, disposed by way of sale, the suit plot to the Respondent's son vide a deed of transfer dated 7/8/2006.

When the appellant visited the suit plot in January, 2010 he discovered that the same was in occupation by the Respondent who built a residential house thereon. He therefore filed the suit before the trial tribunal claiming ownership of the suit plot. However the trial tribunal held in favour of the Respondent, hence this appeal.

Before going further into the merits of this appeal, I have suo motu, discovered that, there was non-joinder of parties before the trial tribunal. The pleadings and the record before the trial tribunal and in this appeal indicate the name of the defendant as Khadija Jamaldini, and in her defence before the trial tribunal she testified that she bought the plot in dispute from Saidi Athumani Lihame. To prove the same she tendered before the trial Tribunal a number of documents including a deed of gift, [Exhibit D2] dated 20/9/2005, and Land form 35 Transfer of Right of Occupancy [Exhibit D3] dated 7/8/2006. However, all those documents show that the suit plot was transferred by the said Athumani Lihame to Abdul Frank Magali, and not Khadija Jamaldini. For easy reference exhibit D2 deed of Gift, partly reads:-

“... Leo tarehe 20/9/2005 mimi Saidi Athumani Lihame..... nikiwa na akili zangu timamu na kwa hiari yangu mwenyewe ninamkabidhi Banda langu lililopo kwenye kiwanja tajwa hapo juu....

Banda hilo ninamkabidhi Ndugu Abdul Frank Magali... Banda hilo ni mali yake halali Ndugu Abdul Frank Magali kama hati ya kiapo inavyoonyesha....”

Similarly exhibit D3 Deed of Transfer of Right of Occupancy, partly reads:-

“In consideration of the sum of Tshs.100,000/= paid to me by Khadija Jamaldin Musa, a mother of Abdul Frank Magali ... I Saidi Lihame... do hereby transfer to the said Abdul Frank Magali the unexpired term of the Right of Occupancy granted in respect of the property above mentioned.”

Therefore for the conclusive determination of the dispute between the parties, it was important, for the name of Abdul Frank Magali to appear in the pleadings as one of the necessary party of the case, because the defendant [Respondent] is only the mother of the transferee of the suit plot. The decree of the court could conclusively be enforced if the pleadings, will join Abdul Frank Magali as one of the necessary defendant.

Further, the record shows that, the alleged suit plot, was transferred to Abdul Frank Magali by Saidi Athuman Lihame, as quoted herein. The Respondent, herein told the trial court that, it is Saidi Athumani Lihame who sold to them the suit plot, and in additional to the exhibits partly quoted herein, she tendered before the trial tribunal a letter of Offer of the Right of Occupancy [Exhibit D1] which shows that Saidi Athumani Lihame was

allocated the suit plot in 2004. However Saidi Lihame appeared as a witness and was not made one of the defendant in this case. It was important for him to be joined because he was the seller of the suit plot, and the letter of offer of Right of Occupancy tendered by the Respondent was in his name. Even in the course of writing his judgment the trial chairman framed the issue which touched the Said Athuman Lihame, and proceeded to resolve it before joining the alleged Saidi Lihame, as a defendant, so as for him to make his defence as to whether he was lawfully allocated the suit plot before selling it to the son of the Respondent.

At page 4 of the trial chairman judgment the Chairman partly stated:-

“... Now the next question is whether the allocation of the suit plot to SAIDI LIHAME in 2004 was lawful done. I find that the answer to this question to be very simple to the effect that the same was unlawful done.”

The above issue was resolved without affording the said Saidi Lihame, a right to be heard. And he could rightly exercise that right if he could have been joined as one of the necessary defendant in the case. Furthermore in order for such decree to be enforced even against the said, Saidi Lihame, he ought to have be joined as a defendant.


In the case of *Juma B. Kadala vs. Laurent Minkande [1983] TLR 103*, Sisy, J [as he then was] had this to say:-

“in suit for recovery fo Land sold to a third party the buyer should be joined with the seller as a necessary party defendant, non-joinder will be fatal to the proceedings.”

In the above case, the court quashed the judgment and decree of the trial court, and ordered a re-trial. Similarly in the instant case, failure, to join Abdul Frank Magali [transferee], and Saidi Athumani Lihame, was fatal to the proceedings. In the event I quash the judgment and set aside the decree passed by the trial Tribunal. All proceedings of the District Tribunal are declared null and void.

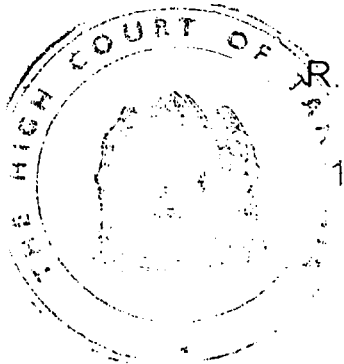
I direct that this matter will now be remitted back to the District Land and Housing Tribunal of Lindi with direction that all interested parties as shown herein must be joined as parties to a case and the case to proceed afresh according to law before another chairman. I make no orders as to costs. To the above extent the appeal is allowed.




  
R.M. Kibella,  
Judge  
13/9/2013

Order: Judgment delivered in chambers today 13<sup>th</sup> September, 2013 in the presence of both parties.

Right of Appeal fully explained.



  
R.M. Kibella,  
Judge  
13/9/2013