

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SONGEA

LAND CASE APPEAL NO.54 OF 2013

**(Originating From the District Land and Housing Tribunal for
Mbinga in Land Application No. 11 of 2011)**

EDMUND NDUNGURU.....APPELLANT

VERSUS

JANUARY G. NINDI.....RESPONDENT

JUDGMENT

1st – 22nd/04/2014

KWARIKO, J.

The Appellant unsuccessfully sued the Respondent at the District Land and Housing Tribunal for Mbinga over a dispute relating to a house

on **Plot No. 297 Block C** situated in Mbinga town. Dissatisfied by that decision, the appellant has come to this court by way of this appeal.

In the petition of appeal, through Mr. Ndunguru learned advocate, the appellant has advanced two grounds of appeal, which are;

1. ***That**, the tribunal erred in law and fact to hold that the disputed land (sic) belongs to the respondent above without evidence to support the same.*

2. ***That**, the tribunal erred in law and fact to depart from the opinion of the gentlemen assessors without reason of its departure.*

At the hearing of this appeal, the Appellant was represented by Mr. Ndunguru, learned Advocate while the Respondent appeared in person. However, before I go into the merit of this appeal, I find it appropriate to recapitulate the facts of the case which led to this appeal as follows:

At the District Land and Housing Tribunal, the appellant alleged to have bought the disputed premises from his younger brother one Bruno

Ndunguru on 5/5/2000. However, the transfer process of the title was not completed, but the seller successfully asked the appellant to continue occupying the house in dispute, in which he (the seller) leased the said house to someone else. Unfortunately, in 2003, the seller committed suicide, hereinafter to be referred to as the deceased; as a result, the deceased's family was left in financial difficulties where the appellant permitted the deceased's wife to collect and take the rent from that house in order to take care of her family. According to the appellant, the problem started in 2010 when the wife of the deceased came up and claimed that, the said tenant had bought the house in dispute from her deceased husband.

On the other hand, the respondent alleged to have bought the disputed premises from the deceased on 16/10/2000 for Tshs. 16,000,000/= in which the sale agreement was done at the Ward Office where the appellant, the deceased seller and his wife signed therein as witnesses. However, the respondent alleged that, he bought the disputed premises which had tenants who used to pay rent to him, but when he wanted to get the residence permit (leseni ya makazi) from the Appellant, he was not co-operative, as a result, he took the deceased's wife and went to the court where swore an affidavit to

indicate that, her deceased husband indeed sold the disputed premises to the respondent.

In support of the appeal Mr. Ndunguru learned Advocate expounded in respect of the first ground of appeal, that there is no sufficient evidence to prove that, the disputed premises belongs to the respondent, since all agreements in respect of the sale transaction ought to have been in writing as per **section 64 (1) (a) and (b) of the Land Act [Cap 113 R.E 2002]**. Mr. Ndunguru went further by submitting that, the District Land and Housing Tribunal decided the case at hand contrary to **section 100 (1) of the Evidence Act [Cap 6 R.E 2002]**.

Pertaining to the second ground of appeal, Mr. Ndunguru submitted that, it was wrong for the opinions of the assessors to be disregarded by the Chairperson of the tribunal without advancing reasons for doing so. In support of this contention, Mr. Ndunguru referred this court to the case of **USI ATHUMAN MATU V. R [1988] T.L.R 78**. Having said so, Mr. Ndunguru prayed the appeal to be allowed with costs.

In reply to the foregoing, the respondent firstly submitted by insisting that, he bought the disputed premises from one the deceased

in 2000, where there are documents to support the sale. He went further by submitting that, the District Land and Housing Tribunal visited the locus in quo, where even the seller's wife was present to verify the boundaries of the disputed premises. Moreover, the respondent submitted that, the appellant came up to claim the disputed premises after the death of the seller whereas he had kept quiet during his lifetime.

In relation to the second ground of appeal, the respondent submitted that, the Chairperson gave reasons for his departure from the opinions of the assessors.

In his rejoinder, Mr. Ndunguru insisted by submitting that it is not true that the respondent tendered the documents pertaining to the sale of the disputed premises.

On my side, after going through the entire submissions of this appeal and the entire court record of the case at hand, I find one crucial issue which is needed to be determined. That issue is whether the appeal has merit.

Starting with the first ground of appeal which centres on the fact as to who is the lawfully owner of the disputed premises. From the

outset, upon my objective perusal of the entire court record and the submissions from both parties, I find that the trial Chairperson was correct to rule out that, the disputed premises belongs to the respondent, because of the following reasons **One;** there is a sale agreement revealing that, the deceased sold the disputed premises to the respondent on 16/10/2000, and the said sale agreement reveals that, the appellant and one Magdalena Ndunguru (the seller's wife) were among the witnesses of the said sale.

Two; I agree with the respondent that, apparently, the appellant waited until the seller died, then he took an advantage of that to claim that he bought the house in dispute from him while in real sense it was not true. The appellant did not even state the purchase price he paid the deceased; instead it was his witness **NONOSIUS KOMBA** (PW2) who came with the theory that the consideration for sale was on love and affection.

Three; had it been that, the appellant bought the disputed premises from the seller, obviously under normal circumstances I would not have expected the seller's wife to come up at this stage to support the respondent's position, even though by way of an affidavit which suggest that, the house in dispute was sold by her deceased husband to

the respondent. Naturally, she would have favoured the appellant, him being her brother- in- law. This shows that the respondent was the one who bought the house from her deceased husband.

Four; despite the fact that, the appellant alleged to have bought the disputed premises from the deceased at the first instance before the same was sold to the respondent, however the evidence on record reveals that, the said sale was not completed since there is no any transfer of title or sale agreement tendered to justify the said sale. For that reason, under those circumstances one cannot assume that the sale had already been executed. Instead, as stated above, the evidence from the court record suggests that, the respondent bought the house in dispute.

Five; I disagree with Mr. Ndunguru's submission that the District Land and Housing Tribunal decided the suit contrary to **section 100 (1) of the Evidence Act** (supra) because in the instant appeal, the court record reveals that, there is a sale agreement indicating that, the respondent bought the disputed premises where the appellant and the seller's wife were among the witnesses to that transaction. More so, it is

in evidence that, the said sale agreement was certified as a true copy of the original document in the District Court of Mbinga by a Resident

Magistrate. This document is also old as compared to the appellant's an uncertified photocopy residence permit dated 08/09/2010 about ten years from the date the respondent's sale agreement. This applies to the land rent receipt dated 07/09/2010. Thus, under those circumstances, I find no good reason to doubt the authenticity of the said sale agreement.

Six, if the appellant alleges that he learnt that the deceased had leased the premises to someone else whilst he had already bought the same, then why didn't he sue him or confront him anyhow? He did not provide any explanation to that. In the event, I find the first ground of appeal has no merit.

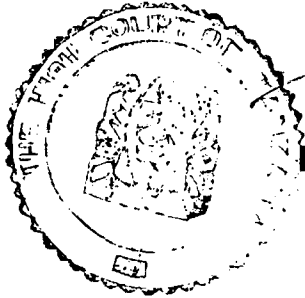
Coming to the second ground of appeal which relates to the fact that, the Chairperson of the trial tribunal departed from the opinion of the assessors without advancing reasons for doing so. In supporting this argument, Mr. Ndunguru referred this court the case of **USI ATHUMANI MATU V. R** (supra) which directs the opinions of the

assessors to be considered unless there are reasons warranting the chairman to depart from their opinions.

On my side I disagree with Mr. Ndunguru because of the following reasons: The original record reveals that, the trial Chairman departed from the opinions of the assessors with reasons. The Chairman was satisfied with the evidence by the respondent which he found heavier than that of the appellant that is why there was departure from the assessors who believed the appellant's evidence only on the presence of the residence permit. For that reason, I find that, **Rule 19 (1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations of 2003** (GN. No. 174 Published on 27/6/2003) which requires the Chairperson to hear the opinions of the assessors before delivering the judgment was properly complied by the trial Chairperson. And thus the rule of law enunciated in the cited case of **USI ATHUMAN MATU V. R** (supra) fits well in this present case. The second appeal is therefore non-meritorious and it is rejected.

From the above analysis and stated reasons, I find that, the trial tribunal correctly ruled out that, the disputed premises belongs to the

respondent. For that reason, I find this appeal to be without merit, and it is hereby dismissed. The respondent shall have his costs. It is so ordered.



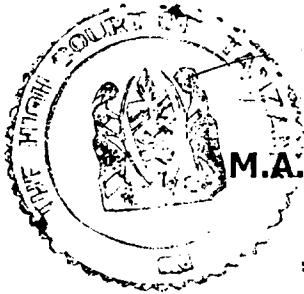
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M.A. KWARIKO

JUDGE

22/4/2014

Judgment delivered in court today in the presence of the parties and Mr, Ndunguru learned Advocate for the Appellant. Ms. Hobokela Court Clerk.



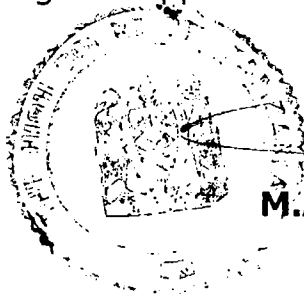
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M.A. KWARIKO

JUDGE

22/4/2014

Court: Right of Appeal fully explained.



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M.A. KWARIKO

JUDGE

22/4/2014