IN THE HIGH COURT OF TANZANIA

AT ARUSHA

LAND APPEAL NO. 12 OF 2011

(From the decision of the District Land and Housing Tribunal of Arusha District at Arusha in Land Application No. 86/2007)

THE REGISTERED TRUSTEES OF TANZANIA AGRICULTURE SOCIETY.....APPELLANT

VERSUS

AGNES MBOYA.....RESPONDENT

JUDGMENT

MASSENGI, J

The Appellant named above being aggrieved by the decision of Arusha District Land and Housing Tribunal dated 15th December, 2010 appeals before this court against the whole decision on the following grounds;

1. That the Honourable Chairperson erred in law and in fact by admitting and relying on a document termed agreement which was not genuine to justify judgment in favour of the respondent.

2. That the Honourable Chairperson erred in law and in fact by failure to consider evidence made by the Appellant and his witnesses to come up with a fair judgement.

3. That the Honourable Chairperson erred both in law and in fact by failure to realize that plot under dispute was given to the respondent on temporary basis.

Parties agreed to argue this appeal by way of written submissions whereby the Appellant was represented by M/S Kimale learned Advocate while the respondent acted through the service of Mr. Nyoni learned Advocate. This court ordered the Appellant to file written submissions by 16/7/2013, the respondent to file reply by 30/7/2013 and rejoinder if any to be filed by 6/8/2013. Both parties complied with the scheduled order.

The Appellant's counsel argued the first and the third ground of appeal jointly in which he submitted that from the evidence adduced before the trial tribunal, it is obvious that the respondent was never given plot No. 50 Block F by the Appellant on permanent basis. It was contended that plots allocated to persons for exhibition are normally given upon application either on the permanent or temporary basis. A person allocated with a plot on permanent basis is required to sign agreement and pay plot fees upon signing and within one year a permanent premise must be constructed. He further stated that the trial tribunals erred in admitting exhibit A1 and relied on it while the said document is not genuine on the face of it. No one will expect Appellant's secretary to sign witnessing signature of chairperson which was never endorsed in the agreement. She stated that these irregularities were ignored by the trial chairperson without any justification. He added that the said document (copy of agreement) bears two different dates as in the first page is dated 14th December, 2002 while in the second page is dated 14th June, 2005. She

insisted that the two pages of the agreement were not drawn by the Appellant otherwise the chairman would have signed before a copy was released to the respondent. It was stated that the agreement was created by the respondent as she failed to give explanation on how she obtained the unsigned agreement and why the same was not returned to the appellant's chairman through the secretary for signature. On top of that, between 2002 and 2005 the respondent never paid rental fees to the Appellant hence it means that there was no agreement signed between the parties. Referring to the definition of "an agreement" as provided by **Osborn's law dictionary;** it was submitted that the appellant did not offer the respondent to be a tenant on permanent basis. The respondent was permitted to place timber in the appellant land for a short period; hence prayed the first and the third ground of appeal be allowed.

Submitting on the second ground of appeal, he contended that RW1, the secretary of TASO gave clear evidence on how the organization runs its activities and it was the evidence of RW1 that the agreement tendered in the tribunal (exhibit A1) was not accompanied by receipt. He contended that annexture A2 which is a receipt for payment of rental fees does not support the fake agreement because the agreement was drawn in 2002 and signed in 2005 but payment receipt was issued in 2006. The two documents are not related and under normal procedure it would be impossible for the respondent to obtain agreement without payment of required fees for the first year of signing agreement. It is her argument that the evidence of RW1, RW2 and AW1 is strong and reliable but the tribunal never worked on it. She added that when evaluating evidence

tendered by both parties, it will be revealed that the respondent was never given plot in dispute on permanent basis as the respondent stayed for the whole period without construction of permanent structure and further the evidence of the respondent is full of uncertainty. Also the evidence of the respondent's witnesses is contradictory and referred this court to the evidence of AW1 and AW2. Therefore it was stated that the Chairman did not consider evidence made by the appellant nor did she evaluate evidence as a whole in order to justify decision made against the Appellant and prayed this court to re-evaluate the evidence afresh and allow the appeal with costs.

Opposing the appeal, responding to the first ground of appeal, he submitted that the fact that the tenancy agreement is not genuine would have affected the validity of the same only if the doctrine of non est factum would have been successfully proved by the Appellant in the trial tribunal. He contended that what transpired was seen to be a unilateral mistake by the Appellant and not the respondent hence it was the Appellant herself to prove the otherwise and referred this court to the case of **TANGANYIKA BUS SERVICE CO. LTD VS. THE NATIONAL BUS SERVICE LTD (KAMATA) 1986 TLR 204.** He contended that the testimony of AW3 who happened to work with the Appellant as Ground Manager from 25th October, 2006 to 23rd January, 2007 stated that despite of the defects seen but exhibit A1 was recognized as the Appellant's agreement and it was the same that gave the respondent as a tenant authority to own the plot. It was stated that the evidence on record proved that the agreement was the Appellant's and if there was any default it was the Appellant herself to be

blamed and not the respondent and the respondent on her side testified that she did not note the defects in the tenancy agreement as she does not understand English and she clearly pointed out that the agreement was from the Appellant and not her.

Responding to the second ground of appeal, he contended that the trial Chairman in his judgment concluded that the respondent was a tenant of the Appellant on permanent basis and not on temporal basis. He further stated that the trial chairman did not only use the tenancy agreement which is claimed to be not genuine but also the receipt as to payment of rent issued by the Appellant to the respondent. He further contended that on the other side, there was no evidence that was strongly adduced by the Appellant's witnesses that clearly showed the plot in dispute was allocated to the respondent on temporal basis. He therefore contended that based on the receipt adduced in respect of the land rent of four years paid, the Appellant is barred by the doctrine of estoppel from denying that the arrangement was not permanent and referred this court to **section 123 of the Evidence Act [Cap. 6 R.E 2002].** He stated that the fact that the respondent was supposed to construct a permanent structure within twelve (12) months from the date she was allocated the plot is an afterthought. He thus contended that there was no strong evidence adduced by the Appellant and his witnesses that could have affected the respondent's evidence. Basing on the above, he therefore prayed this appeal be dismissed and restore the decision and order of the trial Chairperson with costs.

In rejoinder, the Appellant's counsel reiterated the submission in chief and maintained her prayer for this appeal be allowed with costs.

After both parties having been filed their submissions and this court after going through the records of the lower tribunal, on 30th August, 2013 the court acting under the provisions of **section 42 of the Land Disputes Courts Act, [Cap. 216 R.E 2002]** ordered the District Land and Housing Tribunal to call and admit in evidence the permit with reference Kumb. Taso/NZ/SGM/27 from the parties. The District Land and Housing Tribunal complied with that order and the said document was admitted in evidence as exhibit R1.

In disposal of this suit, I will deal with the first and the second ground of appeal jointly as both boils on one issue whether there was sufficient evidence to justify decision in favour of the respondent. The trial tribunal in its findings concluded that the respondent was a permanent tenant of the respondent by virtue of the agreement (exhibit A1) and receipts (exhibits A2) which were tendered before the trial court. Starting with the purported agreement (exhibit A1) this court finds that the said agreement lack qualities of a legal contract (agreement) hence the trial tribunal was wrong to act on that document. I say so basing on the following reasons; firstly, that agreement is contradictory on itself because of the difference of dates. At the first page it is dated 14th December, 2002 while at the second page is dated 14th June, 2005 and there is no any explanation which was given before the trial tribunal about the said defect nor the trial Magistrate bothered to address on that respect. Secondly, the said agreement is not signed by the owner / landlord. As this case is

concerned and in accordance to the evidence of RW1 and RW2 (TASO Secretary and Trustee of TASO respectively); tenancy agreement is signed by Chairman of the Zone who signs on behalf of leaders and body of Trustees, the Secretary of TASO or Trustee board member but exhibit A1 is not signed by any of the above. Hence this court finds that the purported tenancy agreement (exhibit A1) which was tendered before the trial tribunal was vague and the same cannot be relied in evidence. Tenancy agreement is the only document which could have established the relationship between the Appellant and the respondent and give the respondent the status of a tenant. But since there is no such evidence in record, then the trial tribunal was wrong when found that the respondent was a permanent tenant of the Appellant.

For the sake of argument; even if this court could assume that exhibit A1 was a lawful tenancy agreement, still exhibit R1 establishes that the respondent was allowed to conduct business on the suit premises temporarily. I would like to quote part of the said document which reads that;

> ***"YAH: KIBALI CHA KUFANYA BIASHARA YA MBAO KWA MUDA KWENYE NA:TASO/F.50 AMBAYO UNAMILIKI, WAKATI UKIFANYA UTARATIBU WA KUJENGA KWENYE ENEO LA BIASHARA NDANI YA UWANJA WA THEMI.***
>
> *Kichwa cha habari hapo juu chahusika.*
>
> *Tafadhali rejea mazungumzo ya jana tarehe 26.10.2006 kwenye ofisi ya meneja wa uwanja, baada ya kutafakari*

kwa kina kuhusu ombi lako la kufanya biashara ya mbao kwenye eneo la biashara lililo ndani ya uwanja wa Themi kwa kipindi cha miezi mitatu (3) na wakati huo huo unaofuata ramani ukiendelea....."

As such even if this court assumes that there was tenancy agreement between the parties, exhibit R1 as referred above answer the third ground of appeal positively that the plot under dispute was given to the respondent on temporal basis.

Basing on the above findings, I therefore allow this appeal with costs and set aside the decision of the District Land and Housing Tribunal.

Order accordingly.

(sgd)

F.H. MASSENGI

JUDGE

10/08/2015

Judgment delivered in Court this 10th day of August, 2015 in the presence of M/s Kimale for appellant and M/s Kimale holding brief for advocate Deo Nyonyi.

(sgd)

F.H. MASSENGI

JUDGE

10/08/2015

I hereby certify this to be a true copy of the original.

DEPUTY REGISTRAR

ARUSHA

~~21/8/15~~

13/8/2015