

**IN THE HIGH COURT OF TANZANIA  
(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**LAND CASE APPEAL NO. 43 OF 2018**

(Appeal from District Land and Housing Tribunal for  
Manyoni in Land Application No. 15 of 2016)

**COSMAS LWAMBANO .....APPELLANT**

**VERSUS**

**EDWARD MSENGI .....RESPONDENT**

*16/7/2019 & 10/9/2019*

**JUDGMENT**

**MASAJU, J.**

The Appellant, Edward Msengi, successfully sued the Appellant, Cosmas Luambano, in the District Land and Housing Tribunal Tribunal for Manyoni for declaration that he was the lawful owner of the suitland measuring 25 acres of Land upon purchasing if from the Appellant in 1994. The Appellant, his agents or children were restrained from claiming ownership of the suitland or part of it and he was condemned to pay costs of the Application to Respondents. Aggrieved by the said decision, the Appellant has come to the Court by way of an appeal with a Memorandum of Appeal comprised of 8 grounds, although some of them were dropped when the appeal was heard in the Court. The said grounds essentially faults the trial Tribunal's decision in both law and facts with the prayers

that the appeal be allowed with costs and that the impugned decision of the trial Tribunal and the proceedings thereof be quashed accordingly.

The Respondent contests the appeal and he also filed the Reply to Memorandum of Appeal with a total of 8 grounds as well against the appeal. The Respondent essentially denies and disputes the grounds of appeal putting the Appellant to strict proof thereof as he prays the Court to dismiss the appeal with costs for want of merit and unnecessary inconvenience to him and the Court.

The appeal was heard in the Court on the 25<sup>th</sup> day of April, 2019. The learned counsels Mr. Erick Shauri and Ms. Senorina Thomas appeared for the Appellant. The Respondent was advocated for by Mr. Gilbert Kalanda the learned counsel. The said learned counsels of both parties argued for and against the appeal alongside their pleadings in the Memorandum of Appeal the Reply to Memorandum of Appeal. The Court is grateful to the learned counsels whose submissions for and against the appeal are readily available in the record of proceedings of the Court dated the 25<sup>th</sup> day of April, 2019.

That said, according for the evidence on record in the trial Tribunal, the Respondent allegedly bought the suit land from the Appellant for the consideration of TZS 700,000/= and that there was a Sale Agreement (Exhibit P1) to that effect. That, the sale Agreement transactions was eyewitnessed by his late son and his wife. The Respondent's wife Devota Sinya (PW2) testified that the she did not eyewitness the Sale Agreement transaction but handing over of the suitland. That, the suitland was

bought at the price of TZS 600,000/=. The alleged Sale Agreement (Exhibit P1) is about the purchase price of a house (3), Mwembeni between the parties for TZS 570,000/=. The alleged Sale Agreement was dated the 7<sup>th</sup> day of November, 1994. The said figure is also stated in the Respondent's Land Application in the trial Tribunal. By the 2<sup>nd</sup> day of October, 2017 when the Respondent testified in the trial Tribunal, he had allegedly been in undisturbed occupation of the said suitland for 23 years. That is to say, since 1994. The Respondent (PW1) and his witness Devota Sinya (PW2) testified that there was no witnesses from the local authorities. The Court observes that the Respondent and his witnesses never disclosed who reduced the purported Sale Agreement in writing.

On the other hand, the Appellant testified in the trial Tribunal that the entire suitland belonged to him and that it was 25 acres of land he owned by clearing it in 1972. That, in 1994 the Respondent asked him to use the suit land but he allowed him to use 3 ½ acres of land temporarily. That, the land was comprised of two houses and some fruit trees. The Appellant and his witness Theresia Cosmas (DW2) emphatically denied to have sold the suitland to the Respondent. His witness Samwel Remi Rengaji (DW3) the then Village Chairman of theirs testified, however that the Appellant had sold the Respondent 3 ½ acres of land and that there was a time when a dispute arose between the parties he informally reconciled them. That ¾ acres of land was added by the Appellant to the 3 ½ acres of land so much that the Respondent got 4 ½ acres of land in total. There was no dispute that the Respondent had buried his son and some close relatives on the suitland. The Appellant testified that such an

action did not entitle the Respondent legal ownership of the suitland, after all they were friends. That, the dispute between them arose in 2015 when the Respondent constructed a third house on the suitland. That, the Respondent sued him in the Ward Tribunal. That on appeal, the District Land and Housing Tribunal decided that their dispute should be resolved amicably hence the settlement in the village, but the Respondent sued him, once again, in the 2017 in the District Land and Housing Tribunal for Manyoni, hence this appeal.

When all is said and done, the Court is of the considered position that there is no evidence that the suit land was ever sold to the Respondent by the Appellant. This is so because even the purported Sale Agreement (Exhibit P1) is about sale of House not sale of Land. The purported Sale Agreement also does not mention the 25 acres of land but of house and the number of the house(s) if any, is not stated in the said Sale Agreement. In Land Law, if there was a sale of the land, the purported Sale Agreement could have stated for sure that it was land Sale Agreement since the house and any development is part of the land as it belongs to the land.

Secondly, the purported Sale Agreement of the house is also questionable because, in his pleadings in the Land Application in the trial Tribunal, the Respondent stated that the land was bought in 1994 at TZS 570,000/= price but in his testimony before the trial Tribunal, the very Respondent testified that he bought the land at TZS 700,000/= price. His wife (W2) testified that the land was bought at the price of TZS 600,000/=. Whilst the Respondent testified that the Sale Agreement transaction was

eyewitnessed by his late son and his wife Devota Sinya (PW2), the said wife of his denied to eyewitness the alleged land disposal transactions. There is no proof that there was ever Sale Agreement of the house/property on the suitland by the Appellant to the Respondent, for self contradictions and inconsistencies by the Respondent and his witnesses impacts negatively on the credibility of his case and the evidence thereof. The assessors in the trial tribunal opined that the parties should maintain respective ownership of the land in the suit land, that is to say, the Respondent to own 3 ½ or 4 ½ acres of land out of the 25 acres of land which remain to belong to the Appellant.

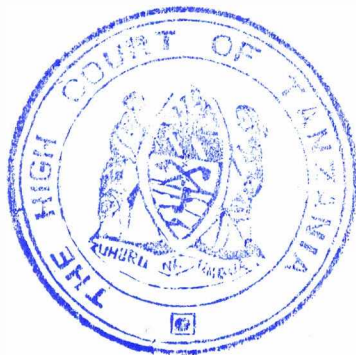
The Court is further of the considered position that since the Respondent did not tender the original of the purported Sale Agreement as Exhibit in the trial Tribunal, there was no proof of the alleged sale of the house on the suit land. This is because section 100 (1) the Evidence Act, [Cap 6] provides that when the terms of a contract or any other disposition of property have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which the secondary evidence is admissible under the provisions of the Act.

That being the case, the Respondent remains to be an invitee tenant on the suitland at the option of the Appellant. There mere fact that his sons and relatives had been buried there, other things being equal, cannot entitle the Respondent legal ownership of the suitland since their burial to

the land was not intended and cannot be proof of the legally binding land ownership, Sale Agreement or the consideration for the sale of the land.

The 25 acres of (the suitland) and the developments by the Appellant thereof shall remain the lawful property of the Appellant. In the event the Appellant decides to evict his friend, the Respondent, from the suitland, the said Respondent shall render vacant possession of the suitland to the Appellant accordingly.

That said, the meritorious appeal is hereby allowed with costs accordingly. The trial Tribunal's decision, decree and order, respectively, are hereby quashed and set aside. Unless otherwise agreed by the parties themselves, the Respondent shall render vacant possession of the entire suitland to the Appellant accordingly.



  
GEORGE M. MASAJU

**JUDGE**

18/9/2019