

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(Kigoma District Registry)

AT KIGOMA

(LAND DIVISION)

LAND APPEAL NO. 21 OF 2019

***(From the Decision of District Land and Housing Tribunal for
Kigoma at Kigoma in Land Case No. 58 of 2018)***

SAMWEL KABONGA MAULID APPELLANT

VERSUS

UFK NORTH WEST..... RESPONDENT

J U D G M E N T

Dated: 15/04/2020 & 18/05/2020

Before: A. MATUMA, J.

In the District Land and Housing Tribunal for Kigoma at Kigoma the respondent UFK NORTH WEST successfully sued the appellant Samwel Kabonga Maulid for recovery of Land Plot No. 101 Block MD Majengo at Kigoma Ujiji Municipality.

The brief facts of the matter is that the respondent a registered NGO alleged to have sent the appellant to trace a Land in which the respondent could start a training college for people who live on hard conditions (vulnerable people). At that time the conversation took place in USA between the founders of UFK Northwest and the appellant. The appellant on his return to Tanzania he managed to trace the plot in dispute and informed the respondent who sent him money for the purchase of the said land. The appellant bought it in his name and when he was asked why, he answered

that they would later on charge the title into the respondent but it ended the appellant claiming that the property in question is his lawful property relying on the purchase contract.

The trial court believed the respondent's evidence and adjudged against the appellant.

The appellant was aggrieved hence this appeal with four grounds of appeal.

At the hearing of this appeal Mr. Thomas Msasa Advocate represented the appellant and Mr. Method R.G. Kabuguzi learned senior advocate represented the respondent.

In addressing on the first ground of appeal, Mr. Thomas Msasa learned advocate faulted the trial tribunal that it did not evaluate well the evidence of the appellant to the effect that he was the lawful owner of the dispute plot because;

- (i) He had tendered the purchase agreement to that effect; and that*
- (ii) The claimed plot by the respondent was plot No. 10 Block MD which is quite different from that of the appellant. Plot No. 101 Block "O" extension Majengo.*

Mr. Kabuguzi learned advocate counter – argued the first ground of appeal in that the purported purchase contract exh. D1 was not read after its admission as required by Law. As such the assessors who are part of the trial tribunal were not accorded opportunity to understand its contents.

The learned senior advocate was of the further arguments that even in the absence of the documentary evidence as such, the respondent had impeccable evidence at the trial tribunal to the effect that, the money for the

purchase of the dispute property was sent to the appellant by the respondent.

Mr. Thomas Msasa learned advocate on the contention that the purchase document exhibit D1 was not read after its admission, he contended that the same did not miscarriage any justice to either party because it was attached to the pleadings and therefore each party was aware of it. He was of the further view that unlike in Criminal Cases, there is no rule of Law or practice that a documentary exhibit must be read after its admission in evidence in a Civil trial.

On my party, I should at the outset state that it has been clearly settled that whenever a documentary exhibit is tendered in evidence, the same must be read loud in the presence of the parties to accord them opportunity to hear its contents for their guard in defence against the document. This is both in Civil and Criminal trials.

In the case of Tanzania Electrical, Mechanical and Electronics Services Agency Versus MS Matobera Investment Ltd, Land Appeal No. 14 of 2019 (HC) at Kigoma I had time to deal with the problem of a similar nature. In it while rejecting to act on the documentary exhibits which were not read after its admission in evidence, I held;

"They were not read after its admission in evidence. Their contents were thus not communicated to each party to have them grasp fully the evidence of each party for their guard to counter each and thorough cross examine in it. They were thus with no evidential value and I accordingly expunge them from the evidence on record."

It is therefore not on a question of Civil trial against Criminal trial. The principle that the contents of a documentary exhibit must be read out to avail the opponent party its contents cuts across all trials be it Civil or Criminal as the purpose is to enable the opponent party to prepare a focused defence against the document having been kept posted with the details of the document. Seen; **John Mghandi @ Ndovo v. Republic, Criminal Appeal No. 352/2018.**

Mr. Thomas Msasa argued that even though the contents of the document was well known to the respondent because prior to the trial, the same was annexed to the pleadings. With due respect to the learned advocate; annexures to pleadings are not evidence worth to be considered for the decision as it was held in the case of **Abdalla Abass Najim v. Amini Ahmed Ali (2006) TLR 55** that;

"Annexures to the plaint are not exhibits in evidence; they cannot be relied upon as evidence and cannot be the basis of the decision".

I would therefore agree with Mr. Kabuguzi learned advocate that exhibit D1 has no evidential value for it was not read after its production as exhibit. The gentle assessors should have been also made aware of its contents for their considered opinion at the end of the trial.

It is my further view and as rightly submitted by advocate Kabuguzi that even in the absence of documentary evidence, the evidence of the respondent was heavier than that of the appellant on the ownership of the dispute plot. The evidence of the respondent would also remain heavier on the ownership of the dispute plot even if exhibit ~~D1~~ would have not been expunged out of record.

PW1 Mr. Martin Thobias Tangale gave a clear evidence that it was the respondent who gave money to the appellant to buy the dispute plot for the intended project but the appellant bought it in his name deceiving them that it was due to problems of registration. After the commencement of the programme the appellant was a mere employee of the respondent. That was as well stated by PW2 Similiga Mnyonge and PW3 Odavia Onyango who stated that the appellant was their fellow employee of the respondent and were paid salaries by the respondent.

It is further in evidence that at one time the appellant quitted the job and went to Morogoro for many months as he got another job. He only came back and started confrontations with the respondent when its founders (wazungu) came for the graduation of their students at the school.

I also find out that the respondent's case was further corroborated by the appellant himself when he categorically admitted in evidence that he was sent USD 8000 by the respondent. He purported to defend that the USD 8000 sent to him by the respondent was his money he raised in USA. I don't purchase this argument and rule out that it is a blatant lies.

If at all that was his money; where is evidence that he had kept them or handled them to the respondent and for what reason. Secondly, if at all the USD 8000 was his money he personally raised in USA why didn't he bring any of his friends who participated in the alleged fund raising to support his allegations. That witness would help us to know the purpose for the fund raising by the appellant if at all it was there.

I am of a firm view that the appellant is trying to use an opportunity of trust which was vested in him by the respondent to con ner. He is a conman who

tries to tarnish the image of good Tanzanians to foreigners like the respondent who have decided to invest in the country for the better of our poor generations.

I therefore rule out that even if the purchase contract exhibit D1 would have been properly in evidence, the same would serve no purpose to validate the appellant as a lawful owner of the dispute plot. I rest the first ground by declaring that the trial tribunal properly adjudged for the respondent that she is the owner of the dispute plot. Issues of difference in plot numbers are mere typing errors and even if it would have to be considered seriously, still it could be cured by the fact that the real property in dispute was well known by both parties to be a tailoring school at Plot No. 101 Block at Extension Majengo.

In addressing the 1st ground herein, I have as well covered the second ground of appeal in which the appellant was lamenting for the trial tribunal to have not considered the sale agreement. The trial tribunal considered it but it found that the respondent accounted well against such contract. I agree with such finding.

In the third ground of appeal the appellant was challenging the documentary exhibits by the respondent exhibit P1, B and C as they were photocopies. Mr. Kabuguzi had in fact conceded in his submission that those exhibits were not dealt in accordance to the law. Those documents are extracts from email conversation between the appellant and the respondent. They gives details on how the dispute plot was bought. In it the appellant seems to call the respondent to be calm as he has bought the plot in his name for temporary because at that time the respondent had yet any registration in Tanzania and that when the respondent shall be formerly ~~registered~~ in Tanzania, he

will change the title to the respondent's name. just to quote part of that email conversation, the appellant in cooling the respondent down.

"The house is in my name for temporary. I will change when we register the ministry.

Don't worry for that brother".

These email conversation gives a clear picture that the dispute plot was not the property of the appellant but of the respondent. The appellant misused the religious trust which the respondent vested in him to con when he used to cool her down religiously;

" Hellow guys how are you doing.

Praise God everything went well.

I am just waiting for little things to finish the process. Everything was good. I was covered by the blood of Jesus. Thanks God".

But as herein above stated these extracts were not properly tendered in evidence and upon their admissibility, they were as well not read just like exhibit D1. Had they been properly tendered in evidence they would be of further corroboration to the true status of the dispute.

Mr. Kabuguzi conceded to the defect as herein above sated.

I would therefore allow this ground and expunge those exhibits from the record. But the expunge of these documents does not in any way weaken the respondent's case for the earlier on observation in ground one of the appeal. This is because those extracts were only corroborative evidence to the oral evidence which is equally admissible under section 62 (1) of the Evidence Act, Cap. 6 R.E 2002 and as per the case of **Loitare Medukenya versus Anna Navaya, Civil Appeal No. 7 of 1998 (CAT)**.

Mr. Thomas Msasa learned advocate for the appellant abandoned the fourth ground of appeal. I uphold the decision of the trial tribunal that the respondent is the lawful owner of the dispute plot.

I therefore, to the extent herein above stated, dismiss this appeal with costs.

It is so ordered.



A. Matuma,

Judge,

18/05/2020