

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM

LAND APPEAL NO. 21 OF 2018

*(Arising from Land Application No. 49 of 2015 District Land and Housing
Tribunal for Coast Region at Kibaha)*

AYUBU HAJI MNZAVA..... APPELLANT

VERSUS

NUHU MATAUNA..... RESPONDENT

JUDGMENT

Date of Last Order: 5/12/2019

Date of Judgment: 29/5/2020

S.M. KULITA, J.

This appeal arises from the decision of the District Land and Housing Tribunal for Coast Region at Kibaha in the Land Application No. 49 of 2018. In that case the Appellant, AYUBU HAJI MNZAVA sued the respondent, NUHU MATAUNA for trespassing his piece of land sized 2.5 acres located at Udindivu area, Mapinga Village in Bagamoyo District.

The appellant alleged that he had purchased the said premise from one Hassan Mtokwete in 2007. On the other hand the Respondent alleged that

Submitting on the 1st and 2nd grounds of appeal collectively that the trial tribunal erred in law by delivering judgment on favor of the respondent basing on the sale agreement which was not annexed/attached in the Written Statement of Defense (WSD) nor in a list of additional document the appellant's Counsel Mr. Mashaka Edgar Mfala, Advocate alleged that the appellant was not served with that said document. He stated that during trial at the tribunal respondent tendered the contract of sale (Exh. D1) with a rubber stamp of the Tanzania Revenue Authority (TRA) on the 2nd page while the sheet he had annexed in the WSD has no that page. Mr. Mashaka Edgar Mfala submitted that the said document being stamped is a legal requirement as per the Stamp Duty Act [Cap 189 RE 2002] but the fact that it was not annexed in the WSD it was wrong for the tribunal to receive and use the said contract as exhibit for the Defendant's/Respondent's case. The Counsel cited Regulation 10(3)(a) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, 2002 stating that before admitting the document the tribunal has to make sure that the same was served to the other party to the case for inspection.

Arguing the 3rd ground of Appeal Mr. Mashaka Edgar Mfala submitted that the trial Chairman in the tribunal decided the matter basing on the presumed facts/information. The counsel further submitted that apart from the missing of the 2nd page and the Village Fees Receipt in the WSD the contract tendered to court has been inserted with some words which are not there in the copy that the Respondent has attached in the WSD. He said that on page 13 of the judgment the Chairman seems to assume as to

sale agreement. Secondly, the Appellant had no witness who testified beyond reasonable doubt that the land is his (appellant's) property.

The Respondent further stated that the decision of the DLHT is well founded in fact and in law. He added that the appeal and submission of the appellant are frivolous, vexatious and abuse of the court process as the evidence adduced by the Respondent was weighted against the Appellant whose evidence was insufficient and inadequate to prove his allegation against the Respondent.

The Respondent concluded his submission by praying the appeal to be dismissed with costs for devoid of merits.

Upon making a careful consideration of the evidence on records and the grounds of appeal I am of the view that the issue before the trial court which is also the matter in question in this appeal is "***who is the lawful owner of the suit land?***". Another issue to be determined as far as the grounds of appeal are concerned is "***whether the sale agreement alleged to have been entered between the Respondent and his pretended seller, Omary Denge was not annexed in the pleadings of the tribunal and hence the Appellant was not served with the copy***".

The two issues mentioned above can resolve all grounds of appeal collectively as follows;

The Appellant's Counsel alleged that the above mentioned contract of sale (Exh. D1) was admitted by the tribunal and used to make decision against the appellant while the same was not annexed in the pleading, Written

his pleading and the same be served together with the said pleading to the opponent party. **Therefore before admitting the document the tribunal has to make sure that the same was served to the other party to the case for inspection.** The fact that the *5% village levy receipt* which is part of Exhibit P1 was not attached in the WSD it was wrong for the Chairperson for the DLHT to admit and receive it as exhibit. The same applied to the original Contract of Sale (Exh. D1) whose contents consists some additional writings which are not found in annexure "A", the pretended true copy of Exh. D1 which was annexed in the WSD and supplied to the Plaintiff/Appellant.

Apart from the defects noted in the documents annexed in the WSD I also noticed from the records that the appellant never called as a witness a person namely Hassan Mtokwete whom he alleges to have sold the farm to him on the 14/10/2017. The same applied to the Respondent who alleged to have purchased the same premise from Omary Denge on the 23/6/1998. The reason behind according to the Appellant is that where about of the seller Hassan Mtokwete was unknown while the Respondent alleged in his evidence that the seller, Omary Denge is no longer alive. He had passed away sometime in 2009 or 2010. In my view those reasons make sense as to why the said persons were not called to testify before the tribunal.

Failure to get the evidence from the alleged sellers made me to tune my mind on the other evidence that had been adduced at the tribunal in respect of the same subject matter. I have noted from the records that the appellant alleged that he has been using the suit premise for cultivation for

(MAMA ANNA), Civil Appeal No. 118 of 2014, CAT (unreported) it was held;

"In Civil cases, the burden of proof lies on the party who alleges anything in his favor. It is common knowledge that in civil proceedings the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities."

To sum up I find the Plaintiff's (Appellant's) case at the District Land and Housing Tribunal, Kibaha was proved on the balance of probability contrary to the view of the trial chairman. In upshot the appeal is allowed. The appellant is declared the righteous owner of the suit premise. Respondent to bear the costs.



S.M. KULITA

JUDGE

29/05/2020