

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. LAND CASE APPEAL NO. 6 OF 2019

(From the Decision of the District Land and Housing Tribunal of Mtwara District at Mtwara in Land Case Appeal No. 162 of 2018 and Original Ward Tribunal of Lichungu Ward in Application No. 1 of 2018)

SALUM MOHAMED NEY.....APPELLANT

VERSUS

HAMIS YUSUPH MNELAMWANA..... RESPONDENT

26 May & 9 June, 2020

JUDGMENT

DYANSOBERA, J.:

This appeal arises from the decision of the District Land and Housing Tribunal for Mtwara District at Mtwara given on 30th April, 2019 dismissing the appellant's appeal and confirming the decision of the Luchingu Ward Tribunal.

Briefly, the historical back ground of the matter is this. The respondent Hamis Yusuph Mnelamwana is the administrator of the estate of the late Emilius Mnelamwana who died intestate on 24th November, 2005. The respondent was appointed on 13th March, 2018 in Probate and Administration Cause No. 76 of 2018. On 25th April, 2018 the respondent filed land case No. 1 of 2018 before Luchingu Ward Tribunal. The suit was in respect of a house, the property of the deceased which was being occupied by the appellant one Salum Mohamed Ney. The respondent sought to recover the house which was among the estate of his late father. In his testimony before the trial Tribunal, the respondent stated that the appellant was occupying the said house illegally and he, the respondent, wanted to know how he came by the house. He testified, and his testimony was supported by Agnes Bakari (PW 3) that after the deceased met his demise, Agnes was appointed by family members to upkeep the house, the obligation she under took from 2005 up to 2010 when the appellant chased her from the premises. PW 2 one Georgina Salum told the trial Tribunal that the deceased Emilius was her in law and the disputed premises belonged to him but that she was surprised to hear that the premises were being occupied by the appellant.

In defending this matter, the appellant told the trial Tribunal that bought the house and coconut trees from Elias in 2005 at a purchase price of Tshs. 90, 000/= and managed to pay Tshs. 80, 000/ to the deceased and that the remainder, that is Tshs. 30,000/= was paid to his relative one Regina Bakari. According to him, the sale transaction was reduced in writing and witnessed by the then Village Executive Officer, one Rashid Lihome (DW 2). It was the evidence of DW 2 that the appellant bought the house from the deceased in 2014 and he witnessed the sale. DW 3 one Salum said that what he knew was that the Ney is the lawful buyer of the house of Emiliasi and he attended the sale transaction when it was being conducted. The witness did not elaborate.

In its decision, the Luchingu Ward Tribunal was satisfied that the respondent had established his case and the appellant was lying and produced a doctored sale agreement. The Tribunal, therefore, found for the respondent.

On the first appeal to the District Land and Housing Tribunal at Mtwara Land Appeal No. 162 of 2018, the appellant lost, hence this second appeal. In his petition of appeal filed on 29th May, 2019, the appellant's complaints are to the following effect.

First, failure to analyse the evidence. Second, that the respondent is not an administrator of the estate of Emilius Mnelamwana. Third and fourth, that the matter was filed beyond the time limitation period as the appellant got the suit land in 2004 but that the respondent lodged his claim in 2018. And fifth, that the decision was based on technicalities rather than on merits.

Owing to the pandemic disease of COVID 19, to minimize the spread of the said disease and avoid delay in resolving parties' disputes, this court, on 21st April, 2020 ordered the hearing of the appeal to be conducted in writing and parties were required to file their respective written submissions in accordance with the set time frame. The time frame was complied with as directed by this court and parties filed their written submissions in support and in opposition of the appeal.

Having duly considered the records of lower Tribunals, the petition of appeal and the submissions by the parties, I am in no doubt that this appeal is devoid of any legal merit. The following are the reasons.

First, the appellant's argument that he bought the land in dispute from the late Elias Mnelamwana lacked probative value. According to the appellant, he bought both the house and coconut trees in 2005 and the

sale transaction was reduced in writing by and before Rashid Lihame, the then Village Executive Chairman. However, the said Lihame was clear in his evidence that the suit land was bought in 2004. The respondent maintained that the said Elias Mnelamwana died in 1989. In such circumstances, the evidence of the appellant was inconsistent with that of his witness Rashid Lihame. Besides, it is inconceivable that the appellant could have bought the items in either 2004 or in 2005 from the person who is said to have died way back in 1989. Second, the evidence that the appellant bought the house from the deceased was not supported. Agnes Bakari, the witness the respondent called, was clear that she was appointed by the clan to up keep the house but and started living in the house from 2006 but three years later, that is in 2009, the appellant with threats, chased her away after he required her to pay rent or leave the house on account that he, the appellant, had bought the house in question. She testified that she left the premises in April, 2010. Indeed, the appellant failed to call any witness on part of the seller to prove that he really bought the premises. The said Agnes insisted that she had no information that the premises were sold. Georgina Salum was clear that the deceased Emilias was his/ her in law and owner of the disputed

premises. The witness said that he /she was surprised to hear that the premises were being occupied by the appellant. Although Salum testified that he knew that the appellant bought the house and attended at the time of the sale transaction, the witness did not elaborate when, what was the purchase price and the role he played at his presence. As the evidence stands, the argument that the appellant bought the house was not proved to the required standard.

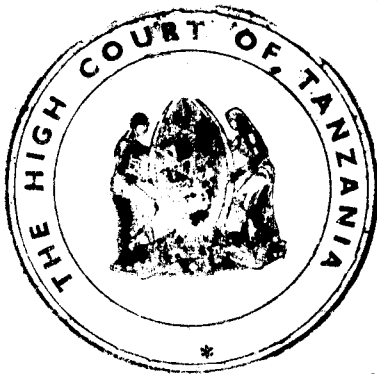
Third, there was a concurrent finding of fact that the appellant failed to justify his legal ownership. The evidence and the grounds of appeal do not provide any material upon which this court can differ from the said concurrent finding.


Fourth, it was established that the respondent was the administrator of the deceased's estate. The premises in dispute were one of the estates of the deceased. It cannot be gain said that the recovery of the disputed premises was in the respondent's endeavour to marshal the assets of the deceased which is one of the duties of the administrator as provided for by the law. The respondent was exercising his legal duty in his endeavour to recover the suit premises. Both lower Tribunals were satisfied that the respondent has established his case. There is no material upon which this

court can be justified in interfering with the concurrent factual finding of the lower Tribunals.

For the stated reasons, I find this appeal want of any merit and hereby dismiss it with costs to the respondent.

Order accordingly.

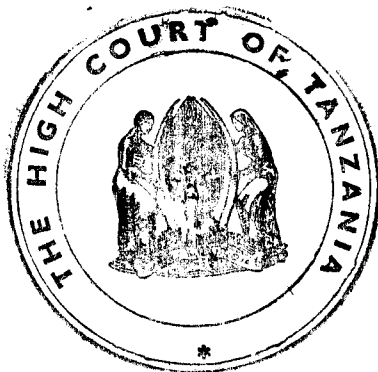




W. P. Dyansobera,

JUDGE

9.6.2020

Dated and delivered at Mtwara this 9th day of June, 2020 in the presence of the appellant and respondent.




W. P. Dyansobera,

JUDGE