

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL NO. 32 OF 2020

(Arising from the Judgment and decree dated 8/5/2020 in Land Application No. 265 of 2014 of the District Land and Housing Tribunal for Mwanza at Mwanza)

NICOLAUS MASUBIAPPELLANT

VERSUS

BULYEHU LUHOYO MASELERESPONDENT

REASONS FOR THE JUDGMENT

26 & 30/10/2020

RUMANYIKA, J.:

When the appeal, with respect to judgment and decree dated 8/5/2020 of the District Land and Housing Tribunal, Mwanza (the DLHT) was called on 26/10/2020 for hearing and the parties were heard, in the end Mr. Steven Makwega learned counsel for Bulyehu Luhoyo Masele conceded. Ms. Janeth Eden, advocate appeared for N.M. (the appellant).

On that basis I nullified the lower tribunals' proceedings and set aside the decision and orders of the DLHT as such I allowed the appeal. I reserved the reasons, here they are;

The three (3) grounds of appeal revolve around points as hereunder:-

- 1) That the DLHT erred in law and fact in holding that with respect to the disputed land Pw2 and Pw3 had a better title to pass onto the respondent.
- 2) That the DLHT improperly analyzed and evaluated the evidence on record.
- 3) That the DLHT erred in law and fact not holding that from its inception the suit was incurably bad for non joinder of the sellers (Pw2 and Pw3) as necessary party defendants.

Ms. Janeth leaned counsel in a nutshell she submitted that not only the said purported sellers (Pw2 and Pw3) were, contrary to law not joined and sued, but also they were without evidence deemed true owners of the disputed land (case of **NHC V. Tanzania Shoe Company and others** (1995) TLR 25) that if anything, it was sufficiently proved when exactly the father had given the land to Pw2 and Pw3, in 2002 or 2003 years of lord? The sons therefore had no title to pass. The learned counsel further contended.

In reply, Mr. Steven Makwega learned counsel submitted that with regard to the disputed land Pw2 and Pw3 may have had it or may have no title to pass to the purchaser but contrary to the legal principle they were not joined and issued as necessary party. We agree that non joinder of Pw2 and Pw3 rendered the proceedings fatal therefore liable to be nullified. We shall ask for no costs. Mr. Makwega leaned counsel rounded up his point.

With concession of the respondent's counsel the central issue is no longer whether only for the reason of misjoinder or non joinder of Pw2 and

Pw3 the proceedings of the two tribunals bellow were incurably fatal and liable to be nullified. Whereas I am mindful of the provisions of Order 1 Rule 2 of the Civil Procedure Code Cap 33 RE. 2019 that a mere non joinder or as the case may be misjoinder of the parties defeats no case, in a case of sales, especially where, in the mind of the court like it was the case here the bona fide purchaser was likely to be prejudiced by non joinder of the parties, the omission renders the proceedings incurably fatal (case of **Juma Kadele V. Laurent M. Mnkande** (1983) TLR 103.

Moreover, and without prejudice to the foregoing, the purported vendors Pw2 and Pw3 may have had been given the land by father fine, but now that the latter chose to, and for whatever reasons he took the land back, it was incumbent upon the sons together with the purchaser to sue the giver for recovery of the land however bona fide the purchaser might be but this was not done. Either way, but without prejudice to the foregoing, I would increasingly hold that whereas every person of sound mind had capacity to sue or being sued, still it sounded strange, unpleasant and unpopular therefore against African taboos and tradition parents and siblings suing each other in courts of law.

It is for the 1st two above stated reasons that I allowed the appeal on 26/10/2020.

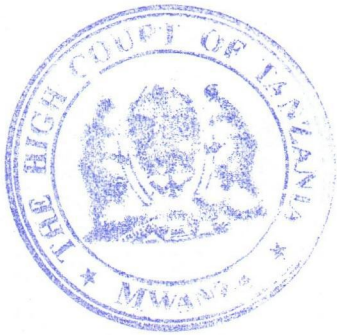


S. M. RUMANYIKA

JUDGE

30/10/2020

The reasons given under my hand and seal of the court in chambers this 30/10/2020 in the presence of Miss. Janeth Eden and Makwega learned counsel respectively.



F. H. MAHIMBALI
DEPUTY REGISTRAR
30/10/2020