

IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

MISC. LAND CASE APPEAL NO. 38 OF 2019

(Arising from the decision of the District Land and Housing Tribunal for SINGIDA in Land Appeal No. 95 of 2017, which originated from Land Application No. 4 of 2017 at Maghojoa Ward Tribunal)

ABDALLAH IRUNDE APPELLANT

VERSUS

MSUNGA NTUNDA 1ST RESPONDENT

ABEID MSUNGA 2ND RESPONDENT

JUDGEMENT

20th July, 2020 & 5th March, 2021

SIYANI, J:

On 9th May, 2019, Abdallah Irunde, the appellant herein filed a Memorandum of Appeal against the decision of the District Land and Housing Tribunal for Singida, where he raised five (5) grounds of appeal. Subject to an order of this court dated 31st April, 2020, the appellant filed an amended Memorandum of Appeal, this time raising two grounds as follows:

- 1. The District Land and Housing Tribunal erred to evaluate the evidence on record, that the 2nd respondent followed all the procedures of sale of the disputed land to the appellant.*
- 2. The Tribunal failed to consider the current market value of the suit premises when it ordered the 2nd respondent to refund to the appellant the purchase price for the suit land.*

At the hearing of the presented appeal which was argued by way of filing of written submissions, both parties were duly represented by Counsels. While the appellant was represented by Counsel Christopher Malinga, the respondents were represented by Counsel Thomas Lighola. Briefly, the 1st respondent and the 2nd respondent are father and son. The 1st respondent sued his son at the Maghojoa Ward Tribunal to be declared the lawful owner of the suit land comprising of four (4) acres which situates at Mwachambia Village in Maghojoa Ward in Singida. He claimed that he was given the land in 1991 and in 2000 he gave his son the said piece land for use.

The record shows, in course of using the land, the 2nd respondent sold the same to the appellant. It was therefore uncontested that the appellant herein purchased the disputed piece of land from the 2nd respondent, who is the 1st respondent's son. The Agreement was reduced in writing and witnessed by the Village Leaders. The Maghojoa Ward Tribunal heard the case, it listened to the witnesses of both sides, and visited the locus in quo. It even gave a chance to the parties herein to reconcile and settle the matter out of court, but the settlement did not work out. Thus, on 16th June, 2015, the Maghojoa Ward Tribunal gave a judgement in favor of the appellant, it held as follows:

.....Hivyo baraza zima limeona kuwa mlalamikiwa A. Irunde ameanza kulima hilo shamba tangu mwaka 1987 na sasa ana miaka 18, sasa basi Mlalamikaji Msunga Ntunda alikomboe Shamba hilo kwa Thamani ya Tshs 2,800,000/= na shamba hilo limepandwa miti pia alipie hiyo miti Shs. 490,000."

The Ward Tribunal declared the appellant herein the owner for long possession, but it gave the 1st respondent an option to redeem the land by compensating the appellant for an unexhausted improvement since the appellant has been using the land since 1987.

Msunga Ntunda was aggrieved, he appealed to the District Land and Housing Tribunal Singida, where the decision of the Ward Tribunal was overturned. The case was ordered to be heard afresh. Again, the second judgement of the Ward Tribunal was in favor of the appellant. Still dissatisfied, Msunga Ntunda returned to the District Land and Housing Tribunal. Having heard the parties the first appellate tribunal decided in his favour. It found that being allocated by Mwachambia Village Council, the disputed land belongs to the 1st respondent herein and that 2nd respondent had no land to sell. Subsequent to such findings, the tribunal ordered the land to be restored to Msunga Ntunda and ordered Abeid Msunga to refund the appellant his purchase price.

Abdallah Irunde, the appellant herein was dissatisfied, he appealed to the High Court. The question to be decided by this Court is whether Abeid Msunga had good title to pass it over to the appellant by way of disposition. In support of the appeal, counsel Christopher Malinga argued in line with the case of **Suzana Warioba vs Shija Dalawa**, Civil Appeal No. 44 of 2017, Court of Appeal of Tanzania at Mwanza (unreported) that since the 2nd respondent was in possession of the disputed land, he was therefore de facto owner of the same and therefore title passed to the appellant. In my view the case of **Suzana Warioba vs Shija Dalawa**, (supra) is distinguishable from the circumstances of this case. In this case, it is undisputed that the original owner of the land is Msunga Ntunda who never transferred its ownership to seller. Therefore, even though the land was sold in the presence of the village leaders that alone does not make Abeid Msunga the owner of the suit land. Abeid Msunga did not have a good title to pass it over to the appellant. The Appellant took the risk of buying the land from a person who does not own it. This is where the doctrine of caveat emptor applies. Caveat Emptor means "buyer

beware." It basically conveys the message that the buyer must protect his or her own interests when making a purchase or transaction. The appellant ought to have obtained all available information before he finalizes the purchases. Failure to do so presupposes that purchased the land from a person who did not own it at his own risk, and he cannot demand for ownership of the land from the real owner. It was his responsibility as the buyer to investigate about the title of the land before he purchased the land. Therefore, the buyer purchased the land at his own risk. Ultimately, he bought the land from a person who did not own it, he must take the risks and thus there is nobody else to blame. The buyer must deal with the consequences of his selection.

As regards to the second ground of appeal, I agree with the arguments of the respondents' counsel that a party cannot benefit from his or her own wrongs. Admittedly, the appellant, purchase the disputed land from the 2nd respondent who was not the owner. The sale agreement was therefore void and as such the property

never passed because the person without good title cannot pass a good title to the transferee. See **Fahah Mohamed vs Fatuma Abdallah** (1983) TLR 205.

The above said, as it was for the first ground, the second ground of appeal also fails and consequently, the entire appeal lacks merits and it is hereby dismissed with costs.

DATED at DODOMA this 5th Day March, 2021



M.M. SIYANI
JUDGE