

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CIVIL APPEAL NO 75 OF 2020

(Originating from District Land and Housing Tribunal for Mwanza Application No. 178 of 2012)

YOHANA MAGAYANE APPELLANT

VERSUS

ANASTAZIA NDAZI RESPONDENT

EXPARTE JUDGMENT

13 & 23/04/2021

RUMANYIKA, J.:

With respect to Squatter No. 013/074 situated at Bwiru area, Ilemela district – Mwanza (the suit plot), and, according to judgment and decree dated 13/11/2020 of Mwanza District Land and Housing Tribunal (the DLHT, against Anastazia Ndazi (the respondent) having had lost the war and battle, Yohana Magayane (the appellant) was not happy hence the four (4) grounds of appeal, which grounds may boil down and revolve around one point mainly; **that the DLHT ignored and or improperly evaluated the appellant's evidence.**

When the appeal was, by way of audio teleconferencing called on for hearing on 13/4/2021, through mobile number 0784963022 I heard Mr. G. Mwachae learned counsel for the appellant much as, according to records pursuant to my order of 4/2/2021 and through Mwananchi Local Newspaper of 10/2/2021 one having had been proved served, by the court order of 25/2/2021 appearance of the respondent was dispensed with hence the exparte judgment.

Having had abandoned ground no. 2 Mr. G. Mwachae learned counsel in a nutshell he submitted: **(1)** that the DLHT erroneously ignored copy of the sale agreement tendered by the appellant simply on the basis that it had been executed outside territorial jurisdiction of the area that the suit land was situated **(2)** that the respondent never proved that indeed she had purchased the suit plot from one Yogo leave alone proof that she had occupied and utilized the same for the previous 15 years **(3)** that actually the appellant's case was on the balance of probabilities proved given copy of the respective handing over note and oral evidence of the five (5) witnesses inclusive of the local leader (pw5) (case of **Godfrey Sayi & Another**, Civil Appeal No. 104 of 2014 (CA) unreported that the appellant had discharged the burden of proof sufficiently. That

whether or not with respect to it the respondent had paid property tax it was immaterial because alone that one constituted no letter of offer or a certificate of right of occupancy (case of **Alex Mwita Nkwama v. Kinondoni Municipal council & 2 Others**, Land Case No 450 of 2016 (HC) at Dar es salaam unreported. We pray that the appeal be allowed with costs the learned counsel further contended.

The evidence on records but very it runs thus;

Pw1 Yohana Magayane Mkobesha stated that Lumwecha Ndazi (the previous owner) having had given him the suit plot in 1986 (copy of the handing over note-Exhibit "P1") he occupied it undisturbed until 2009 when the former died and the respondent claimed title/ownership. That he (pw1) sued her in Pasiansi ward tribunal all the way successfully until such time when the High court at Mwanza (Bukuku, J) had nullified it all.

Gaudencia Lumwecha, Elizabeth Lumwecha, Emmanuel Lumwecha and Misana (pw2, pw3, pw4 and pw5) respectively they supported evidence of the appellant essentially additionally that the said handing over was witnessed on the clan meeting. That is all.

Dw Anastazia Ndazi she stated that the appellant wasn't her blood relative. That having had purchased it from one Yogo, she occupied and

utilized the suit plot for about fifteen (15) years undisturbed and never defaulted the respective land rent and property tax (a bundle of 5 copies of receipts—exhibit "D1". Equally so was another ten (10) copies (Exhibit "D2") but forcefully also claiming title the appellant had demolished her three (3) bed room house. That is all.

The issue is whether the appellant's case was on the balance of probabilities proved. Unlike the respondent, the appellant lined up four witnesses during trial yes, but the most essential piece of evidence (exhibit "P1") it left much to be desired for three main reasons; **one**, It wasn't executed by the purported donor Lumwecha Ndaji, if at all in consideration of natural love and affection or something I suppose, the latter had given one the suit land. **Two**; the giver's address of the time it was not therein stated with a view to establishing the reason why was the document executed say hundreds of kilometers away in Kagera region therefore outside territorial jurisdiction of the area where the suit plot was situated. Like the DLHT in my considered view correctly held, Exhibit P1 left much to be desired. **Three**; the appellant did not, in his evidence establish date of death of the purported giver so that from there the court would now know whether Exhibit "P1" was procured before, after date of

the giver's death or even forged much as quietly though, the respondent is on record having had disputed both its validity and authenticity.

It goes without more words therefore that with the three points herein above in my view sufficiently discussed, not only the appellant's evidence weighed lighter than the respondent's evidence, but also, like the DLHT correctly in my considered view held, the appellant's evidence did not meet the required threshold of balance of probabilities. The appeal is dismissed. Each party shall bear their costs because the respondent never appeared in court or with respect to the appeal even file any documents. Right of appeal explained.

S. M. RUMANYIKA
JUDGE
23/04/2021

The judgment delivered under my hand and seal of the court in chambers this 23/04/2021 in the absence of the parties.



S. M. RUMANYIKA
JUDGE
23/04/2021