

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

LAND APPEAL NO. 52 OF 2020

(Arising from decision of the District Land and Housing Tribunal for Geita at Geita in
Land Case No. 8 of 2017)

HANIFA ABDUL MFURUKI..... APPELLANT

VERSUS

GEITA TOWN COUNCIL1ST RESPONDENT

JOSEPH M. NYEME2ND RESPONDENT

JUDGMENT

13 & 23/04/2021

RUMANYIKA, J.:

With respect Plot No. 297 Block "E" Kagera street, Geita (the suit plot), against Geita Town Council and Josephat M. Nyeme (the 1st and 2nd respondents) respectively having had lost the war and battle, according to judgment and decree dated 27/3/2020 of the District Land and Housing Tribunal for Geita (the DLHT) Hanifa Abdul Mfuruki (the appellant) was not happy, here she is.

The 4 grounds of appeal would boil down to only two essentially as they revolve around points; **(a)** that as opposed to the 2nd respondent having had been allocated the suit plot by the 1st respondent the DLHT

should have declared appellant the lawful owner **(b)** that the DLHT evaluated the evidence improperly.

Messrs Mathias Mashauri and Robi learned counsel and Solicitor appeared for the appellant and 1st respondent respectively. The 2nd respondent appeared in person. The parties were, for avoidance of doubts by way of audio teleconferencing heard through mobile numbers 0755456122 and 0622600269 respectively.

A brief account of the evidence on record reads thus;

Pw1 Hanifa Abdul Mfuruki, at the time a business woman of Geita she stated that having had purchased, say four acres of un surveyed parcel of land for shs. 950,000/= on 1/11/2003 from Biseko Chimasa (copy of the sale agreement-Exhibit "P1" eye witnessed by vendor's wife, one Malulu a local land officer, Haji Abdul Hassan Mfuruki and Mastura Abdul Mfaruki, yet in her back out of it the 1st respondent allocated the portion (plot No. 297 "E" the suit plot) to the 2nd respondent on 11/5/2004 as per copy of letter of offer-Exhibit "P2" whereas her plot was dated 21/11/2005. Not satisfied, she served them a notice to sue on 12/6/2017 (Exhibit "P3") much as she had been notified by land officer (copy of the letter-Exhibit

"P4") that she had failed to developed the land therefore for that reason its portion now allocated to the 2nd respondent. Others equally allocated plots were Steven Lesika (Plot No. 300 "E"), Mr. and Mrs. Elikana Manumba (Plot No. 299 "E") David Mshendeke (Plot No. 298 "E" and so on.

Pw2 Suzana Antony Biseko (with respect to the suit plot wife of the said vendor) she testified materially similar with the evidence of Pw2. That is all.

Dw1 Joseph M. Nyeme stated that he owned the suit plot, on application having had it duly allocated to him by the 1st respondent on 01/11/2020 and he had missed to pay respective land rents. That he had there on built two fenced houses (as per documents – Exhibit "D1").

Dw2 Vedastus Sulus stated that he was since 2014 the 1st respondent's Land Officer therefore in his capacity responsible to, and, among other duties he issued letters of offer that according to records since 2005 the suit plot belonged to no one but the 2nd respondent (as per copy of the letter of offer). That is all.

The pivotal issue in my considered opinion capable to dispose the entire appeal is whether the suit plot belonged to the appellant. At least it

is not in dispute that until 2005 year of the Lord appellant had exercised her deemed right of occupancy undisturbed then the parcel of land having had been declared developed / surveyed, the respective land allocating authorities came up with a number of portions inclusive of the suit plot much as the appellant retained some while similarly some others plots were allocated to the said Steven Lesika, Mr. and Mrs. Elikana Manumba and David Mshondeke this crucial evidence the respondents never attempted even to challenge it. If anything therefore, upon the land being declared developed and the plots were dully allocated, the respondent's complaint could be on compensation yes, but the point it should not have been raised leave alone the issue of double allocation. The cases of **Prof. Benard Kirei** (supra) **Colonel Kashimir** (supra) cited by Mr. M. Mashauri advocate therefore it is with greatest respect distinguishable much as out of it the appellant admitted as having had maintained some plots. There is is no wonder with respect to those allocated the remaining plots probably the appellant had no issue.

The appeal is dismissed with costs.

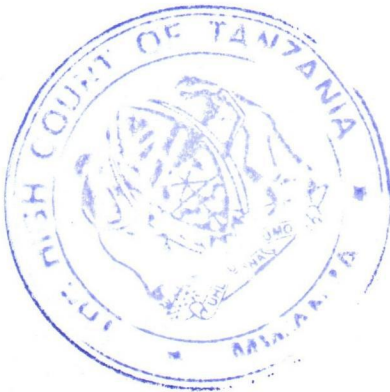
Right of appeal explained.

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