

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

**LAND APPEAL NO. 56 OF 2020**

(Arising from Land Case No. 11 of 2018 of Chato District Land and Housing Tribunal)

**PHILIMON ATHANASE ..... APPELLANT**

**VERSUS**

**JITIHADA SACCOSS ..... 1<sup>ST</sup> RESPONDENT**

**MAHALU AUCTION MART ..... 2<sup>ND</sup> RESPONDENT**

**FILIPINA CHARLES ..... 3<sup>RD</sup> RESPONDENT**

**FARAGHA ..... 4<sup>TH</sup> RESPONDENT**

**CIPE ..... 5<sup>TH</sup> RESPONDENT**

**JUDGMENT**

**27<sup>th</sup> April & 5<sup>th</sup> May, 2021**

**RUMANYIKA, J.:**

The appeal is against judgment and decree of Chato District Land and Housing Tribunal (the DLHT) dated 18/09/2020. According to records Philimon Athanase Tirunganyila (the appellant) having had defaulted loan agreement and through Mahalu Auction Mart (the respondent) attached and sold the respective house and tree plot (colaterals) to Filipina Charles (the 3<sup>rd</sup> respondent) by Jitihada SACCOS (the 1<sup>st</sup> respondent). Faragha and CIPE (the 4<sup>th</sup> and 5<sup>th</sup> respondents) respectively were only sued as tenants.

The 6 grounds of appeal essentially revolve around 5 points as hereunder:

1. That in terms of dates the impugned judgment and proceedings were at variance.
2. That the loan agreement (Exhibit PE4) lacked Stamp Duty pay therefore it lacked evidential value.
3. That the DLHT ignored the parties' agreement dated 05/11/2017 for the appellant to pay.
4. That the DLHT improperly evaluated the evidence the tree plot having been surrendered to the 1<sup>st</sup> respondent on 05/11/2017 and the appellant was done since.
5. That the DLHT chair erred in law and fact for having had not proceeded exparte against the 2<sup>nd</sup> – 4<sup>th</sup> respondents.

Whereas the appellant appeared in person, Mr. Manase learned counsel appeared for the 1<sup>st</sup> respondent.

There was proof of service on the 2<sup>nd</sup> – 5<sup>th</sup> respondents but they did not appear pursuant to my order of 27/04/2021 therefore, their appearance was dispensed with hence, only with respect to them exparte judgment. Through mobile numbers 0626848682 and 0755662788

respectively, the parties present were by way of audio teleconferencing heard on 27/04/2021.

Having had sort of reproduced the grounds of appeal essentially, the appellant submitted that admission by the DLHT in evidence copy of an agreement for which no stamp duty was paid, the chair offended the provisions of Sections 46 and 47 of the Stamp Duty Act therefore the exhibit was liable to be expunged (case of **Malmo Montage Konsult AB TANZANIA BRANCH V. MARGARET GAMA**, Civil Appeal No. 86 of 2001 (CA) Unreported.

**Two;** costs of the case and fee for exhibits were not paid leave alone being referred to written statement of defence. That on that one, a p.o was overruled by the DLHT but actually also the documents should have been expunged (case of **Ayoub Haji Mnzava V. Nuhu Matauna**, Hc Land Appeal No. 21 of 2018.

**Three;** That the DLHT should have nullified it all, the house having had been auctioned/sold on a week end, therefore in contravention of the Court Brokers Rules. That is all.

Mr. Manase learned counsel submitted; **(1)** that in terms of dates the impugned proceedings and judgment may have been variant yes, but it



was due to slip of the pen and the appellant was not in any way prejudiced (2) that with respect to copy of the contract, payment of stamp duty may have been suspended to a later stage (case of **Josephat L. Rugaimukamu V. Kamule Mziwanda** 1985 (HC) also case of **Sundarji N. Ltd V. Mohamed Kassim** (1985) EA 722 much as the copy was nevertheless tendered by the appellant himself. That even if on this ground the exhibit was expunged, still, pursuant to his commitment of 05/11/2017 the appellant was bound to pay the outstanding loan (3) on 25/10/2017, the parties may have agreed that in full settlement the appellant surrendered the tree plot yes, but at the same time it transpired that the plot wasn't free of legal encumbrances and out of the outstanding shs. 5.8 million the house was sold for shs. 4.0 million and the parties were bound by pleadings (case of **Astepro investment Co. Ltd V. Jawinga Company Ltd**, Civil Appeal No. 8/2015 (CA) unreported. That the evidence having had been properly evaluated, equally the sale on 05/11/2017 was properly carried out.

Unlike the DLHT recorded it, the issue is actually whether or not between the appellant and 1<sup>st</sup> respondent there was loan agreement or the

former had breached it but rather whether following the appellant's default the house was properly attached and sold.

At least it was undeniable fact that contrary to the loan agreement, although the appellant ought to have had fully repaid the loan on 03/03/2017 latest yet until 05/11/2017, say 8 months plus later far beyond the schedule, he owed the 1<sup>st</sup> respondent. The latter therefore was justified without further noticed from the wide range of collaterals to pick it and sell the house.


Whether or not in terms of dates the impugned proceedings and judgment were at variant, no stamp duty was paid for Exhibit PE4, the sale was done on a week end and the DLHT failed proceeding exparte against the 2<sup>nd</sup> – 5<sup>th</sup> respondents, all this was immaterial in my considered opinion. I think it is not always the case that means justifies the end! Whether or not the house sold was a residential one also it was immaterial much as it settled law that parties were bound by their pleadings (case **Astepro Investment Company Ltd** (supra). Grounds 1 and 2 are dismissed.

With regard to his commitment of 05/11/2017 to pay, at the same time in his testimony he undertook, but in the back of the said Nyamahanga Group who had it already as collateral now to transfer it from

the former to the 1<sup>st</sup> respondent. Like Mr. Manase learned counsel correctly in my view submitted, the plot was not encumbrance free therefore yet still the appellant was not able to repay the loan at issue. Grounds 3 and 4 of the appeal dismissed.


In the upshot, the devoid of merits appeal is dismissed with costs. It is accordingly ordered.

Right of appeal explained.



**S. M. RUMANYIKA**  
**JUDGE**  
**04/05/2021**

The judgment delivered under my hand and seal of the court in chambers. This 7<sup>th</sup> May, 2021 in the absence of the parties.



**S. M. RUMANYIKA**  
**JUDGE**  
**05/05/2021**