

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)

AT TANGA

Misc. LAND APPEAL No. 11 OF 2020

*(Originating from the District Land and Housing Tribunal for Tanga at Tanga
District in Land Application No. 21 of 2017)*

SALIMA SELEMAN SEPH APPELLANT

(Administratrix of estate of Yasini Seleman Seph)

Versus

1. MAIMUNA YASINI SELEMANI

2. SAIDI ADAM KINGO

3. DAMIAN JOBU MTULWA

4. HUSSEIN BAADI

5. IDDI SELEMANI

..... RESPONDENTS

JUDGMENT

14th July 2021 & 14th July 2021

F. H. Mtulya, J.

Salima Selemani Seph of Pongwe area in Tanga Region (the Appellant) approached this court on 13th May 2020 and preferred **Land Appeal Case No. 11 of 2020** (the Appeal) to dispute the decision of the **District Land and Housing Tribunal for Tanga at Tanga District** (the Tribunal) in **Land Application No. 21 of 2017**

(the Application). The Tribunal heard the parties and at page 6 & 7 of its decision decided in favour of Mrs. Maimuna Yasini Selemani (the First Respondent), Mr. Said Adam Kingo (the Second Respondent) and Iddi Selemani (the Fifth Respondent). The holding of the Tribunal in the decision was that:

...the second and his wife the First Respondent and Fifth Respondents are declared to be the lawful owners of the land they bought from the First Respondent measuring at 15 x 20 meters each situated at Kibaoni area, Kisimatui Village within Pongwe Ward.

The reasoning of the Tribunal is displayed at page 6 of the judgment that:

...from the evidence on record, it is very clear that the land in dispute does not form part of the deceased estates. The Applicant has failed to establish her case on balance of probabilities.

Today morning when the Appeal was scheduled for hearing, this court *suo moto* noted defects on certainty of the land in dispute, and as part of cherishing the right to be heard enshrined under article 13 (6) (a) of the **Constitution of the United Republic of**

Tanzania [Cap. 2 R.E. 2002] and precedent in **Mbeya-Rukwa Auto Parts & Transport Limited v. Jestina George Mwakyoma**, Civil Appeal No. 45 of 2002, this court invited the parties to explain the discrepancies of land as depicted in various parts of the record, *viz*:

- i. 3rd paragraph of the Application which shows that land in dispute is 12 hectares and located at Gonja area within Pongwe in Tanga City;
- ii. 6 (a) (i) paragraph of the Application which shows that the land in dispute is 12 acres located at Pongwe Tanga Region;
- iii. 3rd paragraph of the First Respondent's Written Statement of Defence which disputed location of the land;
- iv. 4th paragraph of the First Respondent's Written Statement of Defence which displays the land is located at Kibaoni area within Kisimatui Village of Pongwe Ward and not Gonja, Pongwe Ward in Tanga City;
- v. 3rd paragraph of the Second Respondent's Written statement of Defence which shows the land in dispute is approximately 15x20 meters;
- vi. 3rd paragraph of the Fifth Respondent's Written Statement of Defence which depicts that the land in dispute is approximately 15x20 meters; and

vii. 3rd & 4th pages of the judgment which show that the issue before the Tribunal was: *who is a lawful owner of the land in dispute*. However, no inquiry was conducted or visitation of the scene of the dispute to ascertain the exact size of the land in dispute was recorded in the Tribunal, despite the fact that the defects were vivid and noted by the Tribunal during the proceedings.

After short consultations and discussions of the parties, they both agreed that there were several faults, which renders the proceedings in the Tribunal a nullity. According to Mr. Yona Lucas, learned counsel who appeared for the Appellant, paragraphs 3 and 6 (a) (1) of the Application are silent on land specifications in terms of size and location and page 3 and 5 of the judgment are in contradiction in terms of size granted to the First and Fifth Respondents as whether it is 20 x 20 meters or 35 x 35 meters. According to Mr. Yona it is not certain whether the issues were framed to settle the present dispute or any other disputes as it contained no exact size and location of the land in dispute.

On part of the Respondents, all four Respondents who appeared for the hearing of the Appeal were lay persons and

attended the hearing in person without any legal representation. In their submissions, each one had brief statement to register. The First Respondent submitted that her land does not exceed one (1) acre and she was surprised to be prosecuted for occupying 12 acres. The Second Respondent on his part stated that things as they are displayed in the record are not clear and there is a need for rectification to put them right. The Third Respondent submitted that the judgment of the Tribunal in the Application is full of unclear facts and uncertainty of the land in dispute, whereas the Fifth Respondent stated that the dispute as whole is uncertain on whether it is centered in hectares or acres.

It is fortunate that the parties in the present Appeal are in agreement that the land in dispute is not clear and certain. In my opinion, I think, the land in dispute must be certain to be able to be distinguished from other lands in terms of size and location. This will not only ease execution of the decision, but also will abide with the law in Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) and precedents of this court in **Daniel D. Kaluga v. Masaka Ibeho & Four Others**, Land Appeal No. 26 of

2015 and **Ponsian Kadagu v. Muganyizi Samwel**, Misc. Land Case Appeal No. 41 of 2018.

This court just found unfair proceedings of the Tribunal in the Application, and cannot justifiably close its eyes on vivid irregularities to stay on records as it mandated to ensure proper application of laws in statutes and precedents in our lower courts or tribunals (see: **Diamond Trust Bank Tanzania Ltd v. Idrisa Shehe Mohamed**, Civil Appeal no. 262 of 2017).

Having said so, and noting the requirement of the Regulations regulating proceedings in the Tribunal and cited precedents of this court, and considering the proceedings and judgment of the Tribunal were tainted with irregularities, I have decided to quash the judgment of the Tribunal, set aside the proceedings and the order emanating from the Tribunal in the Application.

Any interest party who may wish to initiate proceedings on the disputed land may prefer fresh and proper application before a competent tribunal entrusted with determination of land disputes in accordance to the laws regulating land matters. I award no costs in this Appeal as the fault was initiated by the parties themselves and blessed by the Tribunal.

It is so ordered.




F.H. Mtulya

Judge

14.07.2021

This judgment is delivered in chambers under the seal of this court in presence of the Appellant's learned counsel Mr. Yona Lucas and in the presence of the Respondents, First, Second, Third and Fifth Respondents, namely: Maimuna Yasini Selemani, Saidi Adam Kingo, Damian Jobu Mtulwa, and Iddi Selemani respectively.




F.H. Mtulya

Judge

14.07.2021