

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
AT TABORA**

MISC. LAND CASE APPEAL NO. 9 OF 2019

*(From the decision of the District Land and Housing Tribunal for
Tabora District at Tabora in Land Case Appeal No. 80 of 2014 and
Original Ward Tribunal Application No. 35 of 2013)*

JUMANNE HASSAN MTIRO ----- APPELLANT

VERSUS

JUMANNE IBRAHIM MSINGWA ----- RESPONDENT

JUDGMENT

9/06 & 23/07/2021

BAHATI, J.:

This is the second appeal whereby the appellant Jumanne Hassan Mtiro challenges a decision of the District Land and Housing Tribunal for Tabora which dismissed his first appeal against the respondent Jumanne Ibrahim Msingwa.

The present appeal traces its genesis from a loan agreement signed between the appellant and respondent on 15/06/2005 whereby the appellant obtained a loan amounting to Tshs. 500,000/= from the respondent; to secure the loan the appellant deposited to the respondent Certificate of the Right of Occupancy. As per the agreement

(Exhibit K1) the appellant was required to repay the loaned amount on 20/06/2006 and on default the respondent would obtain the land.

Therefore, when the appellant defaulted to repay the loaned amount as agreed the respondent filed a Land Application before the Igunga Ward Tribunal to enforce his rights. Upon hearing of the suit, the ward tribunal decided in favor of the respondent by awarding the suit premise to the respondent.

Dissatisfied, the appellant appealed to the District Land and Housing Tribunal for Tabora and upon a full hearing of the suit, the Tribunal upheld the decision of the original ward tribunal. Still dissatisfied he has lodged this second appeal couched with three grounds of appeal which runs as follows: -

- 1. The trial District Land and Housing Tribunal erred in law for its failure to discover that it was the respondent who breached the contract.*
- 2. The trial District Land and Housing Tribunal erred in law for demurred the right of the Appellant in redemption his suit property from the Respondent.*
- 3. Since the contract regarding mortgaging transactions involving matrimonial property subjected for residential purpose into the family of the Appellant was void for left the consent of the Appellant's wife, the trial District Land and Housing Tribunal erred for misdirected itself by holding in favour of the respondent.*

From the very beginning of this appeal, the respondent has never shown cause hence the Court ordered the matter be disposed *ex parte* against the respondent.

When the appeal was called up for hearing the appellant appeared in person also under legal representation of Mr. Samwel Ndanga learned counsel.

Submitting to reinforce the grounds of appeal, Mr. Ndanga stated that the trial tribunal did not bother to ascertain whether it had pecuniary jurisdiction to entertain the matter because the subject matter of the suit is a house worth more than three million.

On the second ground of appeal, he submitted that the dispute was on the loan agreement where the appellant received 200,000/= from the respondent and he was supposed to repay with interest on 20/06/2006 but on the date due for repayment the respondent refused to receive the money and release the mortgaged property.

As to the third ground, Mr. Ndanga submitted that the respondent hesitantly retained the mortgaged property and denied the appellant his right of getting back the security. Mr. Ndanga added that it is a law that, a property that is secured has the right of being taken out of security as agreed.

Finally, he submitted that the respondent lacks authority to engage in bank transactions in respect of the loan, the record of the Ward tribunal suggests that, the appellant borrowed 200,000/= and he was supposed to repay a total of 500,000/= including interest. The

respondent had no power to involve in interest loans unless he is registered to do so. The trial tribunal record shows that the respondent is not licensed to do so which is against section 3 of the Business Licencing Act, Cap. 208 [R.E 2019].

I have thoroughly read the record of the two tribunals below, what I found is that, as exhibit K1 depicts, the dispute at hand sets its feet from the loan agreement between the appellant Jumanne Hassani Mtilwa and one Jumapili Jumanne Ibrahim Msingwa, a person not a party to this appeal. From 04/11/2013 when the dispute was first referred to Igunga Ward Tribunal the name of the lender as per agreement Jumapili Jumanne Ibrahim Msingwa has never been mentioned even once. That fact made me nervous to dig more into the details of the dispute.

Another thing that I found on the record of the trial tribunal's case file is the meeting minutes of the death of Jumapili Msingwa who died on 14/06/2014, whereby I could not understand for what purpose the meeting minutes were admitted to the tribunal.

As I stated above, the agreement that led to the start of this dispute was between the appellant Jumanne Hassan Mtiro and Jumapili Jumanne Ibrahim Msingwa, the record does not show at what capacity the respondent appeared in the original suit that had its foundation on the loan agreement that he was not a party.

Assuming that, the respondent appeared under the power of Attorney, the document so empowering him would be on the record

but nothing is there to support his appearance as a respondent in this case. That being the case it is my considered view that the respondent was improperly sued by the appellant while knowing that he was not a party to the agreement.

The record depicts that Jumapili Msingwa died on 14/06/2014 but it is not shown if the respondent responded to the suit in the capacity of Administrator of the Estate of the said Jumapili Jumanne Ibrahim Msingwa.

Having considered that, I should not waste this court's time and resources to go through the grounds of appeal levelled, I find it proper to close this chapter by saying that, since Jumapili Jumanne Ibrahim Msingwa is now deceased the respondent Jumanne Ibrahim Msingwa has no powers to claim right over any agreement entered by the deceased unless he is appointed an administrator of the estate of the deceased.

Therefore, in my observation based on the above analysis, the appeal is allowed the respondent had no *locus standi* to prosecute a suit based on an agreement that he was not a party. In the event, I nullify the proceedings, judgment, and decree of the two tribunals below. No order as to costs.

Order accordingly.



A.A.A BAHATI

JUDGE

23/07/2021



Judgement delivered under my hand and seal of the court in the chamber, this 23rd day July, 2021 in the presence of the Appellant.



A. A. BAHATI

JUDGE

23/07/2021

Right of appeal fully explained.



A. A. BAHATI

JUDGE

23/07/2021

