

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA**

LAND CASE APPEAL NO. 79 OF 2020

(Originating from application No. 64/2016 of Muleba District Land and Housing Tribunal)

OSWALD RWECHUNGURA JOHN.....APPELLANT

VERSUS

JUSTINIAN ANGELO.....1ST RESPONDENT

GODFREY ANTONY BYARUGABA.....2ND RESPONDENT

JUDGMENT

21st June & 30th July 2021

Kilekamajenga, J.

The appeal was preferred against the decision of the District Land and Housing Tribunal of Muleba. In challenging the decision of the trial tribunal, the appellant advanced four grounds of appeal thus:

1. That, the Honourable Trial Tribunal erred in law by not considering the evidence of the second respondent who testified to the effect that she sold the suit land to the appellant and not (sic) anybody else;
2. That, the Honourable Trial Tribunal erred both in law and facts to hold that the suit land is the property of the 1st respondent while the issue of agency were never pleaded;
3. That, the trial District Land and Housing Tribunal erred in law and in fact to hold that the sale agreement between the 2nd respondent and appellant was ambiguous;
4. That, the trial tribunal erred in law to decide the case in favour of the 1st respondent for a mere reason that the 2nd respondent has failed to

summon persons witnessed the sale agreement while on of them has testified.

When the appeal was scheduled for hearing, the appellant was present and enjoyed the legal services of the learned advocate, Mr. Peter Matete whereas the 1st respondent was present in person and without representation. On the other hand, the 2nd respondent was absent. The court ordered the case to proceed in absence of the 2nd respondent. The counsel for the appellant was invited to argue the grounds of appeal. The counsel for the appellant informed the court that the seller of the disputed land one Daria Timotheo is now the deceased but she was summoned and testified before the District Land and Housing Tribunal. In her testimony, she confirmed to have sold the land to the appellant. Therefore, it was not right for the tribunal chairman to decide in favour of the 1st respondent. Also, there was no dispute that the land belonged to Daria Timotheo and hence the trial tribunal erred in deciding that the contract between Daria Timotheo and the appellant was void.

On the other hand, the 1st respondent stated that the land was sold to him by Zacharia Timotheo on behalf of Daria Timotheo. However, throughout the pleadings, there was no issue of agency because Daria Timotheo did not appoint any person to sell the land on her behalf. In this case, the testimony of PW2 was

sufficient to prove ownership of the land to the appellant. The counsel finally urged the Court to set aside the decision of the District Land and Housing Tribunal of Muleba and declare the appellant the lawful owner of the disputed land.

In response, the counsel for the 1st respondent submitted that Daria Timotheo sold the land that belonged to the clan of Kilaja. The same land had not shifted to Daria Timotheo; it was still a clan land. Furthermore, the 1st respondent bought the land from Zacharia Timotheo who sold the same under the instruction from Daria Timotheo. As it was a clan land, the sale agreement was supposed to be endorsed by clan members. The sale of the land to the 1st respondent was approved by clan members called John Kilaja and also witnessed by the hamlet chairman. The 1st respondent bought the land first before the sale was done to the appellant. Therefore, the decision of the District Land and Housing Tribunal was correct because the second sale of the land was tainted with fraud. He insisted that the 1st respondent was the lawful owner of the disputed land.

When rejoining, the counsel for the appellant objected the allegation that the land belonged to the clan. He further insisted that Daria Timotheo did not instruct Zacharia Timotheo to sell the land to the 1st respondent.

In disposing of this appeal, the major issue for determination is on who was the lawful owner of the disputed land before the same was disposed of. In the records, there are two sale agreements concerning the sale of disputed land. First, the land was sold by Zacharia Timotheo to the 1st respondent on 26th May 2015. However, the sale agreement to the 1st respondent clearly shows that Zacharia Timotheo was not the owner of the land. The contents of the sale agreement reads:

'Mimi Zacharia Themesio nimemuuzi Justinian Angelo shamba la dada yangu Daria Themesio (anayeishi Dar es salaam kwa niaba yake).

There is no doubt therefore, the land belonged to Daria Timotheo and Zacharia clearly knew that he was transacting on the land that belonged to his sister. Even the allegation that the land belonged to the clan does not feature anywhere in the records of the trial tribunal. This allegation may just be an invention from the counsel for the 1st respondent. On 25th February 2016, Daria Timotheo who was the owner of the land sold it to Oswald Rwegasira John. When the dispute

arose, Daria Timotheo further wrote another letter confirming that she sold the land to the appellant.

During the trial, Daria Timotheo appeared before the trial tribunal and testified that she sold the land to the appellant and not to the 1st respondent. On the other hand, Zacharia Timotheo also appeared and testified that he was instructed by his sister to sell the land to the 1st respondent by way of a phone call. Now, based on these apparent facts, Zacharia Timotheo was not the owner of the disputed land, hence he had no good title to transfer to the 1st respondent. Being the first person to purchase the land does not give you good title to the land if the seller was not the owner. As long as there is uncontroverted evidence showing that the lawful owner of the land was Daria Timotheo, the sale of the land by Zacharia Timotheo had no legal value because he was not the owner the disputed land.

In other words, the transfer of the land to the appellant was valid and legal because it was done by Daria Timotheo who had good title over the disputed land. Only Daria Timotheo had good title to pass and not any other person. The allegation that Zacharia Timotheo was instructed to dispose of the land to the 1st respondent is unfounded and not backed up with evidence. For that reason

therefore, the sale of the land to the appellant was valid. I hereby allow the appeal and set aside the decision of the District Land and Housing Tribunal for Muleba. I further declare that the appellant is the lawful owner of the disputed land. The respondents should vacate from the disputed land as soon as possible. It is so ordered.

Dated at Bukoba this 30th July 2021.



Ntemi N. Kilekamajenga
Judge
30th July 2021

Court

Judgement delivered this 30th July 2021 in the presence of the appellant and his counsel, Mr. Peter Matete (Advocate). The 1st respondent was present but the 2nd respondent was absent. Right of appeal explained to the parties.



Ntemi N. Kilekamajenga
Judge
30th July 2021

