

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND DIVISION

(APPELLATE JURISDICTION)

MISC. LAND APPEAL NO. 01 OF 2021

(Arising from Land Appeal No. 83/2019 of the District Land and Housing Tribunal for Kigoma at Kigoma before F. Chinuku, Chairperson, Original Land Case No. 13/2019 of Rusimbi Ward – Tribunal)

DUNIA S/O MAULID DUNIA

(Administrator of the estate of the Late Maulidi Dunia) **APPELLANT**

VERSUS

SHANI D/O ISSA HAMISI SASILO

(Administratrix of the estate of the late Issa Hamisi Sasilo) **RESPONDENT**

J U D G M E N T

30th June & 18th August, 2021

A. MATUMA, J.

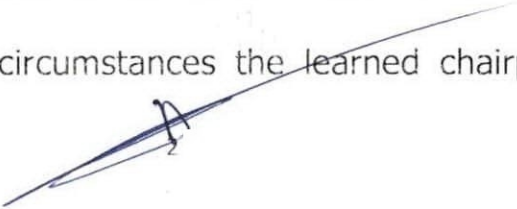
The appellant and the respondent are administrator and administratrix of the estates of their respective fathers Maulidi s/o Dunia and Issa s/o Hamisi Sasilo respectively. The appellant successfully sued the respondent for trespass into plot No. 20 Block E Ujiji the property of his late father Maulidi s/o Dunia. The respondent in her respective defence had alleged that her father bought a house/such plot from the appellant's

father in 1986 therefore the property in dispute was no longer among the estate of Maulidi s/o Dunia but her late father Issa s/o Hamisi Sasilo.

The trial tribunal observed that the fathers of the parties attempted to execute a sale agreement where as they agreed the respondent's father to buy the dispute plot from the appellant's father at Tshs 130,000/= and he partly paid Tshs 30,000/=. He did not pay the remaining balance and the dispute arose between them which led to the breach of the contract. It thus held that the property in question was still the lawful property of the appellant's father as the attempt sale agreement was not full filled by respective deceased persons.

The respondent was aggrieved hence appealed to the District Land and Housing Tribunal which determined the appeal in her favour on the ground that the appellant's father sold the dispute house to the respondent's father way back on 5/11/1986 as exhibited by the sale agreement, and that the respondent's father and his family started to stay in that house since 1991 without any claim by the appellant's father up to the time of his death in 2007.

The appellate tribunal further observed that even the appellant himself stayed mute since the death of his father in 2007 until 2016 when this dispute started. In the circumstances the learned chairperson of the



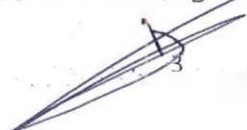
appellate tribunal adjudged that the dispute plot was no longer the property of the deceased appellant's father.

The appellant became aggrieved hence this appeal with four grounds but for the purpose of determining the real question in controversy between the parties, only the first ground suffices to dispose off this appeal. This is the grounds that;

'The learned chairman erred in Law and facts for deciding that the Appellant's father sold the suit house to the Respondent's father while the Respondent's father failed to pay the remaining amount hence amount to breach of sale agreement'

At the hearing of this appeal, the appellant was present in person while the respondent was represented by Mr. Gilagiza learned Advocate.

Submitting on this ground, the appellant argued that the sale agreement between their respective fathers was not complete. That the respondent's father paid only Tshs 30,000/= out of the agreed sum of Tshs 130,000/=. That, due to failure of the respondent's father to complete paying the sale agreed price the problem/dispute arose between their respective fathers and the contract was breached, that is why even the title was not changed from his father Maulidi s/o Dunia to the respondent's father. He thus called this court to find that the sale agreement was not complete and the



contract was breached hence the dispute house be declared the lawful property of his late father as it is to date per registration.

Mr. Gilagiza learned advocate submitted that so long as there is evidence that the respondent's father paid Tshs 30,000/= as part payment to the sale price which was agreed by the parties, then the sale was there regardless the none paying of the remaining agreed sum. He argued that even the father of the appellant shifted from the suit house in 1991 to give vacant possession to the respondent's father which is a clear indication that the sale was complete.

According to the learned advocate the vacant possession was by order of the court although he had no proof that there was indeed a court order for vacant possession.

Having heard the parties for and against the appeal I find that there is no dispute that the dispute house on plot No. 20 Block "E" Ujiji was owned by the late Maulidi s/o Dunia the father of the appellant and the same is still registered in his name to date.

Also, there is no dispute that the parties' respective fathers had intention to execute a sale agreement of the property in question at the price of Tshs. 130,000/=.

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In that respect the respondent's father paid Tshs 30,000/= out of the agreed sale price of Tshs 130,000/=. That was on 5/11/1986. He did not pay the remaining balance and thus they started a dispute while they were all still alive. It is from that dispute the respondent alleges that it reached in court and in the year 1991 the court ordered vacant possession against the appellant's father. That contention was also stated during trial at the Ward tribunal. On the other hand, the appellant contended that although there was a dispute between the said deceased fathers, there was no court decision which ordered vacant possession against his father. In that respect the title of the property was not changed from the appellant's father to the respondent's father.

The failure of the respondent's father to pay the remaining balance of the sale price as agreed amounted to breach of contract as rightly argued by the appellant. Up to the time of his death, on 24th December, 2007 the respondent's father had not paid the remaining balance nor took any positive action to effect the transfer of the property to his name. That is a lapse of 21 years from the date of the agreement on 5/11/1986. In that respect, he breached the contract and in essence he had no intention to fulfill such agreement.

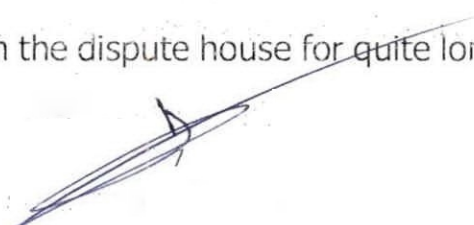
It was therefore wrong for the respondent to think that the property in question was completely sold to her father to form part of his estate. The respondent is further estopped under the provisions of section 123 of the Law of Evidence Act to claim that her father bought the dispute house, while her father in person did not complete the agreement during her life time for the lapse of 21 years nor took trouble to change ownership thereof. It is obvious that he had cancelled his intention to buy the house in question and could not in any manner effect change of ownership as the sale was not complete.

I thus agree with the appellant's argument that the chairman of the appellate tribunal erred to rule out that there was a complete sale agreement between the late deceased persons. Allowing such contention is to confirm and condone the habit of some inhuman people to rob innocent people of their properties by mere executing fraudulent documents on the pretext of buying those properties and paying just meager part payment thereof. Even though, the law of Contract, Cap. 345 R.E 2019 under section 10 is quite clear that the lawful contract must have the lawful consideration. In the instant matter the lawful consideration was the purchase price of Tshs. 130,000/=. This amount was nevertheless paid and thus the contract was voidable. The appellant's father started to

claim the breach and it was carried on by the appellant herein. To the contrary, the sale contract was procured by the respondent's father under the fraudulent trick without full intent to full fill it just to deprive the appellant's father of his property. In that respect the contract was voidable and subsequently void within the meaning of section 19 (1) of the Law of Contract supra.

The learned appellate chairperson also erred to rule out that the respondent's father lived in the dispute house since 1991 to 2007 when he passed away without any adverse action by the appellant's father. There was no positive evidence to that effect. To the contrary, there are contentions from both parties that the respective deceased persons who were parties to the contract started the dispute over the property during their life time. What is lacking is only how their dispute ended. The respondent alleges that it ended with a court order for vacant possession against the appellant's father but there was no evidence to that effect. On the other hand, the appellant alleges that it was just a forceful eviction which they opposed up to the time of this dispute.

Even though, so long as the right of the respondent's father over the property as asserted arose from the sale agreement. In that respect, it is immaterial that he lived in the dispute house for quite long time. The long



stay or adverse possession does not apply when purchase is alleged. *See Hughes v. Griffin [1969] All ER 460 and Nuru Kifundawili versus Wema Salumu*, Misc. Land Appeal No. 134 of 2019, High Court Land Division at Dar es Salaam.

All what matters when the right of ownership accrue from the sale and purchase is the proof of the sale itself and the full purchase i.e execution of the sale agreement to its fulfilment. Failure to prove the complete sale and purchase as happened in this case does not give right over ownership to the person alleging the purchase. The appellate tribunal's chairperson thus misconceived the doctrine of adverse possession.

With the herein observations, I rule out that this appeal has been brought with sufficient cause and accordingly allow it. The judgment of the District Land and Housing Tribunal is hereby quashed and the decree thereof set aside. The appellant is hereby declared the lawful owner of the dispute house. The respondent is declared a trespasser thereat and I order her to give immediate vacant possession to the appellant or else be forcefully evicted in accordance to the law.

This appeal is therefore allowed with costs. Right of further appeal is explained to any aggrieved party.

It is so ordered.




A. Matuma

Judge

18/08/2021

Court: Judgment delivered in the presence of the appellant in person and advocate Gilagiza Issa Omari for the Respondent.

Right of Appeal explained.

Sgd: A. Matuma

Judge

18/08/2021