

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

LAND CASE APPEAL NO. 08 OF 2020

(Arising from Application No. 05 of 2018 of the District Land and Housing Tribunal of Bukoba)

**REV. INNOCENT MUZINDUKI.....1ST APPELLANT
THE REGISTERED BOARD OF TRUSTEES
OF CHURCH OF GOD OF PROPHECY.....2ND APPELLANT**

VERSUS

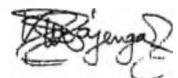
AMELIA MASUDI.....RESPONDENT

JUDGMENT

22nd July & 06th August 2021

Kilekamajenga, J.

On 10th September 2017, the first appellant bought a piece of land from Anna Mshumbusi at the price of Tshs. 6,000,000/=. The land is situated at Kibeta within Bukoba Municipality. The sale agreement was witnessed by the Ward Executive Officer called Leonardina Rugaimukamu and the commissioner for oath, the learned advocate, Mr. Eliphazi Bengesi. On 12th November 2017, the 1st appellant sold the land to 2nd respondent at the price of Tshs. 10,000,000/=. In 2018, the respondent filed a suit against the appellants at the District Land and Housing Tribunal at Bukoba wanting to redeem the land on the reason that the same was sold without the approval of clan members. The respondent wanted to redeem the land from the appellants at the price that the 1st appellant paid to Anna Mushumbusi. After the trial of the case, the District Land and Housing



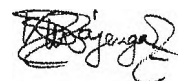
Tribunal decided that the respondent should redeem the land at the price of Tshs. 6,000,000/=. The appellants were aggrieved with the decision of the trial tribunal and preferred this appeal. In challenging the decision of the trial tribunal, the appellants coined nine grounds of appeal which I take the discretion not to reproduce them in this brief judgment because so far they just revolve around one issue.

When the case was scheduled for hearing, the appellants were present and were represented by the learned advocate, Mr. Aaron Kabunga. On the other hand, the respondent was present and enjoyed the legal services of the learned advocate, Mr. Alli Chamani. During the oral submission, Mr. Kabunga for the appellants prayed to argue the 1st ground and simultaneous submit on the rest of the grounds because they all revolve around one issue; whether the disputed land was a clan land. On the first ground, Mr. Kabunga impugned the respondent's locus standi to sue in this matter because the proceedings shows that the respondent named five persons who inherited the land but every person had his own portion. The respondent testified that the land belonged to Gervas Mushumbusi. The daughter of Gervas Mushumbusi called Anna Mushumbusi sold the land to the 1st respondent. In fact, Anna Mushumbusi was the administrator of the estates of her father Gervas Mushumbusi. Therefore, the respondent who was not even the administratrix of the estate of Gervas Mushumbusi and

therefore she had no locus stand to sue in this case. The counsel cemented his argument with the case of **Rujuna Shubi Balonzi Senior v. Registered Trustees of Chama cha Mapinduzi [1996] TLR 203.**

On the second point, the counsel argued that the land was not a clan land and it was therefore legally sold to the 1st respondent. The land was sold by Anna Mushumbusi who was the legal owner of the land. Furthermore, the sale agreements between Anna Gervas and the 1st appellant, and the 1st appellant and 2nd appellant were admitted without objection. In addition, the respondent witnessed the sale of other plots when other relatives sold their own pieces of their land. Based on his submission, Mr. Kabunga urged the Court to set aside the decision of the District Land and Housing Tribunal and declare the appellants as owners of the land.

In response, Mr. Chamani for the respondent argued that the dispute was governed by Haya Customary Law which has not been outlawed. The respondent is the clan member of the seller of the land; therefore the land belonged to Abankango clan. He further confirmed that Anna Gervas inherited the land from her father Gervas Mushumbusi who also inherited it from Masoud Kambuga. So this was a clan land as stated in the case of **Jibu Sakilu v. Petro Miumba [1993] TLR 75.** The seller was supposed to follow the conditions of disposing of the land. To bolster his argument, the counsel referred the Court to the case



of **Nicolaus Komba v. Kondrad Komba [1988] TLR 172**. He finally prayed for the decision of the District Land and Housing Tribunal to be upheld.

In the rejoinder, the counsel for the appellant did not raise any substantial argument worthy noting.

In disposing of this appeal, there is one pertinent issue that covers all the grounds of appeal, that is whether the disputed land was a clan land. Before venturing into extensive discussion in this issue, I wish to hint on the first ground of appeal argued by the counsel for the appellant on whether the respondent had locus stand to sue in this case. It is lucid that the land was sold by Anna Gervas who was the administrator of the estates of her father Gervas Mushumbusi. However, the respondent comes in as a person with interest in the disputed land because she claimed to belong to the same clan with Anna Gervas. On that aspect, though there is dearth of evidence on whether she was a clan member, she has an interest to sue for the recovery of the clan land which was sold without the consent from clan members.

I am aware of the position of the law that under Haya Customary Law, a clan land must be sold with the approval of clan members. On this position of the law, I do not need to put too much academic work because the same position has been previously expounded and it remains the law today. I wish to consider

the case supplied by counsel for the respondent; the case **Nicolaus Komba** (*supra*) which stated that:

'Clan land cannot be sold to non-clan members without prior approval of other clan members. The respondent had no right to sell clan land to a non-clan member without clan members consent...where there are clan members who are ready and willing to buy clan land, such land should be sold to them.'

It may be difficult to construe the real meaning of clan land, but Mwalusanya, J. had the following observation in the case of **Jibu Sakilu** (*supra*):

Clan land means land which has been inherited successfully without interruption from the great grandfathers or from a grandfather by members of the same clan. The key words are without interruption. If a member of the clan sells or in any other way disposes of clan land without the consent of the members of the clan, then the members of that clan can redeem it within 12 years - see the Customary Law (Limitation of Proceedings) Rules GN No 311/1964. If it is not redeemed within 12 years, then it is lost and it is no longer clan land. The said land becomes the property of the purchaser.

By virtue of the above provisions of the law, the land which remains into the hands of clan members without interruption from a person outside the clan is considered a clan land. However, the practical application of the above principle of the law may be coupled with a myriad of challenges because it denied individuals within the clan the absolute ownership to clan land. Even when the

land is in the hands of the child of the deceased, so long as it is a clan land, an uncle has an interest in on the mere reason that he is a clan member. The land cannot remain a clan land forever; where it has shifted hands from grandfathers, in case it is inherited, the heir becomes the owner. For instance, in this case, the land was previously owned by Masoud Kambuga, the land passed to Gervas Mushumbusi and finally to the daughter, Anna Gervas. It is therefore irrational to believe that Anna Gervas who inherited the land from her father was not the owner of the land just on the mere reason that the land was a clan land.

In my view, the land belonged to Anna Gervas and she had the right to dispose it to any person, though by giving priority to clan members. Where the land is sold to a non-member, a member of the clan may redeem it. However, the right to redeem the land ceases as soon as the land shifts to a third person. Also, a clan member can only redeem the land before the expiry of 12 years so long as the land remains into the hands of the person who bought it from the clan member. This stance of law was stated in the case of **Pancras Elias v. Gretian Pancras and another (1968) HCD 411** where the Seaton, J. stated that:

'(1)The court should demand strict proof of all the conditions under which a relative could redeem clan land since otherwise it would stultify the initiative and enterprise of purchaser of clan land. (2) Land bought from a third party is not clan land therefore there was no right to deem part A. (3) Proceedings to nullify a sale had to be started

within 3 months from the time the relative first heard of the sale.'
(Emphasis added).

In the instant case, the 1st appellant bought the land from Anna Mshumbusi on 10th September 2017 at the price of Tshs. 60,000,000/=. The 1st appellant later sold the land to the 2nd appellant on 12th November 2017 at the price of Tshs. 10,000,000/=. The respondent filed the instant case at the District Land and Housing Tribunal 2018. In other words, by the time when the respondent filed the case, the land has already shifted to a third party. The 1st appellant had no land which the respondent could claim under the umbrella of clan land. On the other hand, the respondent cannot claim the right of redemption of the clan land from the 2nd appellant because the church did not purchase the land from a clan member. The land already passed hand to the third party hence irredeemable.

Even if the land could still be in the hands of the 1st appellant, it was wrong for the trial tribunal to order the refund of the same price the 1st appellant paid. Land, unlike other assets which depreciates, it always appreciates. The interval of a month is sufficient to allow appreciation of the land. Based on that reason, the 1st appellant, who purchased the land at the price of Tshs. 6,000,000/=: sold it to the 2nd appellant within two months at the price of Tshs. 10,000,000/=. I have already stated that, the land is non-recoverable but if the land was still in the hands of the 1st appellant, he could not be chased like a trespasser. He was a bonafide purchaser who paid money to the owner of the land. A relative

seeking to redeem the land was supposed to pay the market value of the land based on an evaluation report. Again, the purchaser should be willing to accept the offer of redemption; he cannot be pushed away like a trespasser or an illegal possessor. So long as he paid money, which could have accumulated, the refund of Tshs. 6,000,000/= was unjustifiable, injustice and erroneous. Based, on the reasons stated above, I hereby allow the appeal and set aside the decision of the District Land and Housing Tribunal of Bukoba. I further declare that the 2nd appellant is the lawful owner of the disputed land.

DATED at BUKOBA this 06th day of August, 2021.



A handwritten signature in blue ink, appearing to read "Ntemi N. Kilekamajenga".

Ntemi N. Kilekamajenga.
JUDGE
06/08/2021

Court:

Judgment delivered this 06th August 2021 in the presence of the 1st appellant and the respondent all present in person.



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Ntemi N. Kilekamajenga.
JUDGE
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