IN THE HIGH COURT OF TANZANIA

(DODOMA DISTRICT REGISTRY)

AT DODOMA

LAND APPEAL NO. 34 OF 2019

(From the decision of the District Land and Housing Tribunal for Iramba at Kiomboi in Application No. 35 of 2017)

RAMDHAN KHOLO MRASI .....APPELLANT

VERSUS

1. ZAKAYO AMUSI
2. AMSI MADERA ..... **RESPONDENTS**

JUDGMENT

Date of last Order: 04/08/2021

Date of Judgment: 13/08/2021

Dr. A.J. Mambi, J.

This appeal originates from an appeal filed by the appellant namely **RAMDHAN KHOLO MRASI.** Earlier in the District Land and Housing Tribunal of Iramba in Kiomboi, the Tribunal made the decision in favour of the respondents. The records reveal that the matter involved the dispute in the suit land measuring at around 40. While at the trial tribunal the appellant alleged that he just lesed his land to the first exponent for animal grazing for a while,

the firt respondent claimed that he bought the land and the sale was Winsted by the Village authorities. The tribunal declared the first respondent to be the lawful owner of the disputed land on the ground that the evidence from the document revealed that he legally bought the land before the Kitongoji leaders.

Aggrieved by the decision of the District Land and Housing, the appellants now have appealed to this court basing on four similar grounds as follows:

1. **That,** the learned Chairman erred in law and in fact by declaring the respondents as the lawful owners for the land comprising 40 acres while the parties herein are in dispute over land comprising 20 acres only.
2. **That,** the trial Tribunal erred in law and in fact by taking appellants land comprising 20 acres and give respondents herein while the same is not part of the disputed land.
3. **That,** the learned Chairman erred in law and fact by relying on selling agreement 9exhibit 'D1') which is not genuine document and the same was not prepared and/or produced by a competent authority.
4. **That,** the trial Tribunal erred in law and in fact by not taking into consideration the evidence tendered by the appellant and his witness which proved on the balance or probability that the suit land was leased to the 1st Respondent for keeping his cattle for 7 years.

During hearing, the appellant appeared unrepresented while the respondents never appeared. The appellant prayed to proceed with

matter *experte*. Having satisfied that the respondents never appeared to this court for more than five times albeit of summons that were duly served, the court proceeded to determine the matter *experte*.

The appellant 1 briefly argued that the District Land and Housing Tribunal erred in law to declare the respondent to be the lawful owner while the evidence was sufficient on the appellant's side. He argued that it was wrong for the tribunal to make the decision in favour of the respondents basing on the sale agreement that is Exhibit D1. He argued that, the trial tribunal chairman grossly erred in law and in fact in his decision by concluding that exhibit D1 was the document which shows that the second respondent legally bought the land. He also argued that it was wrong for the tribunal include 20 acres while it was not part of the disputed land. Having gone through the grounds of the appeal and brief submission made by the appellant, let me now revert to answer the key issues.

I have carefully gone through the grounds of appeal and reply by the respondent. I have also keenly gone through all records from the District Land and Housing Tribunal. In my observation and considered view, the main issue at hand is whether the District Land and Housing Tribunal was right in holding respondents were the rightful owners of the disputed land or not. The records show that the Trial Tribunal made its decision in favour of the respondents and declared the first respondent the legal owner of the disputed land since the he legally bought the land. Indeed the

evidence from the Tribunal is clear that the first respondent bought the land and he tendered the sale agreement that was also witnessed by the Kitongoji Leader. This is evidenced by exhibit D that was the sale agreement. This evidence at the trial tribunal was supported by the witnesses from the "Kitongoji" where the suit land is located. In my view since there was valid agreement and parties consented to the agreement, there is no doubt that there was valid sale arising from the agreement.

I wish to refer the case ***the Registered Trustees of Tanzania Agriculture Society versus Agnes CCCCC E. Mboya Land Appeal No.12 of 2011 (unreported).*** The court in this case observed and held that "it is the position of law that, the valid agreement must be manifested by expressing willingness to be bound by the embodied terms in order to obtain assent of the parties". Referring the Law of contract CAP 345 [R.E.2019] (section 2(1)), the court held that in most cases, it is expressed by parties signing the document something which was not been properly done in our case in hand. Now since there was valid agreement expressing willingness of the
It is also a common practice that agreements for sale or purchase of land at the village usually involve village leaders and close neigbours to the land who witnesses and facilitate to prove the ownership of the land to be sold, but there is nowhere on the records such as sale agreement to show their involvement. The records reveal that the village leaders through Kitongoji leader witnessed the agreement of the land in dispute before the sale was graced by the Village authorities.

It appears also the appellant had no locus standi on the land in dispute since he failed to show his ownership apart from just claiming it belonged to him without proof while the respondent tendered the sale agreement supported by his witnesses. If the land belonged to him, he was required to show the documents or other evidence to prove his ownership. Lord Justice James had once laid the principle down in 1880 in the ***Ex P. Sidebotham*** **case[1880] 14 Ch D 458, [1874-80] All ER 588]** (persuasive decision) to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights.

It is a cardinal principle of the law that in civil cases, the burden of proof lies on the plaintiff (the appellant who was the plaintiff/applicant at the trial tribunal) and the standard of proof is on the balance of probabilities. This simply means that he who alleges must prove as indicated under section 112 of the ***Evidence Act, Cap 6 [R.E2019],*** which provides that:

> *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by law that the proof of that fact shall lie on any other person".*

The court in ***NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZAIA & 4 OTHERS, Comm. CASE NO 59 OF 2003( ) HC DSM,*** observed that:-

> *"The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side".*

Therefore, since the appellants were claiming that the land belonged to them and the respondent is not the owner of the land, it was the duty of the appellant to disclose all the facts under his plaint but he did not do so at the trial Tribunal.

Worth at this juncture making reference to Lord Denning in a persuasive case of ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** **[1966] 1QB 380 at 400-1** had once observed that:

> *"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

Similarly in another persuasive decision the court underscored the same position. This was laid down by Lord Justice James, a distinguished English Judge, laid the principle down in 1880 in the ***Ex P. Sidebotham case [1880] 14 Ch D 458, [1874-80] All ER 588]*** who observed that:

> *"to the effect that a man was not a 'person aggrieved' unless he himself had suffered a particular loss in that he had been injuriously affected in his money or property rights".*

The records from the trial court and evidence are clear that the appellant did not show how his interest if any was affected by the respondent. In other words the appellant in his plaint/application at the trial tribunal failed to disclose his cause of action and indeed the Trial Tribunal was right it is decision. In one of the persuasive

decision, Lord Denning in ***R v Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd*** **[1966] 1QB 380 at 400-1** once explained that:

> *"The court will listen to anyone whose interests are affected by what has been done."*

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Land and Housing Tribunal rather than upholding its decision. In the event as I reasoned above, this appeal is non-meritorious hence dismissed. The decision of the District Land and Housing Tribunal is upheld and it is hereby declared as done by the Tribunal that the first respondent was the lawful owner of the suit land.

In the event I make no orders as to costs.

Each party to bear its own costs.

Dr. A.J. MAMBI

JUDGE

13/08/2021

Judgment delivered this **13th** day of **August, 2021** in presence of both parties.

Dr. A.J. MAMBI

JUDGE

13/08/2021

Right of appeal explained.

Dr. A.J. MAMBI

JUDGE

13/08/2021