

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

LAND CASE APPEAL NO. 3 OF 2019

(From the Decision of the District Land and Housing Tribunal of Mtwara District at Mtwara in
Land Case No. 56 of 2017)

GEORGE MKOMOLA.....APPELLANT

VERSUS

HASHIMU HAKIKA MAMU.....RESPONDENT

JUDGMENT

29 July & 6 August, 2021

DYANSOBERA, J.:

The present appeal has been filed assailing the judgment passed by the District Land and Housing Tribunal for Mtwara at Mtwara dated 6th February, 2019 declaring the suit farm to belong to the late Hakika Mauridi Mamu, ordering the respondent Hashimu Hakika Mamu to pay Tshs. 11, 000,000/= to the appellant one George Mkomola (administrator of the estate of the late Curtias Mkomola) being compensation for the servicing of the farm for eleven years and thereafter, the same appellant to hand over the suit farm.

The subject matter in question is a cashewnut farm measuring thirty (30) acres which belonged to the late Hakika Mauridi Mamu who died intestate in

2002. A brief background of the matter is that the deceased had eleven children and four wives, Mwajuma Mohamed Mwinama (DW 2) inclusive. After the demise of the deceased, DW 2 went to the Primary Court of Newala District at Urban and opened Civil Case No. 67 of 2003 against Hatibu Mshamu Kamtinga (DW 1) over the distribution of the estate of her late husband. She was given a farm at Magumchila (not one in dispute) and awarded Tshs. 653, 000/= . The money was not paid and after two years she had no place to live. She decided to sell the house but no client was forthcoming. She went back to the Primary Court whereby it ordered the deceased's property to be attached and sold. Thereafter, the DW 1 sued DW 2 at Newala District Court which found DW 1 not liable. On an appeal by DW 2, the High Court found both DW 1 and DW 2 not liable and advised that only the children had the right to lay claims over the farm.

On 15th day of October, 2018, Hashimu Hakika Mamu, the administrator of the estate of the late Hakika Maulidi Mamu, the present respondent filed Land Application No. 56 of 2017 against the appellant, then 2nd respondent and Hatibu Mshamu, then 1st respondent for declaratory orders that the suit land is the lawful property of the late Hakika Maulidi Mamu, the appellant and then 1st respondent were not owners of the suit property, that the sale by the then first respondent to the appellant was null and void, an order for vacant possession, payment of Tshs. 25, 000,000/= as general damages and costs of the suit.

In its judgment, the District Land and Housing Tribunal found for the respondent as indicated hereinabove. The instant appeal arise out of the said judgment. The appellant's memorandum of appeal comprises four grounds of appeal as follows:

1. Having held that the 1st respondent (Hatibu Msham) did not sell the suit land to the late Curtis Mkomola, the Chairman erred in law and fact in granting ownership of the disputed land to the respondent.
2. The Chairman erred in law and fact in not holding that since the cause of action was based on the sale and the applicant knew about it since 2006 the case before him was time barred.
3. The Chairman erred in both law and facts in holding that there is no shred of evidence which justify the sale of the suit farm to the late Curtis Mkomola
4. That the Honourable Chairman erred in both law and fact in the award of Tshs. eleven million as compensation to the appellant.

The hearing was conducted by way of written submissions whereby the appellant was required to file his written submission in chief in support of the appeal by 1st July 2021, the respondent was to file his written reply by 15th July,

2021 and the appellant was to file a rejoinder by 22nd July, 2021. The parties duly complied with the set time frame.

I have taken into account the competing submissions and the evidence that was given by the parties and their witnesses and recorded by the trial Tribunal.

The trial Tribunal's record is clear that at the commencement of the hearing of the suit, two issues had been framed. One, whether the 1st respondent Hatibu Mshamu unlawfully sold the suit property to the late Curtis Mkomola/2nd respondent and two, to what reliefs were the parties entitled. With respect, I subscribe to the finding by the Hon. Chairman at p. 6 of the printed judgment of the trial Tribunal that, 'according to the applicant's evidence, plus the evidence of both respondents, now the appellant and then 1st respondent, and their witnesses, the 1st respondent has not sold the suit land to the late Curtis Mkomola; rather it is the Ward Executive Officer'. Indeed, this was also the unanimous opinions of the assessors that the 1st respondent has not sold the suit land to the late Curtis Mkomola. It was amply demonstrated by the appellant, and the Hon. Chairman conceded, that the suit farm belonged to the late Curtias Mkomola who purchased it in the public auction following the court order. However, the Hon. Chairman doubted this evidence arguing that there was no court order. With respect, the Chairman failed to make proper analysis of

the evidence that was laid before him. It was amply proved that the Nanguruwe Ward Executive Officer sold the farm to the late Curtias in execution of the Order of the Primary Court in Civil Case No. 67 of 2003. This fact was evidenced by Exhibit D 1, the Chairman admitted in evidence which indicated that the farm was sold in a public auction on an order of Newala Primary Court in Civil Case No.67 of 2003 by Nanguruwe Ward Executive Officer. It is *Hati ya kununua shamba kwa njia ya mnada-Shauri lan Madai Na. 67/2003-Shamba la Mikorosho*. The said letter was copied to the Primary Court with the following express statement:

'Nakala: Mhe. Hakimu Mahakama ya Mwanzo Newala Mjini. Agizo limetokelezwa'.

Exhibit D 1 was clear evidence that there was an order of Newala Primary Court ordering execution and which order, the Nanguruwe Ward Executive Officer was executing. There is no dispute that the Ward Executing Officer had legal mandate to sell the suit farm to the late Curtias as he was, in law, and executing officer of the Primary Court's orders. Deciding the way the Chairman did was tantamount to overruling the decision of the primary court given in Civil Case No. 67 of 2003, the power the Chairman lacked.

The argument by the respondent in his submission that the primary court lacked power to distribute the estate of the deceased has no basis. In the first place, this is not the proper forum to challenge the decision of the primary court. This High Court has no power to revise the decision of the primary court. That power is only vested in the District Court under the law. Second, settled principle is that a court decision though its correctness may be questionable remains an enforceable court's order unless and until, through an appropriate steps, has been set aside, if in fact, it is defective. See the case of **General Manager KCU (1990) Ltd v. Mbatama Rural Cooperative Society**, CAT (Bkb), Civil Application No. 1 of 1991 at Mwanza (URT). This, in my view, disposes the 1st and 3rd grounds of appeal.

In the trial Tribunal's judgment one of the reliefs granted was declaring the suit farm as the lawful the late HAKIKA MAURIDI MAMU. It is not clear what that finding meant. Probably, it meant that the suit farm was declared the lawful property of the said deceased. If that is the case, then the Hon. Chairman went off tangent. In the first place, the deceased cannot own a land. Second, the late HAKIKA MAURIDI MAMU had not prayed to be declared the lawful owner of the suit farm.

With that analysis, since the 4th ground was abandoned and the disposition of the 1st and 3rd grounds of appeal determines the pertinent issue the trial Tribunal had posed and which is the bedrock of the whole case, I have no doubt that the above finding disposes the whole appeal.

The appeal is found to be meritorious and is, accordingly, allowed. The judgment of the District Land and Housing Tribunal is quashed and set aside.

The appellant is awarded costs.

Order accordingly.




W.P. Dyansobera

Judge

6.8.2021

This judgment is delivered under my hand and the seal of this Court this 6th day of August, 2021 in the presence of Ms Lightness Kikao, learned Counsel for the appellant and in the absence of the respondent.

Rights of appeal to the Court of Appeal are fully explained.




W.P. Dyansobera

Judge