

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA SUB - REGISTRY**

**AT MUSOMA**

**MISCELLANEOUS LAND APPEAL NO. 45 OF 2021**

*(Arising from Land Appeal No. 57 of 2020 the Tarime District Land and Housing Tribunal, Originating from Land Case No. 5/2020 of Turwa Ward Tribunal)*

**FAMILIA YA MWITA SAMWEL (C/O MARWA MWITA).....APPELLANT**

***VERSUS***

**GETRUDE JUMA ..... RESPONDENT**

**JUDGMENT**

2<sup>nd</sup> September and 30<sup>th</sup> September, 2021

**F.H.MAHIMBALI, J.:**

At Turwa Ward tribunal the appellant instituted a civil case against the respondent. He alleged that his late father, one Mwita Samwel Mnanka showed them the disputed piece land on 29/01/2015, and its measurement is 30 paces height and width of 22 paces. After a year had passed and he returned from Dar es Salaam, he found there was a building of three rooms erected on the disputed piece of land. They inquired from their father about the building and he told them that the respondent is a "fundi" and he owed him some money and he was

unable to pay so he decided to build the house to pay his debt. Chacha Mengányi was the builder and he owed the appellant tsh. 800,000/= When the family of the appellant called Chacha Mengáyi he accepted that he owed the appellant's father money and he was constructing the house to pay his debt.

The appellant's father died in the year 2018 and they saw the respondent's husband relocating the stones found in the disputed land and when they inquired from him on his action, he stated that he had bought the land in dispute. The appellant further stated that he was not able to follow up on the matter as he was busy with the process of being appointed the administrator of his late father's estate. He sought other legal remedies like reporting the matter to the police, and other local leaders and eventually, he decided to institute a suit before the ward tribunal. His testimony was corroborated by Mkama Mwita Samwel who stated that after the demise of their father in 2018, she gave their family advise of selling the disputed piece of land and that is when they found out that Getrude Juma (the respondent) claimed the land was hers.

Countering the suit at the ward tribunal, the respondent alleged that on the 14/02/2015 she bought the disputed piece of land from

Mwita Samwel for the price of tshs. 2,500,000/= but she paid it in instalments. She paid first instalment of tshs. 1,000,000/=: and on the 30/05/2015 she paid 700,000/= and she later paid 500,000/=. She then built the house over the said plot. Surprisingly, one day as she went to visit her site she was chased by the appellant. She decided to report the matter to the police station where she was advised to institute a civil case at the ward tribunal. Her testimony was supported by the evidence of Charles Daniel Mnanka and Sale Matiko who both stated that the respondent is the owner of the land in dispute as she had bought it from the owner (Mzee Marwa Mwita).

The trial ward tribunal after hearing the parties decided that the land in dispute belongs to the respondent as she had bought it before the demise of the father of the appellant and when they visited the locus in quo, they saw the building that was erected a long time ago.

The decision of the ward tribunal did not amuse the appellant. He lodged his petition of appeal to the District Land and Housing Tribunal (DLHT) of Tarime at Tarime in Land Appeal No. 57 of 2020. The DLHT heard the appeal and upheld the decision of the ward tribunal by dismissing the appeal.

Still aggrieved by this decision, the appellant has lodged his petition of appeal containing four grounds of appeal in verbatim as follows;

- 1. That, the 1<sup>st</sup> Appellate Tribunal erred in law and fact by declaring the respondent the winner yet the alleged sales was administered by unauthorized person for he acted without jurisdiction.*
- 2. That, the 1<sup>st</sup> Appellate Tribunal erred in law and fact by misdirecting its mind in respect of respondent's locus standi concerning the authority to act on behalf of his brother whom he claims to be the owner of the suit land.*
- 3. That, the 1<sup>st</sup> Appellate Tribunal erred in law and fact by totally ignoring the appellant's 2<sup>nd</sup> and 3<sup>d</sup> ground of appeal.*
- 4. That, the 1<sup>st</sup> Appellate Tribunal erred in law and fact by ignoring the contradictory evidence of the respondent, his witness and exhibit with respect to the value of land in dispute.*

When this matter came for hearing on the 2<sup>nd</sup> of September, 2021 the appellant enjoyed the legal services of Mr. Paul Obwana while the respondent was represented by Mr. Revocatus Baru learned advocate.

In support of the appeal, Mr. Paul Obwana submitted that they have lodged a total four grounds of appeal after being dissatisfied with the appeal. He prayed the grounds be adopted to form part of his appeal submission. He submitted on the first and second ground of appeal together that the DLHT erred when it relied on the evidence of

the sale agreement while the disputed piece of land was in a different place and not in Rebu centre, and the witness of the said sale resides at Rebu shule. These being two different places, hence the witness acted in ultravires. He went further to submit that the testimony of the chairperson Charles Mnanga is not reliable as he went to work outside his jurisdiction. He stated that it was similar to an advocate from Tanzania mainland working in Zanzibar without complying with the law. He said there was no proof of the procedure to be strictly followed.

On the third ground of appeal, he submitted that the DLHT erred when it failed to treat the matter free and fair as what was analysed in the judgment does not match with the proceedings but the secretary of the trial tribunal participated fully to ask questions and explained some issues contrary to section 5(3) of the Ward Tribunal Act. In essence that was not the duty of the secretary to the ward tribunal. He being not a member ought not to have actively participated in asking questions but surprisingly the DHLT did not say anything on this ground of appeal. Section 5 of the Ward Tribunal Act is clear about the duties of secretary to the ward tribunal as distinguished from the members of the ward tribunal. In anyway, one cannot act both. He prayed that the decision of the two lower tribunals be quashed and set aside.

As regards the fourth ground of appeal, the DLHT did not evaluate the evidence of the trial tribunal which was contradictory. He prayed that the decision of the two lower tribunals be set aside with costs.

Countering the application, Mr. Revocatus Baru, learned advocate submitted that in regards to the first and second ground of appeal, the question to be asked is whether the sale was lawful or otherwise. He submitted that according to the evidence of the trial court, the appellant freely admitted his father sold the said land to the respondent, as per the handwritten proceedings of the Ward tribunal at page four. He stated further, that the lower ward tribunals decided justly and on the merits of the case. The fact that it was witnessed by a leader from a different area is not meritorious ground. As the land was sold in 2015 by the deceased and the disputes emerged in 2018 when relatives chipped in, the appellants have no basis of claim. He submitted further that there is no law banning one chairperson from acting in another area as witness of any sale transaction.

On the issue that the respondent had no locus is an afterthought as it was not raised at the two lower tribunals. As the same was not pleaded it can not be raised now during an appeal. To cement his point he cited the case of **Deus Sabi vs Roza Boniface Gataya** , HC Land

Case Appeal No. 70/2017 – Mwanza at page 5. In essence it is the appellant who had no locus standi to sue on this matter as he has never been an administrator of the estate from the trial tribunal.

On the third ground of appeal, it is true the 2<sup>nd</sup> and 3<sup>rd</sup> ground of appeal were not discussed by the DLHT. However, not discussing the same didn't prejudice anything as it didn't vitiate the justice of the case. This is because, even if it had been discussed it would not have changed the outcome of the case. Thus, it is prudent that the same should stand intact. S. 45 of the Land Disputes Courts Act, Cap 216 R.E 2019 suggests that such errors do not affect the tribunal's decisions unless really there is a reason to believe otherwise. In **Peter Mnanka Nyamweli vs Analua Mwanga** HC Misc. Land Appeal no. 25 of 2020 (HC- Musoma) , Kahyoza , J held the following at page 4 :

*It is a trite law that the 2<sup>nd</sup> appellate court can hardly interfere with concurrent findings of the two decisions.*

He prayed this court not to interfere with the concurrent findings of the two lower tribunals.

With the fourth ground of appeal, there is no contradictory evidence amongst the witnesses thereof. Each one testified what he

knew. However, the main issue was whether the father of the appellant sold the said plot and not the value of the sale. Thus, it is not fair to reverse the decision while knowing that there had been no any dispute on ownership. Taking all this into account, he humbly prayed that the appeal be dismissed with costs as it is not meritorious.

Re- joining Mr. Paul Obwana submitted that the argument that the respondent had purchased the plot lawfully is not true as there can not be justice from a wrongful act. Any lawful sale is supposed to be before a proper forum and in a proper manner. Regarding the secretary to the ward tribunal actively participating into the proceedings it was not proper as per law. Regarding the sale, he reiterated that it was unlawful as it was witnessed by a wrong party.

With the cited case of **Peter Mnanka** (supra) he argued that the case is distinguishable with the scenario at hand. He conceded to the principle held in the case of **Deus Sabi** (Supra), however the applicant in this case is amongst the family members of the deceased, thus capable of acting as per law.

He went further to submit that they became aware of the sale after the demise of their father. As regards on the contradictions pointed



out, he left it to the court to determine it. So long as there was no lawful sale he prayed his appeal be allowed with costs.

Having heard the submissions of the rival parties and gone through the court's record the ball is now on the court to determine if this appeal is meritorious.

On the first and second ground of appeal, the appellant's complaint is that Tribunal erred when it relied on the evidence of the sale agreement which was witnessed by a chairperson from a different area. The respondent objected to this point and stated that the sale was legal. I have dispassionately considered their rival points. The learned advocate is questioning on the legality of the sale of the land in dispute. The law is settled that the tribunals do not deal with sales but with disputes involving ownership of land. Mr. Paul Obwana, learned advocate is challenging the sale was witnessed by the chairperson who was from a different area. With all due respect this ground will not detain us as this court is not the proper forum to determine if the sale was legal or not. That notwithstanding, I find the grounds challenging the said sale devoid of merit as the appellant is neither the owner nor the administrator of the said land in dispute. It is a mere wish than legal perspective in my analysis.

The appellant's other complaint is that the respondent had no locus standi as the land did not belong to him. I agree with the submission of Mr. Baru that this point is an afterthought. As it is the appellant who instituted the suit at the ward tribunal against the respondent and now, he claims the respondent had no locus standi. Conversely, it is the appellant who is lacking locus on institution of the matter at the trial tribunal. The land being the property of their deceased father, it is not as a matter of law reverting to them automatically. It must pass a proper legal process as per law. This view was well elaborated in the case of **MGENI SEIF V. MOHAMED YAHAYA KHALFANI**, Civil Application No. 1 / 2009, Court of Appeal – Dar es Salaam (unreported) where at page 14, it was held:

*"As we have said earlier, where there is a dispute Over the estate of the deceased, only the probate and administration court seized of the matter can decide on the ownership".*

Additionally, on page 8 of the cited case of the Court of Appeal had this to say;

*"It seems to us that there are competing claims between the applicant and the respondent over deceased person's estate. In the circumstances, only a probate and administration court can*

*explain how the deceased person's estate passed on to the beneficiary or a bona fide purchaser of the estate for value. In other words, a person claiming any interest in the estate of the deceased must trace the root of title back to a letter of administration, where the deceased died intestate or probate, where the deceased passed away testate".*

Having stated so, it is safe to state that his complaint lacks merits and it is dismissed.

The appellants also complained that the ward tribunal failed to treat the matter free and fair as what was analysed in the judgment does not match with the proceedings. The truth of the matter is, the secretary of the trial tribunal participated fully to ask questions contrary to the dictate of section 5(3) of the Ward Tribunal Act while it was the duty of the members. I have gone through the section cited by the learned counsel that was not complied with, I beg to differ with his submission as that section 5 provides for the qualification of the members of the ward tribunal and not their roles and not functions of the secretary to the ward tribunal. However, his duties as per law (the secretary of the ward tribunal) are registration of cases (section 17 of the LDCA and section 6(3) and section 11 of the Ward Tribunal Act, Cap

206 R.E 2019). In line with these duties, my reading to the trial tribunal's records, have not been able to get even a single question personally asked by the Secretary to the Ward Tribunal as complained. What I have gathered from the records are questions put by the Ward Tribunal. As the composition of the Ward Tribunal is legally known (section 4 of the Ward Tribunal Act read together with section 11 of the LDCA), then in the absence of clear evidence from tribunal records, the assertion that the secretary participated fully in asking questions in the trial of the matter it is unfounded. Additionally, I have gone through the proceedings of the trial court and the judgment. I have not seen any contradiction that the proceedings are in conflict with the judgment. Having stated so, this ground is devoid of merits as it is wanting of the contradictions.

The appellant also lamented that the DLHT did not evaluate the evidence of the trial tribunal which was contradictory. However, he did not show this court which evidence was contradictory, he left it to the court to determine. I have gone through the trial tribunal's witnesses testimonies. All the of the witnesses for the Respondent testified on what they knew about the land in dispute. I have not seen any

contradictions by the respondent side. Having stated so this ground is bankrupt of merits and it is dismissed.

All said and done, since all grounds of appeal are devoid of merits, appeal is dismissed with costs.

It is so ordered.

DATED at MUSOMA this 30<sup>th</sup> day of September, 2021.



F. H. Mahimbali

JUDGE

30/09/2021

**Court:** Judgment delivered this 30<sup>th</sup> day of September, 2021 in the presence of Mr. Pau Obwana Advocate for the Appellant, absent of Respondent and Miss. Neema P. Likuga – RMA

Right of appeal is explained.

F. H. Mahimbali

JUDGE

30/09/2021