

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT TANGA**

**LAND APPEAL NO. 40 OF 2020**

(From the Decision of the District Land and Housing Tribunal  
for Lushoto in Land Appeal No. 20 of 2020)

**RAMADHANI ALLY BIRA..... APPELLANT**

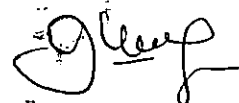
**VERSUS**

**PETER EMANUEL MBOWE ..... RESPONDENT**

**JUDGMENT**

**MKASIMONGWA, J.**

In Kwemhafa Mponde is located a piece of land originally owned by Saidi Bakari Shekinyashi (Deceased). The later developed it by planting permanent crops namely banana, avocado, tea and also sugar canes. On the land again the deceased erected a house and that there is a family grave yard. That land was later on left by the family to Ramadhani Ally Bira (Appellant) for the later to take care of it. Sometime in 2008 Peter Emmanuel Mbowe (Respondent) sold the land to the Appellant at Tshs. 400,000/= price out of which by 30/05/2008 a sum of Tshs. 365,000/= was paid. The family never recognized the sale for the same was done by the owner's (deceased) grandson without the consent or even knowledge of the family. As such and fortified by the fact that the sale price was not



fully paid, the Respondent came and fenced the land against the Appellant. The later did unsuccessfully sue the Respondent in Mponde Ward Tribunal claiming for the land. Similarly his appeal to Lushoto District Land and Housing Tribunal preferred against the decision of the trial Ward Tribunal was not successful. This Appeal is against the decision of the District Land and Housing Tribunal upholding that of the Ward Tribunal. In the Appeal, the Appellant filed a Petition of Appeal in which he listed the following four grounds of Appeal:-

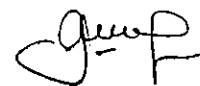
- 1. That the DLHT failed to consider that the Respondent sold the disputed land to the Appellant for Tshs 400,000/= (four hundred thousands), therefore the Appellant was not the care taker of the dispute land.*
- 2. That DLHT erred in law and fact for failing to consider that after the Respondent's purported unlawful sale of the dispute land to the Appellant, the Respondent continued receiving sales payment in installments until mid-March, 2020 when he trespassed on the disputed land by building a fence and the Appellant reported the issue to the police.*
- 3. That the DLHT erred in law and fact for failing to consider that since 4<sup>th</sup> March, 2008 to mid-March, 2020; more than twelve years; the Appellant was in occupation and development of the disputed land without any interruptions.*



4. *That the DLHT erred in law and fact for failing to consider that Ward Tribunal's order for the Appellant to be refunded Tshs. 365,000/=*

The Appeal was contested by the Respondent and when the same was placed for hearing before the Court, whereas Mr. Ladislaus S. Ngomela (Adv) appeared on behalf of the Appellant, the Respondent appeared in person. When he was invited by the Court to argue his case Mr. Ngomela narrated the historical background of the Appellant's ownership over the land. He contended that the Respondent came and trespassed on the land after twelve years of the land sale agreement in which period the Appellant had intensively developed it. Referring to the Provisions of Rule 2 of the Magistrates' Courts (Limitation Proceedings in Customary Laws) Rules, G.N 311 of 1964 Mr. Ngomela submitted that the claim for the land by the Respondent was time barred. As such the Tribunals below erred when they entertained and determined the matter filed out of the prescribed time limitation. In the event, Mr. Ngomela prayed the court that the appeal should be allowed with costs.

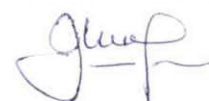
On the other hand, the Respondent maintained that he sold the land in dispute to the Appellant at Tshs 400,000/= out of which a sum of Tshs



365,000/= only was paid. When the family detected that he (Respondent) had sold the land to the Appellant sometime in 2011 they (family members) came and constructed a fence fencing it and since then the family occupies the land. As such, the twelve years bar does not apply to this case. The Respondent stated further that later in 2020 he was sued by the Appellant before the Ward Tribunal which is the genesis of this matter. He prayed the Court that it finds no merit in the appeal and the same should be dismissed.

In a brief rejoinder submission, Mr. Ngomela reiterated that since when the land was sold to the Appellant sometime in 2008 there was no any problem until on 09/03/2020 when the Respondent came and fenced the land. The learned advocate added that since the Appellant had developed the land he is entitled to be paid compensation and the granted compensation of Tshs 500,000/= should be enhanced to Tshs. 15,000,000/=

I have attentively considered the submission as well as the evidence on record. I find it is not disputed that the land in dispute was initially the property of Saidi Bakari Shekinyashi (Deceased) who is the Respondent's grandfather. It is also not dispute that the land was sometime in 2008 sold



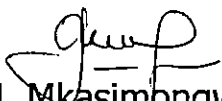
*"Kosa la kujimilikisha shamba mali ya SM na kujenga uzio (fensi) huku ukijua kufanya hivyo ni kosa kinyume na kifungu cha 16 cha sheria ya migogoro ya ardhi"*

This shows that the Respondent was facing a criminal offence before the Ward Tribunal. In my view, if the Respondent was rightly accused of land trespass, the Ward Tribunal was required to determine only whether or not the Respondent had trespassed on the land. As there was no dispute that the alleged trespassed land was that the Respondent had sold to the Appellant and since the sale was never successfully challenged by the Respondent and or his family, it was not proper for the Ward Tribunal to hold and the District and Housing Tribunal to confirm that the sale of the land was null and that the land should return to the ownership of the deceased Shekinyashi's family. If the respondent and the deceased's family members were of the view that the sale agreement was not properly entered by the Respondent, the right course the family could take was to seek the court's remedy of annulment of the agreement. Where the family was satisfied that there was no basis for nullifying the sale agreement, it could have opted to redeem it. It was not proper for the Respondent and/or the family members to unlawfully enter into the land the Appellant had acquired by purchase.



In event, I quash the unanimous finding of the Tribunals below and accordingly set aside all subsequent orders as this Appeal succeeds. The Appeal is allowed with costs. If the Respondent and the family of Shekinyashi think that they have the right over ownership of the land, they should first challenge the legality of the sale agreement entered between the Appellant and Respondent.

Dated at Tanga this 8<sup>th</sup> day of September, 2021.

  
E. J. Mkasimongwa,

**JUDGE**

**08/09/2021**

Date: 08/09/2021

Coram: E. J. Mkasimongwa, J.

For Appellant: Mr. Ngomela (Adv)

For Respondent:

C/Clerk: Alex

**Court:** Judgment delivered in chambers, this 8<sup>th</sup> day of September, 2021 in the presence of Mr. Ngomela (Adv) for the Appellant and in the absence of the Respondent.

Right of Appeal is explained.



  
E. J. Mkasimongwa

**JUDGE**

**08/09/2021**