

**IN THE HIGH COURT OF TANZANIA**

**MWANZA DISTRICT REGISTRY**

**AT MWANZA**

**MISC. LAND APPEAL NO. 16 OF 2021**

*(Arising from the Decision of Mwanza District Land and Housing Tribunal Original Isamilo Ward Tribunal  
in Land Case No. 01 of 2020)*

**AGAPE CHRISTIAN FELLOWSHIP & ANOTHER.....APPELLANT**

versus

**DANIELA DANIEL GAMA.....RESPONDENT**

**JUDGMENT**

20 Sept & 18<sup>th</sup> October, 2021

**RUMANYIKA, J:.**

With respect to judgment and decree of Isamilo ward tribunal dated 16/01/2018 therefore the reversal decision of 13/11/2020 of the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT), Agape Christian fellowship and Petro Nyangi the (1<sup>st</sup> and 2<sup>nd</sup> appellants) respectively were not happy hence the 2<sup>nd</sup> appeal.

When, by way of audio teleconference the appeal was called for hearing on 20/09/2021, unlike Daniela Daniel Gama (the respondent) who appeared in person, Mr. Adam Robert learned counsel appeared for the

appellants. I heard them through mobile numbers 0756 017 405 and 0768 104 666 respectively.

The petition of appeal contained 3 grounds;

- (1) That the DLHT erred in law and fact, without affording the parties right to be heard it having had introduced the issue of nonproduction in evidence of the sale agreement.
- (2) That with respect to the respondent the DLHT erred in law and fact not holding that the appellant's purchasing the disputed land it lacked the respondent's spousal consent.
- (3) That the DLHT chair erroneously without reasons ignored the assessors' opinion.

Mr. Adam Robert learned counsel submitted that with respect to none production by the parties of a copy of the sale agreement in the trial ward tribunal the DLHT improperly raised a new fact therefore it didn't hear the parties, the omission vitiated the proceedings therefore need for the trial ward tribunal to re do it (the case of **Michael Charles v. Ps President's Office & 3 Others**, Civil Appeal No. 5 of 2011 (CA), unreported much as appellants had the respondent's spousal consent and contrary to Rules 23 (1) (2) of the Land Disputes Courts Act Cap 206 RE 2019 the DLHT was not

properly constituted because without assigning reasons he parted company with the assessors. That is all.

On her part the respondent submitted that the appellants only played delaying tactics much as indeed the latter were duty bound to, but they did not produce a copy of the alleged sale agreement and the purported purchaser had not sought or obtained the mandatory spousal consent just as the DLHT chair ignored the assessors' opinion properly. That is all.

A brief account of the evidence on record would read as follows;-

Sm1 Daniela Daniel Gama stated that one having had asked for a site just for necessary school business, she leased it to appellants but later on the former turned hostile and claimed title alleging he purchased it from the respondent's husband (the 2<sup>nd</sup> appellant). That she refunded the 1<sup>st</sup> appellant but claims now of Rev. Theoginus thereof persisted as on 03/12/2008 the latter slashed down some avocado, banana trees and demolished a latrine then the respondent reported the case to the local leaders.

Sm2 Wankuru Nyabomu stated that for the first time the respondent reported to him the dispute in 2008 much as it was not until 2013 when one elderly Waziri died the 1<sup>st</sup> appellant did encroach the plot by building a house but later on the latter was reported to police and arrested.

Sm3 Felician Ibambai stated that in capacity of the local secretary, but with respect to the disputed land he had a case of malicious damage to property reported to him by the respondent on 4/12/2008, at the locus inquo he observed it all then against the 1<sup>st</sup> appellant but in the interim he issued a stop order.

Su1 Reticial Kamuga stated that with respect to the disputed land, between the vendor and purchaser he witnessed the agreement on 22/07/2008 then the 1<sup>st</sup> appellant cleared the plot.

Su2 Idat Salim stated that the disputed land was properly sold to the 1<sup>st</sup> appellant just as also the respondent and husband (2<sup>nd</sup> respondent) witnessed it.

Su3 Petro Nyagi at the time the local chair, he stated that as the elderly Waziri was still alive, on 22/07/2008 the 1<sup>st</sup> appellant's pastor presented to him the ready executed sale agreement only to rubberstamp and did it after he had physically verified the marks and boundaries.

Su4 (the appellant) stated that one Nehemia Waziri having had sold them the disputed plot for shs. 600,000/=, at a later stage, but as at the local chair's office the vendor was missing, later on the respondent was asked to and she signed the document say 5 months later in express terms

the respondent alleged it was a forged agreement that actually the respondent's claims were a mere after thought.

Overruling the trial tribunal, correctly so in my considered view the DLHT chair held that if at all between the appellants there was a written sale agreement, c/s 159(1) of the LMA the 1<sup>st</sup> appellant had no spousal consent of the respondent and the omission fatally vitiated the sale agreement.

The 1<sup>st</sup> appellant may have had purchased the disputed plot from the 2<sup>nd</sup> appellant yes, but the central issue was whether the former had consent of respondent as the vendor's wife. On this one the local chair (Su3) cut the long story short. In fact contrary to his testimony su3 did not witness the parties execute the contract but he just "rubber stamped" it but late in the day found the mandatory consent and signature of the spouse missing. That he traced and procured the respondent's signature if at all. In fact the respondent's signature was but ceremonial. It is very unfortunate that apparently the diligent local chair did not bless the document until when he was done with boundaries and perhaps physical marks of the disputed plot but for a paradigm taking things for granted because he did not even bother to look for the vendor but his wife who was not privy to the contract or even signed as a witness before much as according to him the purported vendor

was still alive. In fact Su3 was neither credible nor reliable witness the latter's evidence should have been discounted. Now that she was "attacked from the back" the respondent had not consented to the sale if any.

Second, the first attempts by respondent's husband in the respondent's back to sell the disputed plot may have been frustrated by the respondent redeeming/refunding the 1<sup>st</sup> appellant because the appellants did not, in their testimony even attempt to dispute such serious allegations against them.

The respondent's claims therefore were proved on balance of probabilities. Like like the DLHT held, the trial tribunal should have held so suffices the point to dispose of the appeal.

As for the issue of the DLHT chair ignoring the assessors' opinion, the learned counsel may, with greatest respect wish to remember that the role of lay members was only on points of fact (not of law) to advise the chair. The requirement of spousal consent to disposition of matrimonial property upon which case was determined purely it was a point of law of which the assessor should not even have opined in the first place. I think not every failure by chair to consider assessor's opinion vitiated the tribunal's proceedings.

The appeal is dismissed with costs. For avoidance of doubts therefore I shall have nothing upon which to fault the DLHT chair. It is so ordered.

  
**S.M. RUMANYIKA**

**JUDGE**

**08/10/2021**

The judgment delivered under my hand and seal of the court in chambers this 18/10/2021 in the presence of Mr. Adam Robert learned counsel and the appellant online.



  
**S.M. RUMANYIKA**

**JUDGE**

**18/10/2021**