

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 29/2020

(C/F District Land and Housing Tribunal of Arusha, Application No. 328 of 2016)

VICENT PETER OLOMI.....APPELANT

VERSUS

PETER CONSTANTINE OLOMI.....1ST RESPONDENT

ROSEMARY B. MNYAMBI.....2ND RESPONDENT

JUDGMENT

10/9/2021 & 22/10/2021

ROBERT, J:-

This appeal arises from the judgment and decree of the District Land and Housing Tribunal (DLHT) of Arusha in Application No. 328 of 2016. In that case, the Appellant unsuccessfully sued the Respondents claiming ownership of a parcel of land measuring 12 feet by length and 12 feet by width located at Ardeko/Kiwawa village at Embaseni Maji ya Chai Ward, Arumeru District in Arusha Region.

Briefly stated, facts relevant to this matter reveals that, the first Respondent is the biological father to the Appellant. The Appellant alleged that sometime in 2013, he gave the first Respondent TZS 4,500,000/= to buy a piece of land for him. Later on, he sent some money to the first Respondent to construct a house on the purchased

land and upon completion he permitted the first Respondent to occupy the house as an overseer on condition that the first Respondent would return the house to him when needed the house. However, it was alleged that, the first Respondent brought the second Respondent into the said house and when the Appellant needed his house, she refused to vacate claiming that the house belongs to her.

The first Respondent admitted to the Appellant's claims as narrated herein. Thus, judgment was entered against him based on his admission and other necessary orders awaited the hearing of the evidence from the other parties. The second Respondent resisted these claims stating that, she acquired the suit property jointly with the first Respondent in 2013 from an income earned in their business of bar.

After a full trial, the DLHT made a finding that, the suit property was bought and built by joint efforts of the first and second Respondents from a business of bar they run together and they were residing therein as couples before they started quarreling. The trial Tribunal was convinced to believe that the first Respondent used his son, the Applicant herein to prolong the quarrel which he had with the second Respondent and with ill motive of taking all the property instead of it being distributed between them in case their relationship is

necessitated to come to an end. In the end, the DLHT dismissed the case with costs.

Aggrieved, the Appellant lodged this appeal armed with the following grounds;

- 1. That, the appellant's claim having been admitted by the 1st respondent supported by evidence made by the appellant and that of his witnesses, the honourable Chairman erred in law and in fact by failure to consider the appellant to had a better title hence the owner of the suit property.*
- 2. That, the trial chairman erred in law and in fact when held the suit property belongs to the respondents ignoring the fact that the 1st respondent is married and relationship between him and the 1st respondent did not presume existence of marriage.*
- 3. That, the trial chairman erred in law and in fact to believe the 2nd respondent to had contributed to acquire the property from an alleged bar business income which was not supported by evidence on record.*
- 4. That, the honourable chairman having entered judgment in admission against the 1st respondent erred in law and in fact by making uncertain decision by declaring the 1st and 2nd respondent the lawful owner of the suit property.*

At the hearing of the appeal Mrs. Christina Y. Kimale, learned counsel represented the Appellant while the Respondents appeared in person, unrepresented. At the request of parties, the Court ordered hearing to be conducted by way of written submissions.

Before dealing with the crux of the matter, I wish to note here that the Appellant filed his written submissions on 26th day of May, 2021 instead of 25th May, 2021 which was ordered by the court. This means the Appellant was late by one day in filing his written submissions. The second Respondent raised her concern on this delay in her reply submissions and prayed that the Appellants submissions be disregarded and expunged from the Court records. The Appellant responded in his rejoinder submissions that he inadvertently recorded the date of filing Appellant's written submissions in chief to be 25th May, 2021 instead of 26th May, 2021. She regarded this as an omission which is not curable and proceeded with his rejoinder on submissions filed by the second Respondent.

I am aware of decisions of this court that written submissions filed outside the time specified in the court's order without leave of the court should not be considered in the determination of a case even if such submissions are of merit. The basis for such decisions is to give respect and put into effect court orders given in the course of litigation. However, considering the circumstances of this case and the fact that all parties have already filed their submission before this court and the Respondents' submissions are mainly based on arguments made in

submissions in chief, interest of justice weighs towards determining this appeal on merit in spite of the lateness of the Appellant's submissions.

Coming to the merits of this appeal, counsel for the Appellant decided to consolidate and argue the first and second grounds of appeal together. The remaining grounds were argued separately.

Submitting on the first and second grounds as consolidated, she argued that, since the Appellant's claim of ownership of the disputed property was admitted by the first Respondent, the first Respondent was not subjected to give his evidence and produce witnesses.

She argued that the disputed land was purchased on behalf of the Appellant by the money given by the Appellant to the first Respondent but since the said land was purchased in the absence of the Appellant, the agreement was written in the name of the first Respondent. Thereafter, a house was constructed by the first Respondent acting on instructions from the Appellant using the money obtained from the Appellant. He maintained that, the first Respondent was living in cohabitation with the second Respondent but she did not sign the agreement as a co-purchaser or a witness despite the fact that she was present at the signing of the agreement. She argued that, that means the disputed land belong to the first Respondent alone in exclusion of the second Respondent. She maintained that, since the second

Respondent failed to prove her contribution to the said property (house), there was no formal marriage between the first Respondent and the second Respondent and the first Respondent admitted that the house belong to the Appellant, then the 2nd Respondent had no right in law in the property. The Chairperson ought to have declared the appellant as the lawful owner.

In reply to the 1st and the 2nd grounds of appeal, the first Respondent submitted that, the Appellant has a good title to the suit property as he was his son and he was the one who gave him the money to purchase the suit land and build a house thereto. During the hearing at the trial court, he was not able to testify nor to call witness after he admitted the whole claim and the said property was purchased by him without the involvement of the 2nd Respondent. He added that, his relationship with the 2nd Respondent did not intend to be that of husband and a wife as they lived as boyfriend and girlfriend therefore all the purchasing and the development of the said plot cannot be said to have been done with joint efforts between the Respondents.

On the other hand, the second Respondent submitted that, the Appellant is deploying delaying tactics against her from getting her right within time. She added that, the trial court was right in his decision that the suit property belonged to the first Respondent due to the evidence

submitted including exhibits admitted. She argued that, according to section 119 of Cap. 6, the Appellant was duty bound to prove the ownership of the suit property and he failed to do so. Further to that, as the matter before the trial tribunal was not a matrimonial one, it was not the duty of the tribunal to prove if there was a marriage between the Respondents or not (See section 33 (1) (a) (b) of the **Land Disputes Court Act**, Cap 216 R.E 2019). He maintained that, mere admission of the claim by the first Respondent does not remove the second Respondent's right over the suit property.

Coming to the 3rd ground of appeal, Mrs. Kimale submitted that, it was wrong for the Chairman to hold that the suit property was bought and built with joint effort of both Respondents while the second Respondent failed to prove her marriage with the first Respondent. ~~The second Respondent failed to prove that they operated a bar business together with the first Respondent, she did not submit business licence nor any receipt to purchase materials to prove the same. The trial tribunal did not have mandate to evaluate the kind of relationship between the parties it ought to have been proved by a different court rather than DLHT.~~

Replying to this ground, the first Respondent submitted that, the second Respondent did not prove her contributions to the suit property,

her name did not reflect in the sale agreement nor did she assist the first Respondent to acquire the said property. The second Respondent at the trial court submitted that, when she started relationship with him, she knew she had the wife but they were separated, as he never paid dowry to her parents nor thinking about it there was no marriage relationship between them.

Responding to this ground, the second Respondent stated that, the Appellant's evidence was contradictory since one person cannot be in two places at the same time. She maintained that, Pw3 was not there when the Appellant was receiving money from the Appellant that is why his evidence was not considered by the trial tribunal. At the trial tribunal the evidence revealed that the suit property was acquired by joint efforts of the Respondents herein. ~~As submitted earlier, the tribunal did not deal with the issue of marital status as it had no jurisdiction to entertain it.~~

Regarding the 4th ground, counsel for the Applicant submitted that, the admission of the first Respondent made the Appellant the lawful owner of the suit property. He explained that, the first Respondent admitted to receive the money from the Appellant to purchase the disputed land together with the construction money. The

admission of the first Respondent was not considered at all by the trial tribunal chairman.

Regarding this ground, the first Respondent submitted that, Hon. Chairman took away the Appellant's right granted after the admission he made (See Order 12 Rule 4 of the **Civil procedure Code**, cap 11 R.E 2002). A judgment on admission can only be altered nor changed by the appellate court, as the judgement was already made in favour of the appellant it was wrong for the Hon. Chairman to change the decision. Based on his submission, he prayed for the appeal to be allowed with costs to the second Respondent.

On her part, the second Respondent submitted that, the Appellant failed to prove his ownership over a suit property that's why the tribunal decided in favour of the Respondents herein. She argued that, in civil cases the one who alleges must prove (see the case of **Abdul-Karimhaji vs Raymond Nchimbi Alois and Joseph Sital Joseph** (2006) TLR 419), the Appellant failed to discharge the said duty which leads to the dismissal of the application. She prayed for the appeal to be dismissed with cost in its entirety.

In a brief rejoinder, counsel for the Appellant reiterated what she submitted in her submissions in chief and added that the Appellant proved his ownership through the admission of the first Respondent the

evidence which was corroborated by the Appellant's witnesses at the trial tribunal

Having carefully considered the rival arguments advanced by the counsel for the parties and examined the record of appeal, this court is now in a position to determine the merit of this appeal on the basis of the grounds of appeal filed in this court.

Starting with the first ground, evidence reveals that, the first Respondent bought the suit property from Mr. Adiel Naftal Pallangyo (PW2) as shown in the sale Agreement (exhibit P1). The Appellant claimed that he gave the first Respondent money to purchase the disputed land on his behalf therefore he is the lawful owner of the disputed land. The first Respondent admitted to the claim made by the Appellant. The question to be determined by this court is whether the Appellant has good title to the disputed land due to the first Respondent's admission that he was given money by the Appellant to purchase the dispute land on his behalf.

Section 64 of the Land Act, Cap. 113 requires that a contract for disposition of land must be in writing (**see Godwin Ndelwa vs Masumbuko Ngongi Cr. App. No. 55 of 2014, High Court of Tanzania, Land Division, (unreported)**). In the present case the only document proving disposition of land is exhibit P1 which shows that the

first Respondent purchased the suit land from Mr. Adiel Naftal Pallangyo. There is no any proof of disposition or ownership of the disputed land by the Appellant apart from the first Respondent's admission at the DLHT that he received money from the Appellant to buy the disputed land. Since writing is required for enforcement of contracts relating to land and in the present case the only written document related to the disputed land is exhibit P1, which does not bear the name of the Appellant, this court finds no proof to establish that the Appellant is the lawful owner of the disputed land. The Appellant cannot claim ownership while the document evidencing ownership bears the name of a different person. The first Appellant's admission may be a good evidence to establish that he received money from the Appellant for purchase of land but such evidence cannot establish a good title to land.

I will now determine the 2nd, 3rd and 4th grounds together as they all revolve around the same issue of marital status between the Respondents and whether the decision of the trial tribunal that they were co-owners of the suit property as a result of their joint efforts of acquiring it was proper.

The Appellant and first Respondent submitted that, it was wrong for the trial tribunal to decide that the first and second Respondents were living together as married couple and argued that the suit property

was not acquired jointly as the second Respondent failed to prove that the suit property was jointly acquired. On the other side, the second Respondent was of the view that the trial tribunal's decision was properly procured based on the evidence placed before it.

Upon perusal of the records and the impugned judgment, this Court is in agreement with the Appellant's argument and that of the first Respondent that the tribunal based its judgment on some extraneous matters. The issue placed before the tribunal was whether the suit property belongs to the Appellant herein. The trial tribunal held that the suit property belonged to the 1st and 2nd Respondent herein and not the appellant as alleged. However, the Tribunal's decision was based on extraneous matters outside the jurisdiction of the Tribunal. At page 8 of the impugned judgment the Tribunal stated at the 1st paragraph that:


"On the other hand, I am satisfied with a lengthy testimony of Dw2 that was supported to a larger extent by Dw3, and Dw4 to find that the suit property was brought and built by joint efforts of the 1st and 2nd respondents from a bar business they run together and they were residing therein as a couples before they started quarrelling each other. I am convinced to believe that the 1st respondent used his son, the applicant herein, just to prolong the quarrel which had with the 2nd respondent and with ill motive of taking all that property instead of it being distributed among him and the 2nd respondent in case their relationship is necessitated to come to an end."

This Court is of the firm view that, guided by the provisions of section 33(1)(a) and (b) of the Land Disputes Courts Act, it was not in the powers of the Tribunal to decide on the marital relationship between the Respondents and whether the suit property was acquired by joint efforts which needs to be divided between the Respondents. Having said that, I find that, the trial tribunal exceeded its powers by granting reliefs it ought not to have granted.

For the reasons stated herein, this appeal is partly allowed to the extent that the first Respondent is the only lawful owner of the disputed property. Parties to bear their own costs.

It is so ordered.




K.N. ROBERT
JUDGE
22/10/2021