

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF DAR ES SALAAM)
AT DAR ES SALAAM

LAND APPEAL NO 4 OF 2019

*(Arising from land case No. 76 of 2013 at the District Land and Housing
Tribunal for Kilombero /Ulanga at Ifakara)*

ALANUS MAPUNDA..... APPELLANT

VERSUS

AMINA LIHENGELA..... 1ST RESPONDENT

VIDILINA LIKOKO2ND RESPONDENT

MWAJUMA KIPINGA3RDRESPONDENT

JUDGMENT

Hearing date on: 10/09/2021

Judgment on: 29/10/2021

NGWEMBE, J

The appellant Alanus Mapunda is firm in this court challenging the impugned judgement of the trial District Land and Housing Tribunal, which decided in favour of the respondents.



As a way of recap, the Village council sometimes in year 2006, decided to allocate undeveloped land to the needy for temporary period of three years for a token amount of money to the Village Government. As a result, in year 2006 the Village Land allocation committee of Mahutanga, allocated two acres of land to the appellant and four acres of land to his son. This fact is in accordance to the "Stakabadhi ya Vijiji" (Village receipt) No. 459384 issued on 18/10/2006 for value of TZS. 6,000/= Likewise, Stephano Alanus Mapunda (Son of the appellant on 7/10/2006 was allocated land after paying TZS. 9,000/=According to those receipt, it was written "Malipo ya shamba pori la Mpunga kwa msimu wa mwaka 2006 – 2008 tu. Huruhusiwi Kuuza wala kukodisha" meaning such land should not be sold or leased.

The same Village land allocation committee in year 2010 allocated six (6) acres of land to Amina Lihengela after paying TZS. 60,000/= through Stakabadhi Vijijini No. 968082 dated 5/11/2010 and repeated same to Vidiliana Likoka through "Stakabadhi Vijijini" No. 968083 for payment of TZS 30,000/- value for three (3) acres. All those receipts were tendered during trial before the District Land and Housing Tribunal.

The tribunal upon considering the whole evidences of the disputants, concluded that, the suit land belongs to the respondents herein because the appellant did abandon it. Such decision aggrieved the appellant hence this appeal clothed with 7 grounds. I need not to recap them herein for good reasons to be disclosed thereafter.

On the hearing date of this appeal, both parties failed to procure legal services from learned advocates. Thus, briefly argued that the disputed land belongs to the appellant who built in it a hut, planted permanent crops, like bananas and trees since 2006 to 2010. However, such house, mattresses and utensils were burnt down including those permanent crops in year 2010. When he inquired from the village leaders, they denied. In turn the respondents started cultivating that piece of land. Challenged the Tribunal by failure to visit *locus in quo*. Rested by praying this court to allow the appeal and order the suit land be owned by the appellant.

In turn the respondents jointly argued that, in year 2010 the Village leaders of Mahutanga advertised to whoever interested to cultivate crops to make an application. The respondents applied for such land and together were allocated 13 acres. That the suit land was a forest. Upon cultivating and planting rice, the appellant did spray chemicals in there, which destroyed the whole rice plantation. That he confessed in writing before the village leaders that he would not repeat. Admitted that the appellant was allocated only two (2) acres of land, which he failed to develop it. By year 2010, the Village Government redistributed them to others who were in needy. Rested by a prayer that the appeal is irrelevant same be dismissed forthwith.

I have inquisitively, perused the available documents with a view to grasp the essence of this appeal. According to the available documents, neither disputant had claim of right over the suit land. The above quoted receipt to both parties, indicates clearly that the suit land belong to the Village Council, that is why in year 2006 decided to allocate two (2) acres of land




to the appellant and another piece of land to his son. The conditions accompanied therein was for use up to 2008. Moreover, he was not allowed to sell or to lease "*Haruhusiwi kuuza wala kukodisha*". The same condition was in receipt of Stephano Alanus Mapunda. Even the receipts of respondents had similar conditions, which indicates clearly that they were not granted ownership, rather were allocated to cultivate according to the seasons of 2010/2011.

Another serious observation is in respect to *locus standi* of the disputants. Assuming the appellant was allocated such land be it temporary or otherwise, likewise the respondents were allocated by the same Village Council, the question is whether in law the disputants have *locus standi* to sue each other in the absence of the Village Council?

There is a cherished principle of law, that generally, in land law, the protection of the court can only be granted or extended to the person who has valid, subsisting right over land. In this appeal none of the disputant allege to have valid right of occupancy over the suit land than the village council itself.

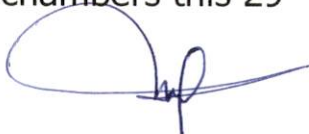
This court has a duty to remind both parties now and then that the court decide disputes according to the available evidences, applicable laws, precedents and the prevailing circumstances. A long established principle of land law is that; court will only grant protection to a person who has subsisting right over land. A person having no right over land, the court cannot help him, rather will assist one having that right.



Since both disputants have not demonstrated any right of occupancy over the suit land and that both have proved that the suit land belong to the Village Council, therefore, it goes like a day followed by night that none of them has right over that land. Any dispute over that land must include the true owner, who is the Village Council. In the absence of the true owner, this suit was nullity from the beginning. Whatever, done by the District Land Tribunal, likewise was null and void. Since this appeal is founded on nullity it cannot stand. In the circumstances, each party is returned to the position he/she was prior to the institution of this suit. Thus, each party should bear his own costs.

I accordingly order.

Dated at Dar es Salaam in chambers this 29th day of October, 2021



P.J. NGWEMBE

JUDGE

29/10/2021.

Court: Judgement delivered at Dar es Salaam in Chambers on this 29th day of October, 2021 in the Presence of the respondents but in the absence of the Appellant.



P. J. NGWEMBE

JUDGE

29/10/2021