

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

LAND APPEAL NO. 19 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal for Mtwara

District at Mtwara in Land Application No. 33 of 2018)

ABDALLAH MOHAMED NALOLA.....1ST APPELLANT

HASSAN LEMU NKALAH.....2ND APPELLANT

MOHAMED ALI MUHAJA.....3RD APPELLANT

ASHA ABDALLAH MATAKA.....4TH APPELLANT

ZAINABU SALUMU MANZI AND 56 OTHERS.....5TH APPELLANTS

VERSUS

SALUM ISSA NAMDIDI.....1ST RESPONDENT

AZIZA HASSAN NYUNDO.....2ND RESPONDENT

JUDGMENT

28th October, 8th November, 2021

DYANSOBERA, J.:

The appellants herein are challenging the decision given by the District Land and Housing Tribunal in Land Application No. 33 of 2018 dated 24th day of July, 2020 dismissing their suit.

A brief background of the matter is that the 1st and 2nd respondents are ex –spouse after their marriage was dissolved in a court of law vide Matrimonial Cause No. 16 of 2015. After the dissolution of their marriage, an order of division of matrimonial assets was made and it appeared the premises on Plot No. 266 situated at Magomeni "A" in Mtwara Municipality was a matrimonial asset subject to division. The said property was, by an order of the court and through the Yono Auction Court Broker, sold to Bahati Ayubu on 5th day of March, 2018.

On 3rd day of April, 2018 the appellants filed Land Application No. 33 of 2018 before the District Land and Housing Tribunal for Mtwara claiming the following reliefs:-

- (i) An order declaring that the applicants are lawful owner of the suit land.
- (ii) An order for the applicants and 1st respondent to use such house for madrasa purpose pending determination of the suit.
- (iii) An order removing such land house in the matrimonial properties.

- (iv) Order for stopping execution for such judgment of primary Court pending the determination of his suit for the lawfully owner to be known.
- (v) Order for costs of this suit.
- (vi) Any other relief or order justifiable to the applicants.

The 1st respondent noted the contents of the said application. The 2nd respondent, however, opposed the application. She averred that the applicants were not representatives of the Islamic parents. It was her contention that after getting married to the 1st respondent in 1999 the two did, on 9.3.2001, buy the suit house from Hassan Ali Mmingange and Zainab Hussein Salum at Tshs. 200, 000/= and that she contributed Tshs. 50,000/=. She asserted that the suit premises was a matrimonial property and was rightly subjected to division. She challenged the appellants to show legal documents of ownership of the suit premises.

After a full trial, the Hon. Chairman found dismissed the claims.

The appellants were aggrieved and filed this appeal on a total of seven grounds of appeal. However, a close look at the memorandum of appeal and the main issue that was framed by the trial Tribunal on who

was the lawful owner of the suit premises, the bedrock of the whole appeal is ground No. 5 which states:-

5. That the trial Tribunal erred both in law and fact to consider the issue of lacking proof of ownership to the appellants while even the all respondents didn't produced any document for sale agreement for such plot.

While the appellants argue that the house was legally owned by the applicants' union after it was purchased by them in 1997 from Mama Mmingange, the evidence of the vendor one Hassan Ally Mmingange said that he sold a hut with a piece of land at Tshs. 200,000/=. As to whom that property was sold, exhibit D 1 is clear that he (Bw. Hassani Ali mmingange) with Mama Zainab Hussein Salum sold the premises to Salum Issa Namdidi. Indeed, the sale agreement dated 9.3.2001 which was admitted as exhibit D 1 is self-explanatory that:-

Mimi Bw. Hassani Ali Mmingange na Mama Zainab Hussein Salum Tumeuza nyumba yetu kumuuzia Bw. Salum Issa Namdidi kwa thamani ya Sh. 200, 000/=. Zimetoka zoote mbele ya mashahidi.

Mimi Bwana Mmingange kutoka Mpapura na Mama Zainabu Hussein Salum Kutoka Magomeni B tumeuza nyumba ambayo ipo Mtaa wa Magomenta A Sokosela.

Mbele ya Balozi na Mwenyekiti wa Mtaa

Mashahidi

1. Hasan Kapela-M/Kiti Mtaa (sgd)
2. Omari Hassan Mchola-balozi (sgd)'

The 1st plaintiff Abdallah Mohamed Nalola who testified as PW 1 admitted that the name of the owner of the suit premises is Salum Issa Namdidi who is the 1st respondent in this appeal. This supports the 2nd respondent's argument that the suit property was registered in the name of her husband that is the 1st respondent and was, therefore, a matrimonial property. Indeed, the primary court which heard and determined the matrimonial cause was satisfied that the suit premises did not belong to the appellants due to their failure to prove on balance of probabilities. Since it is the appellants who were asserting to be owners of the suit premises, they bore the duty of proving that their version was true. This, they miserably failed. Besides, the applicants did not implead the purchaser of the suit property one Bahati Ayubu who legally bought it on 5th day of March, 2018 in a public auction through Yono Auctioneer.

Since the premises have already been sold to the third person who was not even sued before the Tribunal, the argument by the 1st respondent that he is ready and willing to surrender the said suit

premises to the appellants is preposterous as he has no any title in that property to pass to the appellants.

In view of the fact that this 5th ground of appeal sufficiently disposes of the appeal, I find it unnecessary to determine the other grounds of appeal.

For those reasons, the appeal is dismissed. The decision of the District Land and Housing Tribunal in Land Application No. 33 of 2020 is endorsed.

No order as to costs.

Order accordingly.



W. P. Dyansobera

Judge

8.11.2021

This judgment is delivered under my hand and the seal of this Court on this 8th day of November, 2021 in the presence of the 1st and 2nd appellants and the 1st and 2nd respondents in persons.

Rights of appeal to the Court of Appeal of Tanzania explained.



W.P.Dyansobera

Judge