

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
MISCELLANEOUS LAND APPEAL NO. 21 OF 2021
(*Arising from District Land and Housing Tribunal for Mbeya at Mbeya,
Land Appeal No. 138 of 2020, original Land Case No. 9 of 2020
of the Igamba Ward Tribunal*)**

SETH MWASAMBUNGU.....APPELLANT

VERSUS

ELIA E. MSELLA.....RESPONDENT

JUDGMENT

Dated: 02nd & 23rd June, 2022

KARAYEMAHA, J

This appeal is in respect of a piece of land located at Zelezeta Village within Igamba ward in Mbozi District Songwe Region. The suit land was a subject of litigation in Land Case No. 9 of 2020 at Igamba Ward Tribunal (WT) where the family of Stanford A. Mongi (deceased) was ordered to refund the appellant Tshs. 2,000,000/= on the reason that Faustina Bukuku the deceased's widow (she is also deceased) illegally sold the family land. The appellant appealed to the District Land and Housing Tribunal for Mbeya (DLHT) but still lost. This, therefore, is an appeal to challenge the two concurrent decisions of both tribunals bellow.

This tussle started in 2017 after the deceased's death. Essentially the suit land belonged to the deceased. He was allocated farm No. 33 measuring 3 acres on 23/04/2008 by the Zelezeta Village Council and given a customary certificate of occupancy. After his death, Faustina Bukuku sold two acres to the appellant through a sale agreement dated 09/01/2017 at a price of Tshs. 2,000,000/=. Therefore, the respondent on behalf of the family members filed a case in the WT. As introduced above, both tribunals below found in favour of the respondent.

In this appeal the appellant raised 4 grounds of appeal but he abandoned the 1st and the 2nd and retained two grounds which will be referred to as the 1st and 2nd for the purpose of this judgment. They are:

1. That the DLHT terribly failed to evaluate the evidence adduced at the WT that needed corroboration in order to meet a fair and just decision.
2. That the DLHT completely failed to consider that respondent had no *locus standi* to sue appellant at WT.

This appeal was argued by way of written submission and the appellant appeared in person unrepresented whereas the respondent was represented by Mr. Jacob Fabian Mwalyego.

I have read the judgment of the DLHT and grounds of appeal preferred thereat in depth and widely. The two purported aired up grounds of appeal were never grounds of appeal in the DLHT. Let me produce grounds raised at the DLHT. They are:

1. That the trial tribunal erred in law and facts to decide in favour of the respondent basing on wishes of the chairman of trial tribunal and not the facts adduced before the tribunal by the parties
2. That the trial tribunal erred in law and facts to decide in favour of the respondent by entering judgment in favour of the respondent without considering the legality of the respondent upon the land in dispute.
3. That the trial tribunal erred in law and facts to decide the case in favour of the respondent without opinion of the members of tribunal as it lead to reach wrong decision.
4. That the trial tribunal erred in law and facts to decide in favour of the respondent by entering judgment in favour of the respondent without considering the weight of evidence adduced by the appellant.
5. That the trial tribunal erred in law and facts to decide in favour of the respondent by entering judgment in favour of the respondent without considering the legality of the one **FAUSTINA BUKUKU** who sold the land in dispute.

In his submission, Mr. Mwalwego complained that the appellant introduced a new issue of *locus standi* which was not discussed in the tribunals below. The appellant agonizingly compared it with the 2nd ground and stated that the DLHT discussed it at length. On examining the judgment of the DLHT I have noted that the issue of *locus standi* was neither discussed nor raised. At any rate ground two is not a complaint that the respondent had no locus stand. I have also read the appellant's submission he made in the DLHT. He never said a word about it.

The same fate befell on the 1st ground. On reading grounds filed at the DLHT, it is obvious that the issue of evidence adduced at the WT needing corroboration in order to meet a fair and just decision was not one of them.

Obviously, on comparing the two grounds raised in this court and the five grounds raised in the DLHT it is crystal clear that they are totally new grounds raised at this stage of appeal which cannot be called to look at by this 2nd appellate Court. This has been all along the position of the Court of Appeal of Tanzania which all courts in this country must embrace; see the cases of **Galus Kitaya vs. Republic**, Criminal Appeal No. 196 of 2015 (unreported) was confronted with an issue whether it can decide on a matter not raised in and decided by the High Court on first appeal. It stated as follows:

*"On comparing the grounds of appeal filed by the appellant in the High Court and in this Court, we agree with the learned State Attorney that, grounds one to five are new grounds. As the court said in the case of **Nuridin Musa Wailu vs. Republic** supra, the Court does not consider new grounds raised in a second appeal which were not raised in the subordinate courts. For this reason, we will not consider grounds number one to number five of the appellant's grounds of appeal".*

The rationale of this principle is not hard to comprehend. It is that if the DLHT did not deal with the new raised grounds for the reason of failure by the appellant to raise them there, this Court will absolutely and completely fail to determine where it went wrong.

In conclusion, I find this appeal untenable and it is hereby dismissed with costs.

It is so ordered.



Dated at **MBEYA** this **23rd** day of **June, 2022**

A handwritten signature in black ink, appearing to be "J. M. Karayemaha".

J. M. Karayemaha
JUDGE