

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF MBEYA**  
**AT MBEYA**

**LAND APPEAL NO. 66 OF 2021**

*(Originating from the District Land and Housing Tribunal for Mbeya, at Mbeya  
in Application No. 249 of 2019.)*

**MATHIAS SOLONGO..... APPELLANT**

**VERSUS**

**IPYANA MWAMBONA.....1<sup>ST</sup> RESPONDENT**

**KIKUNDI CHA AMANI NA UPENDO.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of Last Order: 31.05.2022*

*Date of Judgment: 28.06.2022*

**Ebrahim, J.**

The Appellant is challenging the decision of the District Land and Housing Tribunal for Mbeya, at Mbeya (the trial Tribunal) in Land Application No. 249 of 2019 dated 16/06/2021. In essence the decision declared the 2<sup>nd</sup> respondent owner of the suit land.

The basis for the dispute between the parties is the house No. 152, Block 47 Ghana Ward in the City of Mbeya (the suit land). According to the record, the suit land was owned by one John

Masawa and his wife one Merina Masawa who passed away in 2012 and 2018 respectively. They were survived by a single daughter one Rehema John Masawa. The Appellant had married to one of the deceased's daughters one Neema John Masawa who is also the deceased.

The record further suggested that in 2019 Rehema John Masawa sold the suit land to the 2<sup>nd</sup> respondent. Then came the Appellant alleging to be the owner of the land hence instituted the suit against the respondents claiming that they had invaded it. He told the trial Tribunal that he bought the suit land from the deceased (John Masawa) since 2009. Having heard the parties, the trial Tribunal decided in favour of the 2<sup>nd</sup> respondent. Being Disgruntled, the Appellant preferred this appeal.

Through the memorandum of appeal and the supplementary grounds, the Appellant referred a total of six (6) ground of appeal as follows:

1. That the whole of the decision of the trial Tribunal is bad in law and irregular, as the proceedings in record were badly recorded and reflected.

2. That the trial Tribunal grossly erred in law and facts by declaring that the second Respondent is the lawful owner of the suit house while the seller of the same was not the administratrix of the deceased's estate.
3. That the trial Tribunal grossly erred in law and facts by granting the house to the Respondents on the ground that the Appellant refused to join one Rehema John Masawa as necessary party to the case among other grounds.
4. That the trial Tribunal grossly erred in law and facts by holding that the disputed house was lawfully sold to the second Respondent while the said house was not part of the deceased properties.
5. That the trial Tribunal grossly erred in law and facts for its failure to properly evaluate and analyse evidence on record that was adduced before it by the parties, results thereof making unjust decision.
6. That the trial Tribunal grossly erred in law and fact for entering judgment in favour of Respondents in disregard to the appellant's evidence that was overwhelmingly in

his favour and in disregard to the fact that there were a lot of contradictions on the respondents' testimonies.

Basing on the foregone grounds the Appellant prayed for this court to allow the appeal with costs; and order that the suit land belongs to the Appellant.

The appeal was disposed of by way of written submissions. The appellant was represented by Mr. Gerald Msegeya, learned advocate, whereas the respondents were represented by Mrs. Joyce Kasebwa, learned advocate.

Arguing the appeal, Mr. Msegeya abandoned the 1<sup>st</sup> ground of the appeal. He argued the remaining grounds of appeal simultaneously whereby the two supplementary grounds (i.e the 5<sup>th</sup> and 6<sup>th</sup>) were argued together. However, I shall not recapitulate in full the submissions made by both counsel but shall refer to them in the course of discussing substantive issues.

I have carefully considered the Appellant's complaints. Starting with the 2<sup>nd</sup> ground of appeal as the 1<sup>st</sup> ground was abandoned, Mr. Msegeya argued that the trial Tribunal erred when decided in favour of the 2<sup>nd</sup> respondent on the ground that

the seller (i.e Rehema Masawa) of the suit land was not the administratrix of the estate of the late John Masawa. He contended that the letters of administration tendered by the seller before the trial Tribunal indicated that they were signed on 24/7/2019 while the sale agreement was signed on 22/7/2019 hence at the time of selling the house, she was not legally able to sell the suit land.

Mr. Msegeya argued further that though he is aware of the capacity of the administrator in disposing of the land forming the estates of the deceased, in the matter at hand it was not true. To bolster his argument on the capacity of the administrator, Mr. Msegeya cited the case of **Mohamed Hassan vs Mayasa Mzee & Another** [1994] TLR 225. According to him the sale in the instant matter was a nullity.

Submitting against the 2<sup>nd</sup> ground of appeal, Mrs. Kasebwa argued that the said 24/7/2019 on the letters of administration was a typographic error. That the exact date was supposed to be 22/7/2019.

In rejoinder, Mr. Msegeya challenged the contention by Mrs Kasebwa that it was typographical error. He said that there is

nothing in the record which indicates that the letters were granted on 22/7/2019.

Admittedly, Mrs. Kasebwa was not correct to infer that the date i.e 24/7/2019 to the letters of administrations was typographical errors. I say so because I have perused the record, the letters of administration are clearly signed and stamped by the Primary Court of Mbeya 24/7/2019.

Nonetheless, whether or not the letters were signed on 24/7/2019 and the sale between the 2<sup>nd</sup> respondent and one Rehema John Masawa was signed on 22/7/2019 it is not the dispute to be determined by this court. It was also not among the issues for determination by the trial Tribunal. It should be noted that, it is undisputed that Rehema John Masawa sold the suit land to the 2<sup>nd</sup> respondent. It should be further noted that, Rehema John Masawa was not one of the parties in the case. Thus, whether she had capacity to sale or not could not have been determined through land dispute. This is because, the validity of the letters of administration and/or the dealings of the administrator/administratrix can be challenged through probate forum. That was also the observation made by the Court of

Appeal of Tanzania (CAT) in **Frank Lionel Marealle vs Joseph Faustine Mawala**, Civil Appeal No. 104 of 2020 [2021] TZCA 728 (TanzLii); see at page 17 of the judgment. The 2<sup>nd</sup> ground of appeal is thus found unmeritorious.

The findings I have made above in the 2<sup>nd</sup> ground of appeal can also resolve the 4<sup>th</sup> ground of appeal. This is because the complaints made therein are interrelated. The appellant faulted the trial Tribunal in its decision on the reason that the disputed land was not among the estates listed by Rehema John Masawa (the administratrix of the estate of John Masawa) in the inventory filed before the Primary Court.

With due respect, as I have hinted above, Rehema John Masawa was not one of the parties in the suit. This court could not go and look on the inventory which is related to probate issues. If the Appellant had any grievance against the administratrix on the sale of the suit land, or he had a claim that the suit land did not form part of the deceased estates, the appellant could have followed the law to challenge the same in the same probate forum. Thus, this Court is not proper forum to decide whether the suit land was one of the estates of the deceased or not. I

therefore, find the 4<sup>th</sup> ground of appeal lacking merit, hence dismiss it.

As to the 3<sup>rd</sup> ground of appeal, the Appellant and his counsel, Mr. Msegeya lamented on the decision of the trial Tribunal that the Appellant failed to prove his case since he declined to join Rehema Masawa as necessary party. According to Mr. Msegeya the Appellant had no any claim against her he could not thus, implead her. In the other hand he argued that since Rehema Masawa was called as witness it was not fatal for the Appellant's case. He bolstered his argument with the case of **Rehema Ally Mdoe vs Theonest Byarugaba Ruganisa**, Land Case No. 28 HCT at Dar es Salaam (unreported).

Mrs Kasebwa, challenged this complaint on the reason that it was not only the basis of the trial Tribunal in its decision. That there were other reasons in which the Tribunal relied on to reach its conclusion.

Apparently, as I have gone through the trial Tribunal's judgment, it is correctly argued by Mrs. Kasebwa. The trial Tribunal did not reach its decision basing on the reason that the appellant failed to join the seller as a necessary party only. It is however, in



my considered view that the seller being called as a witness of the Respondent did not support the Appellant's claim that he bought the suit land, but it supported the 2<sup>nd</sup> respondent's case that she purchased the same from her.

Moreover, for the sake of argument, even if the Appellant would have joined the seller in the case, it could have not changed the result as the seller acted under the capacity of the administrator of the estates of the late John Masawa the action which would have been challenged in the probate court as per my findings above and the case of **Frank Lionel Marealle vs Joseph Faustine Mawala** (supra). In the circumstance, I see no ground to fault the trial Tribunal's decision in relation to this ground of appeal. I therefore dismiss it.

Now, the remaining grounds of appeal as jointly argued by Mr. Msegeya can be resolved by a single issue of *whether the trial Tribunal properly evaluated and analysed the evidence adduced by the parties before it*. In that issue, I will be guided by **section 110 of the Evidence Act, Cap 6 R.E 2019** that he who alleges must prove. Bearing in mind also that the standard of proof in civil cases is on the balance of probability.

Nevertheless, this being the first appeal, this Court has a duty to subject the entire evidence to re-evaluation and come to its own conclusion; aware of the necessity to do this cautiously acknowledging that the trial Tribunal was at better position to see, hear, and appreciate the evidence; see **Tanzania Sewing Machine Co. Ltd vs Njake Enterprises Ltd**, Civil Appeal No. 15 of 2016 CAT.

According to Mr. Msegeya evidence by the respondent was full of contradictions; that the registration of the 2<sup>nd</sup> Respondent is UPENDE NA AMANI GROUP while the sale agreement was entered in favour of UPENDO NA AMANI GROUP. He then submitted that the Appellant repaid the loan to redeem the suit land which was mortgaged by the deceased John Masawa. Mr, Msegeya further argued that the evidence by the Appellant's witnesses was to the effect that the late John Masawa promised to bequeathed the suit land to the Appellant as thank giving for repaying the loan.

I should stop here and say that, I have scrutinised the evidence on record nothing reveals that the deceased bequeathed the suit land to the Appellant in honour of the said promise. Again, such piece of evidence does not reflect

anywhere in the proceedings on record and the Appellant himself did not adduce such evidence. The available evidence by the Appellant is that he bought the land by instalment from June, 2008 to March, 2009.

Additionally, the evidence by the Appellant that he bought the disputed house in 2009 left a lot to be desired. This is because, it is undisputed fact and evidence that the suit land is registered. However, the appellant bought the same without any document availed to him in signifying that the deceased sold it to him. Equally, the Appellant had never occupied it until 2019 when he instituted the suit.

On part of the 2<sup>nd</sup> respondent, she tendered a sale agreement (i.e Exhibit D1) and certificate of Title. She also called the seller as a witness (DW3) who proved that she sold the suit land to the 2<sup>nd</sup> Respondent and handed her with the Certificate of Title. In that regard, I am constrained to agree with the trial Tribunal that the Appellant did not have cogent evidence compared to that of the Respondent.

Moreover, the Appellant's evidence was to the effect that he acquired the suit land by way of purchase from the late John

Masawa and his wife Merina J. Masawa on 04/09/2009 he also tendered a letter which however was challenged in cross-examination and the Appellant admitted that the same was not signed by the late John Masawa. Surprisingly, Mr. Msegeya in this appeal is telling this court that the Appellant was bequeathed the land the claim that is not supported by any evidence by the Appellant's witnesses.

All that said, I find that the Appellant's complaint that the trial Tribunal did not properly evaluate evidence is untenable. In the end, I dismiss the entire appeal for lack of merits with costs.

Ordered accordingly.

**Mbeya**  
**28.06.2022**



  
**R.A. Ebrahim**  
**JUDGE**

**Date:** 28.06.2022.

**Coram:** Hon. Z.D. Laizer, Ag-DR.

**Appellant:** Present.

**For the Appellant:**

**1<sup>st</sup> Respondent:** Present in person.

**2<sup>nd</sup> Respondent:** Present.

**For Respondent:** Ms. Febby Cheyo, Advocate h/b for Mr. Msegeya.

**B/C:** Patrick Nundwe.

**Court:** Delivered in the presence of the appellant, Respondents and Ms. Febby, Advocate.

Sgd: Z.D. Laizer

Ag-Deputy Registrar

28.06.2022

**Order:** (1) Right of Appeal Explained.



**Z.D. Laizer**

**Ag-Deputy Registrar**

**28.06.2022**

DEPUTY REGISTRAR  
HIGH COURT OF TANZANIA  
MBEYA