

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT MOSHI

MISC. LAND APPEAL NO. 5 OF 2022

(Arising from Land Appeal No. 7 of 2021 of Moshi District Land and Housing Tribunal at Moshi, originating from Land Case No. 15 of 2020 of Uru Kusini Ward Tribunal).

FRANK LYATUU.....APPELLANT

VERSUS

AUGUSTINA A. SHALO.....RESPONDENT

JUDGMENT

10/5/2022 & 29/6/2022

SIMFUKWE, J.

This is a second Appeal; in a nutshell the respondent herein instituted the land dispute before the Ward Tribunal against the appellant claiming that the appellant trespassed in their land. The appellant claimed to buy the disputed land from Augusti Shalo, the respondent's father. The Ward Tribunal decided in favour of the respondent on the reason among others that that the alleged sale agreement did not involve the family of Augusti Shalo or the village leaders. The appellant was aggrieved with the decision of the Ward Tribunal. He appealed to the District Land and Housing Tribunal unsuccessfully hence, this appeal. In this appeal, the appellant raised 7 grounds as follows:


Page 1 of 26

1. *That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts for failure to find out that, the suit was incompetent for failure to join the seller one AUGUSTI MASUMBUKO SHALO, as a necessary party to the suit.*
2. *That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts for failure to find out that, the Respondent's suit was time barred and the Appellant was protected by the Law of Limitation.*
3. *That, the Chairperson of the District Land and Housing Tribunal erred in law and fact for failure to find out that, the Ward Tribunal lacked pecuniary jurisdiction to entertain the matter.*
4. *That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts by entertaining the matter while the Respondent had no locus standi to sue the Appellant and had no cause of action against the Appellant.*
5. *That, the Chairperson of the District Land and Housing Tribunal failed to act judicially by failing to deal/determine and dispose the Appellant's grounds of appeal leaving the same unresolved and blindly followed the biased opinions of the Assessors as a result pronounced uninjustice (sic) and incompetent judgment and without giving reasons for that decision.*
6. *That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts by pronouncing*



judgment relying on the contradictory evidence of the Respondent and her witnesses.

7. That, both the District Land and Housing Tribunal and the Ward Tribunal erred in law and facts for holding that, the Seller's family and the local government leaders were not involved in the sale of the suit land while the Family members witnessed and signed the sale agreement and the Village Chairman approved the said agreement.

When the matter was called for hearing, the appellant was represented by Mr. Thomas Kitundu, learned counsel, while the respondent was unrepresented. The respondent prayed the matter to be argued through written submission and the prayer was granted. I am grateful that the parties complied to the schedule of filing their respective submissions.

In respect of the first ground of appeal which concerns non joinder of the seller, it was Mr Kitundu's argument that before Uru Kusini Ward Tribunal (Trial Tribunal), the respondent instituted a suit to recover the land sold to the appellant by her father one **AUGUSTI MASUMBUKO SHALO**. However, the said **AUGUSTI MASUMBUKO SHALO** was not joined as a necessary party (seller) in the suit for recovering a land sold to the third party since a seller and the buyer ought to be jointly sued. Mr. Kitundu was of the view that such failure vitiated the proceedings before the Ward Tribunal and the Appellate Tribunal as the rights of the parties cannot be determined in the absence of the seller. Mr. Kitundu cited the case of **HAMISI SALUM KIZENGA vs MOSES MALAKI SEWANDO AND 18 OTHERS; LAND APPEAL NO. 51 OF 2019, (Unreported)** which defined a Necessary Party as follows:



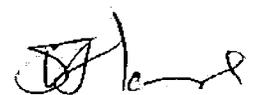
"A non-necessary party is a person who has merely to be joined in the suit. He also commonly referred to as a proper party. However, a necessary party is a person who has to be joined in the suit yes, but whose presence before the court is necessary for it to effectively and completely adjudicate upon the questions involved in the suit. In other words, a court can effectively and completely adjudicate upon the dispute between the parties even in the absence of a non-necessary party. Nonetheless, the court cannot do so without a necessary party."

Mr. Kitundu submitted that, the disputed land was bought from **AUGUSTI MASUMBUKO SHALO**. However, before the Ward Tribunal only the appellant was sued leaving apart **AUGUSTI MASUMBUKO SHALO** who is the necessary party to enable the Tribunal to effectively and completely adjudicate upon the questions involved in the suit. It was Mr. Kitundu's opinion that, a mere fact that, he was called as a witness does not in law hold water because a witness is not a party to the suit.

Further to that the learned advocate referred to the case of **JUMA B. KADALA vs LAURENT MNKANDE [1983] T.L.R 103**, which held that:

"In a suit for recovery of land sold to a third party, the buyer should be joined with the seller as the necessary party defendant; non joinder will be fatal to the proceedings."

Also, he referred to the case of **ABDALLAH SAIDI vs ELIEZER S. MCHOME & 2 OTHERS, LAND CASE APPEAL NO. 26 OF 2010**,



HIGH COURT OF TANZANIA AT TANGA (Unreported) at page 8 it was held that: -

"A necessary party is one against whom the relief is sought or without whom an effective decree cannot be passed by the court. In the present case, no effective decree can be passed in respect of the ownership of the house without affecting the interests of the person who bought it.

On the basis of the above cited cases, it was the learned counsel's argument that no effective decree can be passed in respect of the ownership of the suit land without affecting the interests of **AUGUSTI MASUMBUKO SHALO** (the seller) who ought to have been joined for the effective determination of the suit. He concluded the first ground by arguing that, since the necessary party was not joined, the proceedings of the trial Tribunal were a nullity.

Submitting in support of the second ground of appeal that the respondent's suit was time barred, it was stated that evidence on record shows that, the appellant bought the suit land on **28/4/2008** while the dispute was instituted before the Ward Tribunal on **16/9/2020** which was more than 12 years later. Thus, the Appellate Tribunal and the trial Tribunal ought to have found the appellant to have owned the disputed land for a long time and that he was protected under item 22 of the 1st Schedule to the **Law of Limitation Act, [Cap. 89, R.E 2019]**. The learned advocate cemented the point by the case of **BHOKE KITANG'ITA vs MAKURU MAHEMBA, CIVIL APPEAL NO. 222 OF 2017** (unreported), in which the Court of Appeal stated to the effect that, for the application under part 1 item 22 to the 1st Schedule to the **Law of**


Page 5 of 26

Limitation Act (supra) to stand the appellant must have been disclosed during the trial when exactly he occupied that land. That, in the instant matter the appellant clearly stated that he started to own the said land on 24/04/2008, which was not challenged by the respondent in cross examination which tantamount to admission to that issue. He cemented his argument with the case of **ROBERT JUMA MAZIKU vs PANGEA MINERALS, REVISION NO. 36/2013**.

Mr. Kitundu concluded that, it is the appellant who is protected by the Law of Limitation for occupying the suit land for more than 12 years to date peacefully and uninterrupted.

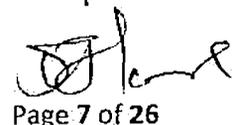
On the 3rd ground of appeal that *That, the Chairperson of the District Land and Housing Tribunal erred in law and fact for failure to find out that, the Ward Tribunal lacked pecuniary jurisdiction to entertain the matter*; Mr. Kitundu averred that he was alive to the position of the law that the pecuniary jurisdiction of the Ward Tribunal is prescribed by **section 15 of the Land Disputes Courts Act, [Cap. 216 R.E 2019]** to be **Tsh. 3,000,000/=**. Thus, as per the evidence on record, the suit land was bought by the appellant at the value of **Tshs. 1,200,000/=** in the year **2008**. The appellant developed the suit land by gathering building materials such as stones, gravels, sand, building blocks, cements, and concrete steel and constructed the foundation. Also, he had planted permanent trees to wit mkomamanga, mwarobaini, mango trees and orange trees. In the circumstances, the learned counsel was of the view that the value of the subject matter was more than **Tshs. 3,000,000/=** above the pecuniary jurisdiction of the Ward Tribunal. He condemned the trial Ward Tribunal for entertaining the matter to its finality while it lacked jurisdiction to try the matter in view of the value of the subject matter

exceeding the statutory limit of **TZS. 3,000,000.00/=**. He referred to the case of **SOSPETER KAHINDI vs MBESHI MASHINI, CIVIL APPEAL NO. 56/2017, CAT (Unreported)** and implored the court to nullify the judgment, decree and whole proceedings of the lower tribunals.

On the 4th ground of appeal, concerning the locus standi and absence of cause of action, Mr. Kitundu for the appellant argued that; before the Trial Tribunal the respondent claimed to be the legal representative and attorney of **Augustino Shalo** family and that, the suit land in dispute is the clan land. However, no any documentary evidence was tendered by the respondent to prove that, she was dully appointed by her family to represent the family in Court. Also, the respondent alleged that, the suit land is a clan land but no evidence was adduced to prove that, it is a clan land.

Mr. Kitundu thus challenged the trial Tribunals' findings that the appellant had to surrender the suit land to **AUGUSTI SHALO** and not to the respondent. The appellant's advocate was of the view that such findings proves that the respondent had no interests in the land and have no cause of action against the appellant. The learned counsel cited the case of **LUJUNA SHUBI BALONZI vs REGISTERED TRUSTEES OF CCM [1986] T.L.R 203** and the case of **PETRO ZABRON SINDA & ANOTHER vs ZABRON MWITA, CIVIL CASE No. 176 of 2017** (unreported), which defined the term *locus standi*. He concluded the 4th ground by stating that the respondent herein lacked the requisite locus standi and cause of action to institute the suit before the Ward Tribunal.

On the 5th ground of appeal, Mr. Kitundu condemned the Chairperson of the District Land and Housing Tribunal for failure to determine and dispose



the appellant's grounds of appeal leaving the same unresolved and blindly followed the biased opinions of the Assessors as a result pronounced injustice and incompetent judgment, without giving reasons for that decision. The learned advocate elaborated this ground of appeal by referring to **Regulation 20 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations** which provides that: -

20.- (1) The judgment of the Tribunal shall always be short, written in simple language and shall consists of:

(a) a brief statement of facts;

(b) finding on the issues;

(c) a decision; and

(d) reasons for the decision.

In respect of the above cited provision, Mr. Kitundu argued that before the Appellate Tribunal, the appellant raised 7 grounds of appeal and submitted thoroughly on every ground of appeal. However, the Appellate Tribunal Chairperson never dealt with the grounds of appeal but rather quoted the opinions of the Tribunal Assessors and proceeded to hold that:

"Sioni sababu ya kukataa maoni ya wajumbe. Nikianza na sababu ya 1,2,3,4 na 5 zinazohusu mapungufu ya kisheria ni wazi hoja zilizotolewa hapo hazina msingi. Sababu zinazohusu ushahidi pia sioni msingi wa sababu hizo....."

The learned advocate challenged the said decision on the fact that it does not qualify within the ambit of **Regulation 20 (1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations**

(supra) as it lacks the prerequisites such as a brief statement of facts, finding on the issues, a decision and reasons for the decision. That, the same leaves the raised grounds of appeal unresolved. It was the opinion of Mr. Kitundu that the appellate Chairperson ought to have analysed one ground after another by considering the rival submissions of the parties and not to follow the biased opinions of the Assessors without dealing with the issues worth consideration by the Tribunal. Also, he was of the view that, the same rendered the Tribunal to pronounce incompetent and injustice decision to the detriment of the appellant.

Under the 6th ground of appeal, the appellant's advocate faulted both the trial Tribunal and appellate Tribunal for pronouncing judgment relying on the contradictory evidence of the respondent and her witnesses. He submitted to the effect that, before the trial Tribunal the respondent testified that, the appellant bought the suit land from her father **AUGUSTI MASUMBUKO SHALO**. While cross examined by the appellant, the respondent testified that, her father mortgaged the suit land to the appellant. The respondent's witness (AUGUST JOSEPH SHALO) contradicted with the respondent's testimony that; he mortgaged the suit land to the appellant after his son got a motorcycle accident but none of them tendered any documentary evidence to prove the allegations. Also, the respondent's witness namely **BALTAZARI AUGUSTI SHALO** testified that, the appellant borrowed the suit land so that he could cultivate maize and beans contrary to the respondent's testimony. To support the issue of contradictions, the learned advocate referred to the cases of **LUCAS KAPINGA AND 2 OTHERS VS REPUBLIC [2006] T.L.R 374**; and **BAKARI HOSENI VERSUS SELEMANI BAKARI**



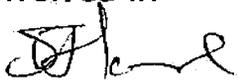
(supra), whereby at page 8 the Court had this to say in respect of contradictory evidence: -

*"It is well settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. **Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it had neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusion.** The Appellate court is confined to the evidence on record. Accordingly, the view of the trial court as to where credibility lies is entitled to great weight."*

He also referred to the case of **MOHAMED SAID MATULA vs REPUBLIC [1995] T.L.R 3 (CAT)**, and **MARY KIMAMBO VERSUS SIMON GODSON MACHA** to that effect.

On the strength of the above authorities, Mr. Kitundu submitted that the inconsistencies and contradictions of the respondent and her witnesses in the instance case, goes to the root of the matter and they disapprove the claim of the respondent over the land in dispute. He faulted the trial Tribunal and Appellate Tribunal for failure to address the inconsistencies and try to resolve them before reaching to its conclusion. Thus, it was wrong for the trial Tribunal to decide on the Respondent' favour by relying of the contradictory evidence.

On the 7th ground of appeal, it was alleged that both the Appellate Tribunal and the Ward Tribunal erred in law and facts for holding that, the Seller's family and the local government leaders were not involved in


Page 10 of 26

the sale of the suit land while the Family members witnessed and signed the sale agreement and the Village Chairman approved the said agreement. Mr. Kitundu referred to the sale agreement dated 28/4/2008 which was signed by the appellant (Purchaser), Augusti Masumbuko Shalo (seller), Margarete Augusti (the seller's wife), Joseph August (the seller's son) and Emmanuel Augusti (Seller's Son) and finally witnessed by the Village Chairperson who signed and stamped into the sale agreement after the purchase price was paid in full. That, such evidence was not challenged by the respondent and therefore remain to be admitted by the respondent. Therefore, the appellate Tribunal and the Ward Tribunal was wrong to hold that, the Seiler's family and the local government leaders were not involved in the sale of the suit land while the family members witnessed and signed the sale agreement and the Village Chairman approved the said agreement.

Mr. Kitundu continued to submit that, the appellant bona fide purchased the suit land from **Augusti Masumbuko Shalo** believing that, the vendor had good title to pass to him as there was no any suspicious circumstances to believe otherwise. That, the appellant being a bona fide purchaser is protected by the law if at all the Seller acted fraudulently. He supported this contention with the case of **Suzana S. Waryoba vs. Shija Dalawa, Civil Appeal No.44 of 2017** and the case of **Stanley Kalama Masiki vs. Chihiyo Kisia w/o Nderingo Ngomuo [1981] T.L.R 143.**

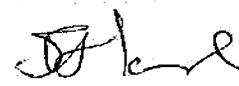
Mr. Kitundu insisted that the appellant herein purchased the suit land in good faith, believing that he had clear rights of ownership after the purchase and having no reason to think otherwise. It was Mr. Kitundu's comment that in situations where a seller (**AUGUSTI MASUMBUKO**

SHALO) behaved fraudulently, the bona-fide purchaser (appellant) is not responsible. That, the respondent herein having conflicting claim to the property under discussion would need to take it up with the seller (**AUGUSTI MASUMBUKO SHALO**), not the purchaser (appellant), and the purchaser (appellant) would be allowed to retain the property. The learned counsel prayed the 7th ground of appeal to be allowed.

Mr. Kitundu concluded his submission, by praying the court to allow the Appeal with costs, quash and set aside both the judgment and decree of the appellate Tribunal in Land Appeal No. 7 of 2021 and trial Ward Tribunal in Land Dispute No. 15/2020 and hence pronounce the appellant as the bona fide purchaser and the rightful owner of the suit land.

In reply, the respondent on the outset, challenged the appellant's grounds of appeal by stating that it is as if the appellant was appealing against the decision of both lower Tribunals in a second appeal, something which is not proper as he ought to appeal only against the decision of the Appellate Tribunal. It was her opinion that the grounds of appeal are not maintainable before the court.

Contesting the first ground of appeal on failure to join the seller as a necessary party, the respondent argued that there was no such need since there is nothing which shows that there was sale agreement between the appellant and the said August Masumbuko Shalo. The respondent challenged the alleged sale agreement by submitting that the same was alleged to be entered in 2008 to a tune of Tshs 1, 200,000/= which was paid for six years that is 2014 when the alleged amount was finalized and also took almost another six years to 2020 when the said sale was



Page 12 of 26

stamped by the village authority certifying that the sale is complete while it was not proper in the eyes of the law. The respondent questioned how can one enter into a sale agreement involving the land situated in the village level unsurveyed without involving the village authority for almost 12 years and thereafter presented the said agreement to the Village Authority and stamped it. The respondent was of the view that in law, that trend was very wrong and ought to be looked upon by this Court as there is some elements of forgery on the appellant's side.

She also replied on the issue of joining the seller to the effect that the same has nothing to vitiate the proceedings of both lower tribunals on the reason that the said **August Masumbuko Shalo** was called upon to testify before the Ward Tribunal as a witness as it appeared at page 4 of the typed proceedings of the ward tribunal where he stated that he never sold the land in dispute to the appellant herein rather he took some amount of money (Tsh 300,000/-) for treating his child and placed a portion of his land to the appellant as a security for the said amount. Also, the said witness narrated that the appellant had to use that land for cultivating only until he refunded the amount so taken.

In respect of that evidence, the respondent submitted that it is the position of the law that no invitee can exclude his host whatever length of time the invitation takes place and whatever the unexhausted improvements made to the land on which he was invited. She argued that Courts have discussed a lot on this issue of an invitee, for instance in the case of **Mussa Hassan v. Barnabas Yohanna Shedafa (legal personal representative of the late Yohanna Shedafa), Civil Appeal No. 101 of 2018 (CAT)** (unreported) which quoted the decision

in the case of **Maigu E.M. Magenda v. Arbogast Mango Magenda, Civil Appeal No. 218 of 2017** (unreported) where it was observed at page 13 that:

"We do not think continuous use of land as an invitee or by building a permanent house on another person's land or even paying rent to the city council of Mwanza in his own name would amount to assumption of ownership of the disputed plot of land by the appellant."

In respect of the above case, the respondent argued that August Masumbuko Shalo who was called to testify before the tribunal stated that he never sold his land to the appellant. Thus, the appellant was an invitee whose long occupation and any development made thereat did not grant him ownership.

The respondent insisted that the said August Masumbuko Shalo was not a necessary party to be joined as the defendant by mere allegation that he sold the disputed land to the appellant. She referred to the case of **Abdi M. Kipoto vs Chief Arthur Mtoi, Civil Appeal No. 75 of 2017**. She stated further that a necessary party must have rights which will be affected by the decision of the court. Thus, in the instant matter nowhere it was stated that August Masumbuko Shalo was a necessary party to be joined to the case before the Ward Tribunal.

The respondent challenged the cases which were cited by the appellant's advocate to support the 1st ground by arguing that the same are distinguishable to the case at hand. She said that, in the case of **Juma Kadala** the issue was that the appellant sued the respondent while the

records revealed that the land in dispute was no longer occupied by the respondent rather a third party namely Omari Kiziwa who purchased the same from the respondent in that case (Laurent Mnkande). That situation was known to the appellant during the filing of the plaint and when adducing evidence before the court but opted to sue the respondent alone leaving Omari Kiziwa who would have been affected by the outcome of the matter as he was the one in actual occupation of the disputed land hence, it was necessary to join him as a necessary party. Thus, the authority stands outside the scope.

In respect of the 2nd ground of appeal that the suit was time barred, it was submitted that the allegations that the appellant purchased the suit land in 2008 has no any proof at all. That, the only documentary evidence which was found to be unspecific was concluded in the year 2015 when the alleged last payment was made by the appellant to the said August Masumbuko Shalo and the same was witnessed by the village authority in 2020. The matter at hand was instituted in 2020 after the appellant started to put some building materials and started building foundation at the disputed land. Thus, the cited provision of Item 22 to the first schedule to the **Law of Limitation Act** (supra) to support the second ground of appeal has nothing to do with the matter at hand by simply looking at the purported transaction which started in 2008 until 2015 when is alleged to be finalized.

The respondent emphasized that, the suit was not time barred at the time when the same was instituted since the alleged sale agreement was not completed in 2008 but took almost 7 years. The respondent was of the view that in such situation the complainant before the Ward Tribunal was

within time limit to recover land since time started to run against the respondent in 2020 when the respondent discovered that the appellant was in a speedy way developing the land.

The respondent went on to submit that, there is clear and unambiguous evidence that the land in dispute was not sold to the appellant by the said August Masumbuko Shalo who appeared and testified before the trial tribunal by stating that he took some amount of money from the appellant for treating his son and gave the appellant that disputed land as security until when the said amount could be paid back to the appellant. However, the appellant prepared a sale agreement and forged it purporting that he purchased the land in dispute way back 2008. The alleged sale agreement is within the court records and she implored the court to go through it. Thus, the cited authorities by the appellant in his submission regarding the occupation of land for more than 12 years are distinguishable to the present matter and she urged the court not to give them any consideration as the facts differs a lot to the present case.

On the ground of pecuniary jurisdiction as raised under the 3rd ground of appeal, the respondent cautioned the court to be aware on the jurisdiction of the Ward Tribunal. However, she disputed the fact that the land was sold in 2008. That the sale agreement showed that Tsh 1,200,000/- was paid on installments until 2015 when the last installment of Tsh 150,000 was paid. The respondent was of the view that if at all there was a valid agreement purported to be entered by parties thereto, the mode of payment had to be reflected in the said sale agreement.

Moreover, she argued that during the trial and at the appellate stage the appellant never ever produced a valid valuation report that the land in dispute was worth above the pecuniary jurisdiction of the ward tribunal. Therefore, failure to prove that the land in dispute exceeded Tshs 3,000,000/= renders the allegation by the appellant baseless on the issue of jurisdiction of the ward tribunal.

Submitting in respect of the 4th ground *That, both the District Land and Housing Tribunal and Ward tribunal erred in law and fact by entertaining the matter while the respondent had no locus standi to sue the appellant and had no cause of action against the appellant;* it was argued that the respondent before filing the suit before the ward tribunal, sought permission of her family and a family meeting was convened and a minutes on the said issue was written conferring her the authority to sue on behalf of the rest of the family members. The said minutes was presented before the ward tribunal during the institution of the matter and it is from such letter the respondent instituted the matter at hand. Thus, the respondent had locus standi and cause of action to institute the matter at hand before the ward tribunal. Moreover, the trial tribunal found that the purported sale agreement of the disputed land was tainted with illegalities as there was no involvement of the family members of the seller, village authority was not involved within time, mode of payment was uncertain and the village authority had no information of purported sale agreement until 2020. Therefore, basing on such noted discrepancies in the sale agreement and the facts of the case, the trial tribunal ruled that August Masumbuko Shalo should refund the sum of Tshs 310,000/= and the appellant to surrender the farm.



Page 17 of 26

Moreover, the respondent argued that during institution of the matter the respondent did not claim to be declared owner of the disputed land but rather claimed that the purported sale between the appellant and her father was illegal as a family ought to be involved as interested parties. It was the opinion of the respondent that it was proper to sue for recovery of that land as the transaction itself was not proper as ruled out by the trial tribunal. That, it was proper for the trial tribunal in its decision to say that the appellant should be refunded his money for him to surrender the land to the respondent's father. Also, it was not proper as alleged that the land in dispute be declared the property of the respondent while she never claimed it before the ward tribunal.

Regarding the cited case of **Lujuna Shubi Balozi** (supra) the respondent argued the same to be supportive to the fact of their case as the respondent showed that her family rights had been breached or interfered with by the action of the appellant to purchase the land without involving the family while in fact that land fall within clans' land according to chagga customs.

On the 5th ground of appeal that, the Chairperson of the District Land and Housing Tribunal failed to act judicially by failing to deal/determine and dispose the appellant's grounds of Appeal leaving the same unresolved and blindly followed the biased opinions of the Assessors as a result pronounced injustice and incompetent judgment and without giving reasons for that decision; the respondent stated that the judgment of the appellate tribunal clearly reflected the provisions of **regulation 20(1) of the Land Disputes Courts (The District Land and Housing Regulations,** (supra). Therefore, the allegation is baseless at this stage


Page 18 of 26

as nothing was wrong with the judgment of the appellate tribunal as all the grounds of appeal were considered by the honourable Chairman.

Responding to the 6th ground of appeal in respect of contradictory evidence, the respondent submitted to the effect that the Tribunal which heard the parties' testimonies was the Ward tribunal and not the appellate tribunal. Therefore, it was wrong to argue that the appellate tribunal also pronounced judgment relying on the contradictory evidence of the respondent and her witnesses since the first appellate tribunal never heard parties' testimonies.

She further submitted that before the Ward tribunal the respondent testified that, her complains against the appellant was for purported purchase of the disputed land which belongs to the clan without involving family members of August Shalo. She also narrated that she made follow-up to the village authority where she discovered sale agreement of the appellant which was not proper. She further asked the ten-cell leader about such transaction who replied that he was not aware.

The respondent was of the view that as a matter of assurance once a person is in need of the land situated at the village, he/she has to make sure that the leaders around there are involved in such transaction for the avoidance of any dispute regarding the land in question.

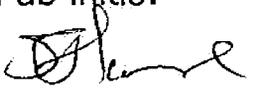
The respondent continued to state that in the instant matter, there is no contradiction of the testimonies of the respondent and her witnesses as alleged. That, the respondent stated that there was a sale transaction after being asked who stamped to the purported agreement in 2020; where she said there was some kind of sale made without their knowledge

either by misrepresentation or fraud hence, filed the matter before the tribunal for the tribunal to look upon such transaction and finally the tribunal found that the said sale agreement was invalid as it was not certain.

Regarding the cited cases by the counsel for the appellant to support this ground, the respondent argued the same to be baseless and distinguishable to the facts in the matter at hand as there was no any inconsistencies and or contradictions during the hearing of the respondent and her witnesses. Moreover, the first appellate tribunal clearly found that there was nothing so important to vitiate the trial tribunal's decision as the decision was based on the facts and evidence of both parties.

Responding to the 7th ground of appeal that both the appellate tribunal and the ward tribunal erred in law and fact for holding that the seller's family and the local government leaders were not involved in the sale of the suit land while family members witnessed and signed the sale agreement and the village chairman approved the sale agreement; the respondent argued that such issue of involvement of family members and the local authority was clearly discussed before the Ward tribunal and in the first appeal. It was found that the records were clear on that.

The respondent submitted further that the appellant claimed that the said sale agreement was witnessed by the family members and the local leader while in fact the said sale agreement was disregarded by the trial tribunal due to its inconsistency to the contract of sale. Thus, since the records clearly reveal that there is no valid sale agreement hence everything purported to be done under such transaction are null and void ab initio.



Page 20 of 26

That, the said sale agreement is unenforceable under the law as clearly discussed by the ward tribunal. Therefore, all the allegations by the appellant were argued to be baseless. The respondent called upon the court to disregard the allegation and dismiss this ground to its entirety.

Responding to the issue of bona fide purchaser as submitted by Mr. Kitundu, the respondent submitted that the appellant had tried to mislead this second appellate court by citing a number of authorities regarding the issue of purchaser in good faith but the facts of the cited authorities and the matter at hand are distinguishable.

Finally, the respondent implored the court to dismiss all the grounds of appeal for being baseless and unfounded and proceed to uphold the decision of the lower tribunals.

In rejoinder, in respect of allegation that the learned counsel for the appellant submitted as if he was appealing against both lower Tribunals, he stated that there is no law that restricts the appellant to challenge the decision of the Appellate Tribunal only if at all he is aggrieved by both decisions. After all, this Honourable Court has jurisdiction to quash and nullify the decisions of both lower Tribunals if it is satisfied that, the grounds of appeal have merit.

In respect of the first ground of appeal, the learned advocate referred to the ruling and evidence available in the Ward Tribunal and argued that the same clearly showed that the appellant and his witnesses and documentary evidence proved that the appellant bought the suit land from AUGUSTI MASUMBUKO SHALO. He insisted that the said Augusti Masumbuko Shalo was a necessary party who ought to have been joined

since it is the requirement of the law that, for a person to recover a land sold to the third party, a seller and buyer must be joined together as co-defendants/respondents. He referred to the already cited case of **JUMA B. KADALA** (supra)

In respect of the allegation that the appellant was an invitee, Mr. Kitundu argued that the same was a new allegation since the dispute before the Ward Tribunal was not about invitee and host. It was about selling of the family land. Thus, those allegations by the respondent have no legs to stand and those claims were not presented before the trial Tribunal for determination. Also, the cited cases by the respondent are distinguishable from the material facts of this case.

In respect of the second ground of appeal, Mr. Kitundu reiterated what has been submitted in chief. He added that the evidence was not challenged in cross examination thus he was protected by the law of Limitation act in the line of the case of **ROBERT JUMA MAZIKU** (supra).

On the 3rd ground of appeal, Mr. Kitundu reiterated what has been submitted in chief in respect of the issue of pecuniary jurisdiction.

Regarding the issue of locus standi, the appellant's counsel contested the respondent's allegation that she was appointed by the family members vide a meeting and that the meeting minutes were presented before the trial Tribunal at the commencement of the land dispute. He stated that the same was an afterthought, since no family meeting minutes were tendered before the trial Tribunal to prove that, the respondent had power to institute the dispute on behalf of her family. Also, the respondent alleged that, the suit land is a clan land but no evidence was adduced to



prove that, it is a clan land. Mr. Kitundu continued to reiterate what he submitted in chief in respect of the ground of locus standi.

On the 5th and 6th grounds of appeal the learned advocate also reiterated what was submitted earlier in submission in chief serve that under the 6th ground of appeal, he added that in the first appeal, parties are entitled to obtain from the appellate court its own decision on issues of fact as well as of law. He referred to the case of **BAKARI HOSENI VERSUS SELEMANI BAKARI, LAND APPEAL NO. 75 OF 2018, HIGH COURT OF TANZANIA AT TANGA** and argued that the allegation by the respondent that, the Appellate Tribunal did not hear the evidence of the parties is baseless since the first Tribunal had the power of re-evaluating the evidence and by doing so was re-hearing the witnesses.

Regarding to the issue of inconsistency/contradictions which go to the root of this case he faulted the respondent for failure to address the same. He repeated what he submitted in respect of the inconsistencies.

Also, in respect of the 7th ground of appeal the learned advocate condemned the respondent for failure to contest the same which amount to admission of the same. He restated what he stated in respect of this ground and in respect of the issue of bona fide purchaser.

Having summarised the rival submissions of both parties, I now turn to the grounds of appeal which I am of considered view that they fall under two categories. First category are grounds of appeal in respect of matters of law and these are the 1st, 2nd, 3rd and 4th grounds of appeal, the rest of the grounds concern matters of facts.

Before scrutinizing these grounds of appeal, from the outset, I wish to make it clear that this being the second appeal, I am aware that I should

not interfere with concurrent findings of facts of the lower courts unless there is misapprehension of the evidence, miscarriage of justice or violation of principles of law. See the case of **Amratlal D.M.Zanzibar Silk Stores vs A.H Jariwale Zanzibar Hotel [1980] T.L.R.** Looking at the grounds of appeals especially the grounds which are in respect of matters of the law, it goes without saying that there is allegation of violation of laws. I will thus start dealing with these matters of laws. I opted to start with the 4th ground on the issue of locus standi since the same is vital as the claim could not be established by the respondent herein who is not entitled to such claim. See the case of **Chama cha Wafanyakazi Mahoteli na Mikahawa Zanzibar (HORAU) Vs Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar, Civil Appeal No. 300 of 2019 (unreported).**

On the 4th ground of appeal, the appellant claimed that the respondent had no locus standi since no documentary evidence was tendered to show that the respondent was a legal representative and attorney of the said August Masumbuko Shalo's family or the document to prove that she was representing the alleged clan. The respondent to the contrary argued that she sought permission from her family and she was appointed to prosecute the case through the minutes which she produced before the Ward Tribunal.

The law is very clear on the issue of locus standi. It is a legal principle that a person instituting a suit before the court must have a right to do so (*locus standi*). This has been well elaborated in the case of **Lujuna Shubi Ballonzi v. The Registered Trustees of CCM** (supra) cited by Mr. Kitundu for the appellant. The principle has been further developed in various cases of the Court of Appeal like **Peter Mpalanzi vs Christina**

Mbaruka, Civil Appeal No. 153 of 2019 (CAT); and the case of **Omary Yusuph (Legal Representative of the late Yusuph Haji) vs Albert Munuo, Civil Appeal No. 12 of 2018.** (Unreported)

I have gone through the proceedings of the trial Tribunal, both written and typed. I perused one paper after another; no such thing happened as contended by the respondent to prove that she was appointed to institute the suit before the Ward Tribunal. Even the trend of the story does not suggest such a thing. Thus, the respondent herein had no locus standi to institute the case before the trial tribunal. Strangely, the said August Masumbuko Shalo was called as a witness to testify while he alleged that the disputed land belonged to him. It is not certain if such disputed land belongs to the clan as contended by the respondent or it belongs to the said August Shalo as he himself claimed. In any case, the respondent ought to get permission to institute the case.

I am alive with **section 18 (2) of the Ward Tribunal Act, CAP 206 R.E 2019** which provides that a Ward Tribunal may permit any relative or any member of the household of any party to any proceeding, upon request of such party to appear and act for such party.

In the instant matter, no such request was done and permitted by the Ward Tribunal as demonstrated above. Thus, it goes without saying that the respondent herein had no locus standi to institute the suit. Assuming that the respondent had locus standi, still non-joinder of the seller as a necessary party vitiates the proceedings of the two lower tribunals as rightly submitted by the appellant's counsel. I subscribe to the cited authorities in respect of the issue of non-joinder of the seller as a necessary party.

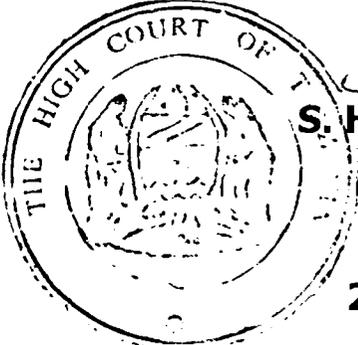


Page 25 of 26

Having found that the respondent herein had no locus standi to sue the appellant over the suit land and that failure to join a seller as a necessary party; I therefore hold that the Ward Tribunal erred by entertaining the claim instituted by the respondent. The 1st and 4th grounds suffice to dispose of the appeal. It is on that basis that I hereby quash the decision and proceedings of the Ward and District Tribunal and set aside the decrees of the two lower tribunals.

Having found as such, I find no need of entertaining the rest of the grounds of appeal. I thus allow this appeal with costs.

Dated and delivered at Moshi this 29th day of June, 2022

 *S. H. Simfukwe*
S. H. SIMFUKWE
JUDGE
29/6/2022