

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY OF DODOMA  
AT DODOMA**

**LAND APPEAL CASE NO. 65 OF 2021**

**JOHN POLIAS CHINJ1** }  
**NASON LENGÁTA** } ..... **APPELLANTS**

**VERSUS**

**SAMSON MAHINYILA..... RESPONDENT**

**(Arising from the decision of District Land and Housing Tribunal, Dodoma)**

**( O.Y Mbega-Chairman )**

**Dated 20<sup>th</sup> August,2021**

**In**

**Land Appeal Case No.51/2021**

**JUDGMENT**

**27<sup>th</sup>April&17<sup>th</sup>June,2022**

**MDEMU, J:.**

This is a second appeal. Briefly, in Ihumwa Ward Tribunal, in land case No. 137 of 2020, the Respondent filed a land dispute claiming that the Appellants trespassed into his four acres' land and caused some destruction to his wells. According to the trial Tribunal's record, the Respondent purchased the suit land from one Elizabeth Ngosi whereas the Appellants claimed to have purchased the same land from Zakayo Ngosi. The Tribunal considered this evidence and decided in favour of the Appellants.

Aggrieved, the Respondent appealed to the District Land and Housing Tribunal at Dodoma, in Land Appeal No. 51 of 2021 which reversed the decision of the trial Tribunal for failure to evaluate properly evidence on record, thus declared the Respondent herein lawful owner of the suit land. The Appellants were aggrieved by that decision hence this appeal on the following two grounds:

- 1. That, the Honourable Chairman erroneously erred in law in deciding the appeal in favour of the Respondent whereas failed to examine critically the strong evidence adduced by the Appellants and their witnesses.*
- 2. That, the Hon. Chairperson erroneously erred in law and fact by deciding on favour of the Respondent by accepting without qualification the contradictory evidence supporting the ownership of the Respondent over the disputed land.*

On 27<sup>th</sup> of April, 2022 when this appeal was scheduled for hearing, the Appellants were represented by Mr. Bonaventure Njelu, Learned Advocate whereas the Respondent had the service of Mr. Kidando, learned Advocate.

It was Mr. Njelu's submissions that, the Appellants purchased the disputed land from one Zakayo Ngosi and were in possession of the same as from 2008. He stated that, at a point in time, there was a land dispute between the Appellants and other persons over the same land in favour of the Respondent as per Application No. 412/2017 and Land Appeal No. 2/2017.

He submitted further that, in the evidence of the Respondent, the land was purchased in 2017 thus contradicting the sale agreement indicating the purchase to be effected on 29<sup>th</sup> of October, 2017. By that time, land Appeal No. 2/2017 had already recognized him the lawful owner five months prior. To him, these are circumstances which compelled Ihumwa Ward Tribunal to declare the two Appellants lawful owners.

In his further views, the trial tribunal considered the evidence on record especially that of William Morejehe who witnessed sale transactions and Wilbert Mika Thadayo who reduced the said agreement in writing in 2008. He also faulted the DLHT for failure to consider evidence of Emmanuel Zakayo Wami who had knowledge that his father is the one who sold the land to the two Appellants.

Submitting in the second ground of appeal, the learned Advocate argued that, there was contradiction regarding the date the suit land was purchased. In the first place, the evidence shows the land was purchased on 29<sup>th</sup> of October, 2017 whereas the sale agreement indicates purchase to be effected on 21<sup>st</sup> of June, 1998. Equally, the vendor and the purchaser are not disclosed in the said agreement. The Respondent here in signed it as a witness.

In addition, the District Land and Housing Tribunal acknowledged the two documents but didn't pronounce itself which one is the basis of its decision. It was his further submissions that, the Respondent tendered decisions of the court which recognized him to be the owner of the suit land five months prior to the evidence he tendered.

He thus summed to be trite law that, whoever desire any Court to declare him or her to have certain rights, then must prove on their existence. He cited sections 110, 111 of the Evidence Act, Cap. 6 and the case of **Pauline Samson Ndawaje v. Theresia Thomas Mandaha, Civil Application No. 45/2017** (unreported) to cement his position. In all, he said, the Chairman erred in not underscoring the duty of the Respondent to have failed to prove the case. He lastly urged this Court to declare the Appellants lawful owners of the disputed land.

In reply, Mr. Kidando's concern on the 1<sup>st</sup> ground of appeal was on the genuineness of the 2008 sale agreement which was authorized at Iyumbu instead of Ihumwa. In his view, in law, the Authority in which the land is located have to witness the agreement, which was not the case here. He said therefore that, the document relied on was *void ab-initio*. He cited in this the case of **Bahari Mhando Savanga v. Mzee Mohamed Bahari Shelukindo and Four Others, Civil Appeal No. 389/2019** and that of **Raphael Bundala vs. Hamis Kigalu, Land Application No. 57/2016** (both unreported) to bolster his assertion.

On the other hand, he submitted resisting the appeal that, documents tendered by the Respondent was genuine because it was from Ihumwa village, the very place where the land in dispute was located. He thus said the first ground of appeal is an afterthought.

On the second ground, Mr. Kidando conceded that, the Respondent tendered two agreements at the trial tribunal. The reason for so doing in his observation was presence of two plots which are adjacent to each other belonging to one Elizabeth Ngosi which she sold in two intervals. He however argued that, the agreement entered in 1998 had no dispute but he tendered in the tribunal because the Appellants were extending in trespass in that plot. He said that, Elizabeth Ngosi is Zakayo Ngosi's aunt

who sold the land to the Appellants. He added further that, at the trial, there were several contradictions on the size of the disputed land to be five acres by the Appellant whereas Zakayo said his father sold seven acres.

Another contradictory evidence was on neighbours to the suit land in which, Emmanuel Zakayo mentioned different neighbours to those mentioned by the Appellants. He added also that, when the trial tribunal visited the disputed land, Respondent's plot was different from that claimed by the Appellants. He concluded therefore to have found the Respondent's evidence heavier than that of the Appellants. He prayed the appeal be dismissed with costs.

In rejoinder, Mr. Njellu stated that, there is nowhere in the Ward Tribunal the Respondents purchased two plots in two intervals that is 1998 and 2017 and no any witness was called to testify regarding the two agreements. Regarding the authority that authorized the disposition, he submitted that, the suit land is between Ihumwa and Iyumbu and specific in 2008, was at Iyumbu.

I have heard the parties herein in their submissions and have gone through the record of both the Ward and District Land and Housing Tribunals. The main issue is whether the DLHT properly evaluated the

evidence of the Ward Tribunal in declaring the Respondent herein the lawful owner of the suit land. In essence, this issue resolves the complaint in the two grounds of appeal.

It is obvious that, the judgement of the District Land and Housing Tribunal relied on documentary evidence, the sale agreements. However, those exhibits were not tendered at the Ward Tribunal to be part of record. Furthermore, there are other exhibits such as interim order and judgement in Miscellaneous Application No. 160 of 2019 found in the Ward Tribunal records. The record is however silent on how they got their way in the proceedings. It is equally not clear in the DLHT if it embarked in the exercise of taking additional evidence.

Of essence perhaps is this that, both parties when testifying, informed the trial Tribunal to possess documentary evidence on how they acquired the suit land. To the conclusion of recording evidence, the trial Ward Tribunal never witnessed by recording the said important evidence. Again, much as the Ward Tribunal neither recorded in the proceedings nor endorsed any agreement, both Counsels submitted on availability of two sale agreements of the Respondent. Mr. Kidando said the reason for so doing was presence of two plots which are adjacent to each other.

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However, at the trial tribunal, the talk is on one plot. Yet, the evidence is silent at the trial tribunal if the suit land is at Ihumwa or Iyumbu

On that stance, reliance by the District Land and Housing Tribunal on improperly received documentary evidence to determine rights of the parties was irregular. In this aspect, in the case of **Ismail Rashid v. Mariam Masati, Civil Appeal No. 75 of 2015** (unreported), the Court of Appeal observed that:

*"We wish to reiterate what we stated in SHEMSA KHALIFA AND TWO OTHERS VS. SULEIMAN HAMED, CIVIL APPEAL NO. 82 OF 2012 that, it is trite law that judgement of any court must be grounded on the evidence properly adduced during trial otherwise it is not a decision at all. As the decision of the High Court is grounded on improper evidence, such a decision is a nullity."*

In a similar vein, the decision of the District Land and Housing Tribunal is a nullity for relying on documentary evidence that was not adduced in the Ward Tribunal. Now, as the trial tribunal also relied on documentary evidence which never formed part of the record, the said proceedings and resultant decision are hereby nullified. Should any party



desirous to pursue his rights, the same be filed in a court/tribunal having competent jurisdiction. Each part to bear own costs.

It is ordered accordingly.



~~Gerson J. Mdemu~~  
**JUDGE**  
**17/06/2022**

**DATED at DODOMA** this 17<sup>th</sup> day of June, 2022.



~~Gerson J. Mdemu~~  
**JUDGE**  
**17/06/2022**