

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

LAND APPEAL NO. 2 OF 2022

(Arising from Land Appeal No. 44 of 2020 of the Kahama DLHT)

JONATHAN MAZIKU.....APPLICANT

VERSUS

GETRUDA DAVID KELELA..... RESPONDENT

JUDGEMENT

6th June & 15th July 2022

MKWIZU, J.:

Appellant and respondent are relatives coming from the same clan. The center of the dispute is the ownership of the suit land approximated to one acre. Respondent's explanation before both the trial tribunal as well as at the 1st appellate tribunal was that her house was 2005 destroyed by a flood and thus, she required money for reconstructing it. In that process, she obtained a 50,000/= loan from the appellant pledging the suit land as security for two years period but since then appellant has refused to take back his money claiming the purchase of the Suit land.

The Appellant's position is a little bit dissimilar, while disputing the claim by the respondent, the appellant said he purchased the land from the respondent at a purchase price of 50,000 at a sale transaction witnessed by their late Clan leader, Charles Kelela, and that the clan members refused to entertain respondent's complaint over the suit land for being baseless.

The Appellant was declared owner at the Ward Tribunal, but his success could not last long because the DLHT overturned that decision in an appeal preferred by the respondent by declaring the respondent owner for failure to establish a valid sale with approval from either the Village authority or the clan leader.

Appellant is now before this court contesting the above decision. He has brought a petition of appeal with a total of two grounds of appeal that:

- i. That, the trial Chairman tribunal erred in law and fact by deciding the matter in favour of the respondent without considering the fact that the appellant herein acquired the dispute property legally from the respondent and he used the dispute property for more that fifteen years since 2005, without any disturbance.
- ii. That, the trial Chairman tribunal erred in law and fact by failure to take into consideration that the appellant and respondent herein had entered into sell agreement over the disputed property sometimes in 2005.

Before me, both parties are unrepresented. Submitting in support of the appeal, the appellant insisted on his stand that he bought the suit land from the respondent in 2005 and that the sale was transacted before the clan leader who is no more. And therefore the land is his.

The respondent contested the appeal arguing that the land is hers and that he just pledged it to the appellant in exchange for the 50,000/= obtained from him for purposes of reconstructing her destroyed house.

And that her efforts to repay the money bore no fruits after refusal by the appellant to receive the money-back.

Having considered the matter, I find the issue for consideration to be whether the appeal is meritorious or not. It is uncontroverted that, the land is customarily owned and that it initially belonged to the respondent before it shifted to the appellant. The area of controversy which needs this court's determination is the validity of sale if any. I say so because this is the only point where the two differ in their argument in relation to how the land moved to the appellant. My perusal of the entire evidence finds no document exhibiting the claimed sale. And though the appellant alleges that their sale transaction was known to the entire clan members, none of them was called to testify in that respect.

Again, this piece of land is said to have been customarily owned, and the sale was executed in 2005 well after the coming into force of the Village Land Act (Cap 114 RE 2019). As rightly observed by the DLHT chairperson, the disposition of such land requires the approval of the village council under section 8 read together with section 31 (3) of the village Land Act. Section 31(3) of the said Act reads:

"Unless otherwise provided for by this Act or Regulations made under this Act, a disposition of the derivative right shall require the approval of the village council having jurisdiction of the village land out of which that right may be granted."

This position was also emphasised in the case of **Bakari Mhando Swanga v. Mzee Mohamedi Bakari Shelukindo and 3 others**, Civil

appeal No. 389 of 2019, CAT at Tanga (unreported) where the Court of Appeal held:

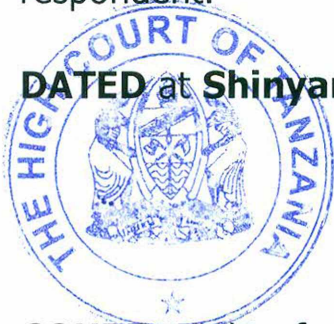
“Even if we assume that the purported sale agreement was valid, which is not the case, then the same was supposed to be approved by the village council...”

Under normal circumstances, it was expected for the appellant after he had executed the purported sale deed with Khatibu Shembilu, to present the document to the village council of Kasiga to get its blessings...”

In this case, however, neither the village council nor neighbors to the suit land were involved. And none of them was called to authenticate the transaction between the parties. Having not obtained the approval of the village council under section 31 (3) of the Village Land Act, (Cap 114 of RE 2019), the appellant’s purchase if any, is ineffectual without any force of law. I find no reason to fault the DLHT’s decision.

The appeal is therefore devoid of merit. It is dismissed with costs to the respondent.

DATED at Shinyanga this 15th day of July, 2022.



E. Y. Mkwizu
E. Y MKWIZU
JUDGE
15/07/2022

COURT: Right of appeal explained.

E. Y. Mkwizu
E.Y. MKWIZU
JUDGE
15/07/2022