

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MTWARA)

AT MTWARA

MISC. LAND APPEAL NO. 4 OF 2021

(From the Decision of the District Land and Housing Tribunal of Mtwara District at Mtwara, in Land Application No. 38 of 2020)

KRISTOFA COLUMBA APPELLANT

VERSUS

T.A.G KANISA..... RESPONDENT

JUDGMENT

Muruke, J.

The appellant Kristofa Columba was aggrieved by the decision of Mtwara District Land and Housing Tribunal in Land Appeal No. 38 of 2020, in which the trial tribunal's decision was in favour of the respondent. Thus, filed present appeal raising four grounds as articulated in the petition of appeal.

On the hearing date, both parties were unrepresented. In his submission the appellant submitted that, he bought the land legally ownership was transferred to the appellant, order of the appellate tribunal that he refused 300,000 is not proper. He bought the Land in 2013, he developed the shamba by planting cashewnut trees and wood plants. Appellant also put two trips of sand valued 300,000 each. He made bricks there at the disputed area worth 200,000. So, refund of 300,000 is not proper. I wish could have asked for purchasing, insisted appellant. On ground two he

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argued that, it was wrong for the appellate tribunal to agree with trial tribunal. The seller of the disputed land Stella Simtaji proved that appellant bought the disputed plot legally. In regard to ground three he submitted that; the issue is on the two-sale agreements. First one dated 17/12/2013 and the other one dated 03/12/2015 both shows that, appellant bought the disputed land. Thus, the area belongs to him. It was wrong for the tribunal to hold in favour of the respondent. On ground four he argued that, appellate tribunal erred by upholding the ward tribunal decision while chairman erred for departed from Assessors opinion without assigning any reasons. Assessors' opinion was not to be ignored. In totality he prayed this court to quash the decision of the two lower tribunals and to declared the appellant the rightful owner of the disputed land.

In rejoinder, respondent submitted that, appellate tribunal did not error. Respondent was the original owner. Appellant sale agreement is not signed by the owner, Gerard Simtaji there is only sign of the son of deceased Beda Simtaji, and at that time, owner had died early 2015. The one, signed by true owner Gerard Simtaji has no any stamp of any leader in the village. On ground two he submitted that, there is no any error done by Chairman. All evidence were in favour of the Respondent. Stella Simtaji witnesses of the appellant did not even know the boundaries. She was not present while appellant and Gerard Simtaji were entering sale agreement.

On ground three he submitted that; appellant was not member of T.A.G Kanisa. So, lawful owner was T.A.G Kanisa, and not Kristofa Columbia. There is sale agreement of 80,000/= on 28/05/2012 that was signed by the seller Gerard Simtaji and witnessed by M.N Milanzi of Nagaga Village Masasi. So, the area in dispute is the property of T.A.G Kanisa. Kristofa Columba appellant was told that, we are indebted to Gerard Simtaji. He then went to the son of the owner and bought the area.

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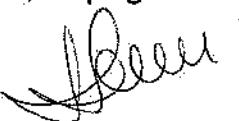
Ground 4 complaint is on opinion of Assessors, Appellant tribunal was right. Trial Tribunal followed the law. Appellant tribunal did not say that Respondent return 300,000 to Appellant. But rather, it was said, that Appellant to go back to the one who sold the disputed area, and ask for his purchase price back. In totality let appeal be dismissed in total with costs.

In rejoinder appellant submitted that, respondent did not buy the land in dispute legally. Evidence shows that, respondent bought the land in dispute at 80,000 Tshs. But Appellant Tribunal said 680,000 which is not true. Let the appeal be allowed.

Having heard both parties' submission, reviewing the evidences at trial tribunal, proceedings of the first appellate tribunal and documents tendered issue for determination is whether was legally sold land in dispute. To dispose this appeal, I will start with ground three, two, one then ground four will be the last. In ground three the complaint is on the two sale agreements, first dated on 17th December, 2013, second dated on 3rd December, 2015. Appellant complained that, the trial tribunal did not consider the two Sale Agreements which proved that he is the owner of the disputed land having bought legally from Mzee Simtaji.

The proceedings and judgment of the trial tribunal did not reflect if the appellant tendered the two documents (sale agreements) however, the records show that the Sale Agreements was only attached in trial tribunal file. Thus, the trial tribunal was correct for not considering the two-sale agreements. Ground three lacks merits. It is dismissed.

On ground two, the complaint is that, the trial tribunal did not consider the testimonies of appellant and his witnesses adduced at the trial tribunal. I have careful reviewed the evidence on record. It is clear, at page 13 and

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14 of the trial court typed proceedings and judgment the trial tribunal considered the evidence of the appellant and his witnesses. At page 14 of the trial tribunal judgment is recorded as follows: -

Baada ya baraza kusikiliza shauri hili na kupata Ushahidi wa pande zote mbili. Balaza limebaini yafuatayo.

Looking on the quoted paragraphs above, the trial tribunal considered the evidence of both parties before making its decision. Thus, this ground of appeal lacks merits. It is dismissed.

On ground one complains is on the appellate tribunal to uphold the decision of the trial tribunal and order the seller to refund the appellant Tshs. 300,000/= while the ownership of the disputed land was transferred to the appellant. I have reviewed the evidence on record, The record reflects that the appellant bought the disputed land from Gerard Simtaji and Stella Simtaji on 2015. The dispute arose between the appellant (Kristofa Columba) and respondent (T.A.G Kanisa), as a result respondent decided to file land dispute No. 38 of 2019 before Namalenga Ward, in which ordered the respondent (T.A. G. Kanisa) to be the rightful owner of the disputed land and ordered to refund the appellant Tshs.300,000/= purchase. Legally he bought the suit land in 2013 for Tshs. 300,000/= and he possessed the land until 2019. Moreso, appellant developed the suit land by planting cashewnuts trees, wood plants, supplied two trips of sand valued 300,000/= each, and made bricks for building. In simple calculations, if you count from the day on which the appellant bought the disputed land on 2013 until to the day the dispute filed at ward tribunal on 2019 it is almost six (6) years, the land was in the possession of the appellant. It is my considered opinion that, even if the



disputed land was not valued to determine the actual commercial value for the disputed land from when the appellant bought the said land from Gerard Simtaji and Stella Simtaji until when the decision of the trial tribunal delivered, the value of the land had appreciated.

Trial tribunal and first appellate tribunal to order the respondent to compensate appellant Tshs. 300,000/= it is not proper. The amount of compensation ordered appellant over the disputed land. Compensation should be reasonable in relation to what was done by the appellant and time used to developed the disputed land.

In the case of **Anna Mbakile Vs. Ded Geita, Labour Revision No. 11 of 2019**(unreported) HC at Mwanza held: -

“In determine how to consider reasonable compensation, I will be guided by the principle of law and international standards.....”

The amount of compensation ordered by the trial tribunal and the first appellate court to the appellant, it not only unreasonable but it is unjust and unfair compensation compared to development made by appellant in the disputed land from 2013 to 2019.

The records are clear, appellant paid Tshs. 300,000/= to Gerard Simtaji and Stella Simtaji to buy the disputed land. However, the evidence shows that the seller sold two different plots one to respondent and the other to the appellant. At page 9 of the trial court typed proceedings DW2 Stella Simtaji testified as follows: -

Hawa wote wa wili nimewauzia shamba langu Kolumba amenunua shamba na T.A.G Kanisa nao wamenunua na hapa mahali pana vipande viwili kipande walichonunua Kanisa niliwauzia kw ash



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80,000/= kabla hawajanunua kingine baada ya muda wakanunua kingine kwa thamani y ash 300,000/= walitoa sh 200,000/= ikabaki sh 100,000/= na hatimaye walimalizia nayo ilitolewa na Askofu wao tukaandikishiana mshitakiwa nimemuuzia shamba la mikorosho kwa thamani y ash 300,000/= na adaiwi na nilimuuzia mwaka 2015 na halipewa hati na mzee Simtaji ambae kwa sasa ni marehemu.

The above evidence is self-speaking, the appellant bought different plot and he paid all the purchase price. Seller handled over the necessary documents to the appellant. In other words, the seller had already transferred his ownership to appellant, thus, from the moment seller handled over all the document to appellant, the appellant became the lawful owner of the disputed land. It is a settled principle of law that no one can transfer a better title than the person who has the said title.

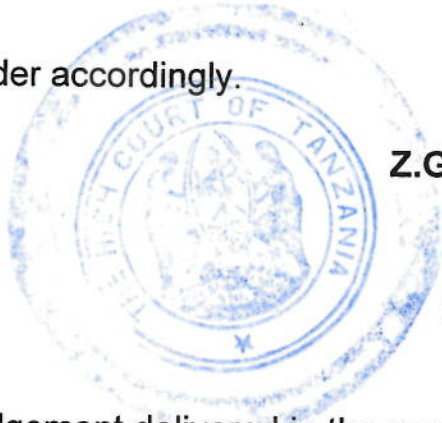
This principle was discussed by this court in the case of **Kaisi Hamisi Mpanda Vs. Fank Julius Sigele, Misc. Land Appeal No. 09 of 2021**(unreported) when referred the case of **Farah Mohamed Vs. Fatuma Abdalla [1992] TLR 205** where it was held that: -

"He who has no legal title to the land cannot pass good title over the same to another."

Appellant purchased legally the disputed land from the original owner. The owner had transferred the title to the appellant. Thus, appellant is the lawful owner of the disputed land has merits. Accordingly allowed. Decision by the trial tribunal and the District Land and Housing of Mtwara is quashed and set aside. Respondent to leave vacant possession of the disputed land to appellant from the date of this judgment.



Order accordingly.



Z.G. Muruke

Judge

31/8/2022

Judgement delivered in the presence of appellant and respondent, both in persons.



Z.G. Muruke

Judge

31/8/2022