

Tamini



**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
(DISTRICT REGISTRY OF MTWARA)
AT MTWARA**

MISCELLANEOUS LAND APPEAL NO.09 OF 2021

(Originating from District Land and Housing Tribunal at Mtwara in Land Appeal No.37 of 2021)

KAISI HAMISI MPANDA..... APPELLANT

VERSUS

FRANK JULIUS SIGELEDEFENDANT

JUDGMENT

Muruke, J

Kaisi Hamisi Mpanda appellant sued respondent at Ndanda ward tribunal for invading the shamba in which he was administrator. Trial tribunal ruled in favour of the appellant, and declared him the rightful owner of the disputed shamba. Being dissatisfied, Frank Julius Sigele, (respondent) filed appeal at the District land and Housing Tribunal for Mtwara at Mtwara, land appeal number 37/2021. Appellate tribunal, quashed trial Tribunal decision and declared respondent to be the rightful owner. Appellant was dissatisfied, thus filed present appeal. At the hearing, both parties were unrepresented, thus argued their appeal orally.

On his part appellant submitted that Edward sold shamba that was not his to Frank Julius Sigele. Evidence of Edward proves the same. Edward was ready to compensate the respondent, by giving one acre as compensation, but refused. All the time, Edward was ready to compensate the respondent; it is unfortunate that respondent refused to accept the land given as compensation. So, Edward wanted the case to come to an end by refunding the land. To date, the land is there, for respondent to be refunded, by Edward but he is insisting on our land.

On the other hand, respondent submitted that: he gave money Edward, for him to be treated. Edward sold the plot but he was not sure if it is his. The plot belongs to all the four persons, appellant mother being one of them. He was not sure if the four persons had letters of administration of their late mother. Edward sold the plot for him to go to hospital. Respondent was not sure if Edward had power to sell the property, but he just bought from him. Edward is now sick; he was ready to give him another shamba, but he did not want because it belongs to his sister not his. He is ready to receive the shamba if it is proved that it is Edward's property. Let the appeal be dismissed.

Having heard both parties, the central issue is whether, Edward who sold the shamba to respondent had legal title. From the Evidence of Edward, who sold the shamba he had no title to pass to respondent. He was not the owner. That's why he was ready to compensate respondent with the another piece of shamba.



It is settled law that no one can transfer a better title than the person who has the said title. This was discussed in 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”

To the best of my understanding: - No man can transfer a better title than he himself has. The aim of the principle is to protect the interest of the true owner when it provides that: - where the goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods the seller had.

Equally so, the law is well settled that an Executor or Administrator has in respect of the property vested in him, power to sell immovable property conferred by written law upon Trustees of a trust for sale, in terms of **Section 101 of the Probate and Administration of Estates Act, Cap 352 [R.E 2022]**.

From the evidence on records, Edward had no title to pass to the respondent. He was not lawful owner for him to be able to sell the disputed land. Thus, appeal has merits, accordingly allowed. Decision by District Land and Housing Tribunal of Mtwara is quashed and set aside. This court restores the trial Tribunal decision. Trial Tribunal decision to be executed. It is so ordered.




Z. G. Muruke

Judge

28/07/2022

Judgment delivered in the presence of the appellant and respondent both in persons.



A handwritten signature in blue ink, appearing to read "Z. G. Muruke".

Z. G. Muruke

Judge

28/07/2022