IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 134 OF 2021

(Arising from Land Application No. 62 of 2020 in the District Land and Housing Tribunal for Tarime at Tarime)

BETWEEN

DANIEL MSETI..... APPELLANT

VERSUS

CHACHA WAMBURA NYAKAHO..... RESPONDENT

JUDGMENT

A. A. MBAGWA, J.:

This is an appeal against the judgment and decree of the District Land and Housing Tribunal for Tarime in Land Application No. 62 of 2020.

The respondent, Chacha Wambura Nyakaho successfully sued the appellant Daniel Mseti over ownership of piece of land located at Kitare hamlet within the district of Tarime. In a bid to prove his claims, the respondent paraded three witnesses notably, Chacha Wambura Nyakaho (PW1), Muhorya Damian Muhorya (PW2) and Chacha Marwa Kehata (PW3). Besides, the respondent produced two documentary exhibits to wit, sale agreement (PE1) and M-Pesa transactions print out (PE2).

The factual background of the matter is that on 25th February, 2019, the appellant Daniel Mseti approached the respondent and requested him to buy his parcel of land in order to get money for repayment of loan that the appellant was indebted to the lending group called Fisi. The appellant accepted the offer and therefore they went together to inspect the land. Having seen the land, the duo agreed to dispose it at the consideration of Tanzanian shillings five million two hundred thousand (5,200,000/=). As such, on 26th February, 2019, the appellant and respondent entered into written agreement of sale. It is undisputed that on the date of signing the agreement i.e., 26th February, 2019, the respondent advanced to the appellant Tanzanian shillings two million (2,000,000/=) and both parties mutually agreed that the remaining sum would be paid later. However, it was not expressly clear in the sale agreement (exhibit P1) as to when exactly should the outstanding amount be fully paid. The respondent alleged and it was not disputed by the appellant that after the first payment, the respondent paid appellant another sum of Tanzanian shillings seven hundred thousand (Tshs 700,000) in three instalments namely, five hundred thousand (500,000/=) via M-Pesa, one hundred thousand (100,000/=) in cash and another one hundred thousand (100,000/=) in cash. Thereafter,

the respondent cleared the land and planted about two thousand trees. This fact was also supported by DW4 one Mwita Chacha Mseti who was hired by the respondent to clear the land and plant trees.

The respondent further told the trial Tribunal that after making the payments above, the appellant wanted the respondent to pay him the remaining balance of Tshs 2,500,000/= in lump sum. As such, the respondent told him to wait until he got the said amount in lump sum. Sometimes, in August, 2020 the respondent informed the appellant that he would be ready disburse in full the outstanding amount on 15th September, 2020 but the appellant appeared not ready to receive that sum. He started avoiding the payment.

On 15th September, 2020, the respondent went to visit the suit premises but while there, the appellant emerged and told the respondent to leave the premises claiming that the respondent Chacha Wambura was not the owner of the suit land because he failed to complete the payment. Following this fracas, the respondent resorted to institute a land case in the District Land and Housing Tribunal whose decision is being challenged.

In defence, the appellant called a total of five witnesses namely, the appellant himself (DW1), Magabe Imanani Magoko (DW2), Happyness Lucas

Wambura (DW3), Mwita Chacha Mseti (DW4) and Marwa Baston Chacha (DW5).

In brief, the appellant, on his part, did not dispute entering into sale agreement with the respondent on 26th February, 2019. He further admitted that he was paid Tanzanian shillings two million on the signing date and later the respondent paid him another amount to the tune of Tanzanian shillings seven hundred thousand thereby making a total sum of Tanzanian shillings two million seven hundred thousand (TZS 2, 700,000/=). The main contention by the appellant was that the respondent defaulted the terms of contract because, according to him, it was agreed that the outstanding amount would be fully disbursed by 1st April, 2019. It was the appellant's argument that since the respondent failed to disburse the remaining balance by 1st April, 2019, it necessarily follows that he breached the contract and therefore sale was vitiated.

After hearing the evidence of both parties and upon scanning the exhibits in particular the sale agreement (exhibit PE1), the trial Chairman was satisfied that the sale agreement did not specifically state the time at which the respondent was required to fully disburse the remaining amount. He thus

did not see any breach of contract on the part of the respondent and consequently, declared the respondent a lawful owner of the suit premises. In addition, the trial Tribunal ordered the respondent to pay the appellant the remaining Tshs 2,500,000/=

The appellant was not amused by the decision of the trial District Land and Housing Tribunal for Tarime hence he appealed to this Court. The appellant filed a petition of appeal containing three grounds namely,

1. *That the District Land and Housing Tribunal erred in law and fact by declaring that the respondent is the lawful owner of the disputed land without considering the fact that the respondent failed to pay the remaining sum of money for long time and reasonable time entitled the appellant to repossess back his land (sic)*
2. *That, the District Land and Housing Tribunal erred in law and fact by failure to consider that the way the respondent was paying the appellant in very small amount and for very long interval implied that the respondent had no intention to pay the appellant the unpaid amount which entitle the appellant to retake back the suit land*

3. *That, the District Land and Housing Tribunal erred in law and fact by relying on weak and contradictory evidence of respondent while ignoring strong evidence by the appellant.*

On the hearing day both parties appeared in person, unrepresented. The appellant reiterated his grounds of appeal as contained in the petition of appeal and finally beseeched the court to quash the decision of DHLT and consequently declare the appellant lawful owner of the suit premises.

In rebuttal, the appellant resisted the appeal. He was very emphatic that the sale was concluded and he advanced to the appellant a total sum of Tshs 2, 700,000/=. He further argued that there was no deadline for payment of outstanding amount.

Having gone through the record, grounds of appeal and submissions by the parties, the central issue for determination of this appeal is whether the trial Tribunal was right to declare the respondent a lawful owner of the land in dispute.

On my part, I have thoroughly gone through the evidence adduced by both parties along with the key exhibit namely, sale agreement (exhibit PE1). There is no dispute that the parties on 26th February, 2019 entered into a

sale agreement of the suit premises at the consideration of Tshs 5, 200,000/=. It is further undisputed that the respondent paid the appellant a total of Tshs 2,700,000/=. The only controversy is the date on which the remaining balance of Tshs 2,500,000/ was no supposed to be paid. Whereas the respondent contends that there was fixed date for disbursement of the remaining sum, the appellant alleged that it was on 1st April, 2019.

Parties entered into sale agreement which they reduced in writing and appended their signatures thereto. It therefore follows that their contractual obligations were governed by the contract deed (exhibit PE1). It is a common principle of contract law that parties are bound by the terms of contract they freely entered. A party to a contract is not permitted to seek remedy outside the agreement.

While deliberating on akin issue in the case of **Unilever Tanzania LTD vs Benedict Mkasa trading as Bema Enterprises,** Civil Appeal No. 41 of 2009, CAT at Dar es Salaam, the Court of Appeal had the following to say, *Strictly speaking, under our laws, once parties have freely agreed on their contractual clauses, it would not be open for the courts to change those clauses which parties have agreed between themselves. It was up to the*

parties concerned to renegotiate and to freely rectify clauses which parties find to be onerous. It is not the role of the courts to re draft clauses in agreements but to enforce those clauses where parties are in dispute

I have keenly scanned the said agreement (exhibit PE1). Indeed, it is silent as to the time when the outstanding amount should be disbursed. As such, it is not true as contended by the appellant that the agreement was to pay the whole outstanding amount by 1st April, 2019. Since the contract did not provide for a specific time to fully disburse the outstanding sum, there is no way a party can seek to enforce a term which is not provided in the contract.

In the circumstances, I am at one with the trial Tribunal that by virtue of the sale agreement, no terms were breached by the respondent. In the event, I uphold the decision of the trial District Land and Housing Tribunal for Tarime.

In the final analysis, I find this appeal without merits and consequently dismiss it with costs.

It is so ordered.

The right of appeal is explained.

A. A. Mbagwa

JUDGE

19/09/2022

Court: The judgment has been delivered in the presence of both parties this 19th day of September, 2022.

A. A. Mbagwa

JUDGE

19/09/2022