

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND APPEAL NO. 2 OF 2021

(Arising from the Ruling of Lushoto District Land and Housing Tribunal in Land Application No. 51/2015 delivered on 26th November 2020)

REGISTERED TRUSTEE OF BILAL MUSLIM

MISSION OF OT TANZANIAAPPELLANT

-VERSUS-

MOHAMED MSABAHA.....1ST RESPONDENT

SALIM MSABAHA.....2ND RESPONDENT

RAMADHAN MSABAHA.....3RD RESPONDENT

DAUDI MAKUNCHA.....4TH RESPONDENT

FATUMA MNYANI.....5TH RESPONDENT

JUDGMENT

Date of last order: 11/10/2021

Date of judgment:08/02/2022

AGATHO, J.:

The Appellant being aggrieved by the ruling of Lushoto District Land and Housing Tribunal at Lushoto delivered on 26/11/2020 appealed to this Court on the following grounds:

1. That, the Honourable trial tribunal erroneously entered the ruling in favour of the Respondents while they are the ones who were

obliged to appoint the administrator of the estate to be joined as necessary party.

2. That the Honourable trial tribunal erroneously delivered contradicting decisions by ordering and assigning the Appellant to appoint the Administrator of the estate and be joined as a necessary party while the one is not the family member of the seller of the disputed land as it was ordered by the same in its ruling delivered on 25th May 2018.
3. That the Honourable trial tribunal erred in laws and facts by vacating on its order of 28th February 2018 in which it granted the prayer by the counsel for the Applicant to file the amended application after the demise of one party without any prayer thereof by the Respondents.
4. That the Honourable trial tribunal erroneously removed the temporary injunction order against the Respondents and therefore gave the latter an ample opportunity to enjoy the right over the disputed land.
5. That, the whole proceedings, and ruling are vague, problematic, and full of errors, incapable of execution and lack of supports.

In lieu of the above grounds of appeal the appellant prayed for:

The court to nullify the proceedings, ruling, and the drawn orders of District Land and Housing Tribunal; the court be pleased to order the 1st – 3rd Respondents to appoint the Administrator of the estate to be joined as necessary party; the court order trial de novo; the Appellant be granted costs of this appeal; and any other reliefs that the Court may deem fit to grant.

On the date fixed for hearing the Court ordered the appeal to be disposed by way of written submissions. To determine the appeal the Court raised issues that match the grounds of appeal and drew responses for each issue/ground of appeal as follows:

1. Whether the Honourable trial tribunal erroneously entered the ruling in favour of the Respondents while they are the ones who were obliged to appoint the administrator of the estate to be joined as necessary party.

The Appellant's claim is not true. Looking the trial tribunal records and the ruling, nowhere the District Land and Housing Tribunal ordered the Appellant to appoint administrator of the estate. Rather, the trial tribunal ruled that the Applicant join the administrator of the estate as a necessary party after the family has appointed the said administrator. The Appellant ought to wait for the lapse 90 days as

sets out under Part III, item 16 of the Schedule in the Law of Limitation Act, [Cap 89 R.E. 2019] for joining of the legal representative of the deceased estate and notify the Court that the family members have not appointed any administrator. Thereafter, the Court could have ordered the Appellant to join the family members in the case. Since that was not done and because the Court did not order the Appellant to appoint Administrator of the deceased's estate, I find the first ground of appeal lacking merit.

2. Whether the Honourable trial tribunal erroneously delivered contradicting decisions by ordering and assigning the Appellant to appoint the Administrator of the estate and be joined as a necessary party while the one is not the family member of the seller of the disputed land as it was ordered by the same in its ruling delivered on 25th May 2018.

This ground of appeal relates with the first ground. Therefore, the finding will be same that there was neither contradiction nor error in the District Land and Housing Tribunal's ruling. The tribunal did not order the Appellant to appoint the administrator of the estate. It rather ordered the family members of the late Abdallah Msabaha, the seller to do so. The Appellant was required to join the Administrator

of the estate the deceased as a necessary party. These orders are found in the ruling of District Land and Housing Tribunal date 25th May 2018.

3. Whether the Honourable trial tribunal erred in laws and facts by vacating on its order of 28th February 2018 in which it granted the prayer by the counsel for the Applicant to file the amended application after the demise of one party without any prayer thereof by the Respondents.

I have perused court records on the issue of the order the District Land and Housing Tribunal granted on 28th February 2018 and found in the handwritten proceedings the order of District Land and Housing Tribunal dated 28th February 2018 in which at the instance of the Advocate Njowoka (Applicant's counsel) the District Land and Housing Tribunal granted the prayer to amend the application. However, looking at the record of proceedings on 28th February 2018 the reasons for amending the application are not stated. Or if they were stated the District Land and Housing Tribunal Chairperson did not record them. However, the pleadings show that Applicant's counsel prayed to remove the deceased the then 1st Respondent (Abdallah Msabaha).

On 28th March 2018 the 1st Respondent's counsel raised an objection that the amended application was defective for non-joinder of a necessary party, the seller of the land (the late Abdallah Msabaha). The Applicant's counsel responded that the said Respondent (the seller) was joined in the application prior to amendment. After his death he was removed in the amended application and remained with five Respondents. Thus, on 24th May 2018 the District Land and Housing Tribunal's Chairperson ruled that since the 1st Respondent is deceased, and he, being the seller of the land in dispute then the family members were ordered to seek an appointment of the administrator of the deceased's estate who will later be joined in the matter. The District Land and Housing Tribunal on the same date ordered the stay of the proceedings pending the appointment of the administrator of the deceased's estate.

Having briefly narrated what is observed in the ruling and the proceedings of 28th February 2018 to 24th May 2018, let me turn to the ruling dated 26th November 2020 subject of the present appeal. The Appellant complains that the District Land and Housing Tribunal vacated its order of 28th February 2018 in which it granted the prayer by the counsel for the Applicant to file the amended application after

the demise of one party without any prayer thereof by the Respondents. I should say the Appellant has misconstrued the ruling. The order dated 28th February 2018 was not vacated in as far as the filing of amended application is concerned. And indeed, the applicant did file its amended application on 7th March 2018. Therefore, as per the District Land and Housing Tribunal's ruling dated 26th November 2020, what was vacated is inter alia the order to join the legal representative of deceased's estate for a reason that the time (90 days) set by the law under Part III, item 16 of the Schedule in the Law of Limitation Act, [Cap 89 R.E. 2019] the said representative to join the matter has lapsed. Moreover, more than two years passed from 24th May 2018 to 26th November 2020 without the deceased family members appointing any administrator of the estate. That is visible on page 4 of the District Land and Housing Tribunal ruling dated 26th November 2020. The law on joinder of parties is Order 1 Rule 3 of Civil Procedure Code [Cap 33 R.E. 2019]. Moreover, a need for joining a seller as a necessary party a land dispute arising out of sale of the same is elaborated in **Stanslaus B. Juma Kadala v. Laurent Mkande [1983] TLR 103**. Therefore, the 3rd ground of appeal is without substance.

4. Whether the Honourable trial tribunal erroneously removed the temporary injunction order against the Respondents and therefore gave the latter an ample opportunity to enjoy the right over the disputed land.

Regarding the 4th ground of appeal, whether the District Land and Housing Tribunal erred in removing the temporal injunction, again the learned counsel with respect did not grasp the content of the District Land and Housing Tribunal ruling on this issue. The temporary injunction being a legal remedy is regulated by the law. It is also time bound. Under the provisions of Order XXXVII Rule 3 of the Civil Procedure Code [Cap 33 R.E. 2019] states categorically that temporary injunction shall last for six months unless a party seeks for an extension thereof. On page 3 of the District Land and Housing Tribunal's impugned ruling shows that that date on which the temporary injunction was granted was on 30th August 2018. From that time to 26th November 2020, it is two years and three months. Thus, the temporary injunction expired. The District Land and Housing Tribunal's ruling is also explicit that the Applicant did not seek an order for extension of the same. Consequently, the 4th ground of appeal crumbles.


5. Whether the whole proceeding and ruling is vague, problematic, and full of errors, incapable of execution and lack of supports.

In lieu of what has been stated herein above, there are no errors committed by the District Land and Housing Tribunal. The ruling was proper.

In conclusion, the Appellant did not move the District Land and Housing Tribunal when the time set for the legal representative of deceased estate to join the application/case lapsed. It is the Appellant who brought the application not the Respondents. It should not have decided to sit on the rights. Moreover, the Appellant had an opportunity upon expiry of the temporary injunction to seek extension or renewal of the same, but surprisingly decided not to do so. Consequently, this appeal lack merits and I dismiss it with costs.



DATED at TANGA this 8th Day of February 2022.


U. J. AGATHO
JUDGE
08/02/2022

Date: 08/02/2022

Coram: Hon. Agatho, J

Appellant: Present, Shemahonge, secretary of the Appellant.

Respondent: 1st Respondent present, and Irene Raulencio, legal officer.

B/C: Zayumba

Court: Judgment delivered on this 8th day of February, 2022 in the presence of Shemahonge, Secretary of the Appellant, the 1st Respondent and Irene Raulencio Legal Officer.



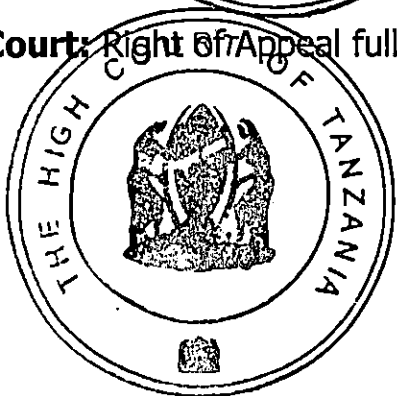
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U. J. AGATHO

JUDGE

08/02/2022

Court: Right of Appeal fully explained.



A handwritten signature in black ink, appearing to read "U. J. Agatho".

U. J. AGATHO

JUDGE

08/02/2022