

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

**(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND APPEAL CASE NO. 72 OF 2019

(Originating from the District Land and Housing Tribunal for Singida in Land Application No. 10 of 2019; Arising from Land Case No. 18 of 2018 of Ikungi Ward Tribunal)

YUSUPH MOHAMEDI HEMEDI.....APPELLANT

VERSUS

ADIJA MNYARURESPONDENT

JUDGMENT

09/5/2022 & 18/5/2022

KAGOMBA, J

YUSUPH MOHAMEDI HEMEDI, the appellant being aggrieved by the decision of the District Land and Housing Tribunal for Singida (the "Singida DLHT") in Land Application No. 10 of 2019, appealed to this Court against the said decision based on three grounds of appeal as follows;

1. That, the District Land and Housing Tribunal erred in law and facts by hearing the appeal and reach into decision while the respondent had no *locus standi*.
2. That, the District Land and Housing Tribunal erred in law and facts when it decided the matter in favour of ASHA NKANDI who was not a party to the case.
3. That, the District Land and Housing Tribunal erred in law and facts upon failure to make proper assessment and analysis of the evidence adduced by the appellant in the trial Tribunal which reached the required standard.

A short background of this matter reveals that there is a claim over a house located at Ikungi urban area, namely plot No. 68, block B ("the suit house"). The respondent instituted a land case in the Ikungi Ward Tribunal (the "trial Tribunal") against the appellant claiming the title of the suit house on behalf of one ASHA MKHANDI MKHANDI (ASHA NKANDI). The case was heard by the trial Tribunal and determined in favour of the appellant. As a result, the respondent appealed against the trial Tribunal's decision in the Singida DLHT where the appeal was decided in favour of the respondent, hence this appeal.

During hearing of the appeal, both parties were represented by the learned counsel. The appellant was represented by Mr. Fred Kalonga and Mr. Lucas Komba appeared for the respondent.

The appellant's counsel opted to submit ground 1 and 2 jointly and ground 3 separately. Submitting on the ground 1 and 2, the learned counsel for the appellant argued that the Singida DLHT erred in law and fact to hear and allow an appeal to a party who had no *locus standi*. He referred this Court to page 5 of the judgment of the Singida DLHT which states that the suit house belonged to ASHA NKHANDI but who was not a party to the suit. His other contention is that the records of the trial Tribunal do not state if the respondent was suing under instructions of the said ASHA NKHANDI since the respondent filed a suit in her own capacity.

The appellant's counsel added that the respondent during trial did point out that she had a letter in which she was appointed by ASHA NKHANDI to represent her to conduct case with No. 8 of 2018 while the case during

trial was No. 18 of 2018. That, the respondent was also required several times to bring the said ASHA NKHANDI to the Tribunal to prove her ownership but the respondent did not do so. Therefore, it is the appellant's view that if the respondent was given such mandate, she could not fail bring the said ASHA NKHANDI to the trial Tribunal to prove if she owned the suit house.

The appellant's counsel further added that, the letter that the respondent based upon in appearing in Courts was not enabling her to institute an appeal, hence the respondent lacked *locus standi* to appeal to the Singida DLHT.

On the ground 3, that the Singida DLHT erred in law and facts for failure to make proper assessment and analysis of evidence adduced by the appellant, the learned counsel submitted that, the appellant, during trial, proved sufficiently that he purchased the suit house from ASHA NKHANDI since 2004 and also proved how payment was made and that he had been living in the suit house since 2004 where he made renovations.

The counsel went further to tell this Court that the evidence of the appellant was corroborated by his witnesses namely; Sophia Churi & Samwel Kinyangaa. Having submitted so, he prayed this Court to allow the appeal with costs, quash the decision of the Singida DLHT and uphold the decision of the trial Tribunal.

Mr. Komba the learned counsel for the respondent, opposed the appeal for being devoid of merit. He contended that the respondent had *locus standi*

to institute the suit on behalf of ASHA NKHANDI as she had a letter to that effect. He referred to page 4 of the trial Tribunal proceedings whereat the respondent produced the said letter.

Mr. Komba added that S. 18(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] enables the respondent, being a relative to the said ASHA NKHANDI, to represent her in a suit. He added that the law does not state special procedures to be followed for a party to be represented. To cement his argument, he cited a ruling of this Court in **Ramadhani Omary V. Zainabu Omary**, Misc. Land Case Application No. 03 of 2019 where the Court found it proper for applicant to file his application without having power of attorney.

As to whether the respondent that she was appointed by ASHA NKHANDI to represent her in Case No. 8 of 2018 and not Case No. 18 of 2018, the respondent's counsel conceded that there was a typographical error. He said the intention was Case No. 18 of 2018.

The respondent's counsel further added that the name of respondent, ADIJA MNYARU does not appear in the pleadings but the proceedings are clear that she was representing ASHA NKHANDI.

On the ground 3, Mr. Komba argued that the appellant failed to prove ownership of the suit house since the purported sale agreement was never signed by ASHA NKHANDI who is the lawful owner of the suit house. Adding his views that the appellant having brought to the trial Tribunal the sale agreement which had no signature of ASHA NKHANDI it was expected that

he would bring witnesses who witnessed the sale of suit house instead of only Sophia Churi who is appellant's wife and beneficiary of the suit house.

Additionally, the respondent's counsel argued that the suit house being a surveyed plot, the procedures for sale of surveyed land had to be observed as required by the law. The learned counsel cited S. 62 of the Land Act, [Cap 113 R.E 2019] to such extent saying disposition had to be done in prescribed forms otherwise the sale becomes doubtful.

Further the learned counsel referred to a case of **Farah Mohamed V Fatuma Abdallah** (1992) TLR 205 where the Court said;

"Documents purport to transfer ownership must be registered. Otherwise, those documents are invalid and ineffectual".

Having cited the above case, Mr. Komba expressed his view that since the sale agreement supplied by the appellant was not registered, the same becomes invalid and ineffectual. He added that since the suit house is still in the name of ASHA NKHANDI it means ASHA NKHANDI is the owner of the same.

In conclusion, the respondent's counsel prayed this Court to dismiss the appeal with costs and ASHA NKHANDI be declared the lawful owner of the suit house.

Rejoining, the appellant's counsel stated that the sale agreement is not disputed since the same was signed ASHA NKHANDI and witnessed by the

Village Executive Officer and that there is no dispute that ASHA NKHANDI received purchase price from the appellant. Besides, the appellant's counsel argued that the sale agreement does not in any way offend other legal steps for registration of appellant's ownership over the suit house.

The learned counsel further rejoined that there is no dispute that the appellant had been in occupation of the suit house since 2004. He argued that S. 18(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] clearly states that a Tribunal may permit a person to appear and act on behalf of one another. He submitted however that the respondent from the date of institution of the suit, appeared as a complainant and not a representative. He found the case of **Ramadhan Omary** distinguishable to the case at hand but stated his view that the same procedure adopted in that case were to be observed in this case as well.

In the light of his submission, the learned counsel for the appellant concluded by maintaining his submission in chief and contended more that the proceedings of the Singida DLHT are illegal *ab initio* for allowing the appeal to ADIJA MNYARU who was the appellant and the decree to ASHA NKHANDI.

The above submissions by the learned counsel for the appellant and the respondent, raise two issues for determination by this Court. The first issue is whether the respondent had *locus standi* to institute a suit in the trial Tribunal and the second issue is whether the appellant's evidence during trial proved his ownership of the suit house to the required standard.

In **Lujuna Shubi Ballonzi, Senior V. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, the Court explained what "*locus standi*" is all about. Samatta, JK (as he then was) had this to say:

"Locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the Court has power to determine the issue but also that he is entitled to bring the matter before the Court".

The learned counsel for the appellant, in his submission, who argued that the respondent instituted a suit in trial Tribunal, in her own name as a complainant, over a plot which was not hers. That, it was in adducing her evidence, when she produced to the trial Tribunal a letter which gave her authority to institute the suit on behalf of ASHA NKHANDI being Case No.8 of 2018, while the case at hand is Case No. 18 of 2018.

To counter the above argument, the learned counsel for the respondent cited S. 18(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] which allows a relative or a member in a household to appear in the Ward Tribunal on behalf of a party, and that with the letter produced to the trial Tribunal the respondent had *locus standi*. On the argument that the said letter cited Case No. 8 of 2018 instead of Case No. 18 of 2018 the learned counsel replied that there was typographical error.

The provision of S. 18(2) of the Land Disputes Courts Act, [Cap 216 R.E 2019] referred to by respondent's Advocate, states as follows;

"Subject to the provisions of subsections (1) and (3) of this section, a Ward Tribunal may permit any relative or

any member of the household of any part to any proceeding, upon request of such party to appear and act for such party”.

In the denotation of the above provision, it is very clear that a relative may appear on behalf of either party in proceedings of the Ward Tribunal as rightly submitted by the learned counsel for the respondent. The provision further requires such party to request to appear as correctly argued by Mr. Kalonga. However, cited the provision does not provide for any specific manner upon which a request to represent a party shall be made to the Tribunal. In this case it is shown that the respondent submitted a letter which was received by the trial Tribunal. The said letter is titled “*YAH: KUMKABIDHI MTOTO WANGU ADIJA MNYARU AWE MSIMAMIZI WA KESI YANGU YA NYUMBA NA KIWANJA NO. 68B*”. The question comes was it in conformity with the law.

It is the considered view of this Court that, since there are no hard and fast rules to be observed by parties to dispute in this regard, what was conducted by the trial Tribunal was lawful in the circumstance, since the said letter as a request intended to put forth a request in terms of S. 18 (2) of the Land Disputes Courts Act (Supra). Besides, the fact that the Tribunal received it and continued with the case, it directly means that the request was accepted.

Moreover, section 15 of the Ward Tribunal Act (Supra) states clearly that the Ward Tribunals are not bound to rules of evidence or procedure applicable to other Courts. It provides;

"15. Proceedings before Tribunal

(1) The Tribunal shall not be bound by any rules of evidence or procedure applicable to any court.

(2) A Tribunal shall, subject to the provisions of this Act, regulate its own procedure.

(3) (Not applicable)".

From the foregoing deliberation, I am of settled mind that procedure followed by the trial Tribunal to allow the respondent to appear on behalf of ASHA NKHANDI is, in the circumstances lawful and in any case not detrimental to justice. Regarding the argument by the appellant's counsel that the letter authorizing the respondent was in respect of Case No. 8 of 2018 and not the case before the trial Tribunal which is Case No. 18 of 2018, I agree with the respondent's counsel that the same is typographical error, as the authorization letter clearly states that the matter concerned is on plot No. 68B which is the suit house in the case at hand.

On the argument that the trial Tribunal asked the respondent to take ASHA NKHANDI to the Tribunal, it is true there was a call, however the purpose was not to inquire about respondent's authority to represent her in the case but to inquire her on ownership of the suit house. Since the appearance of the respondent on behalf of ASHA NKHANDI was not a question to be determined by the Tribunal, failure to bring her to the Tribunal is inconsequential, as far as the said representation is concerned.

It is also my settled views that since the respondent was authorized to proceed with the Land Case No. 18 of 2018 before the trial Tribunal, she was *ipso facto* authorized to proceed with the appeal filed in the Singida DLHT

so long as said ASHA NKANDI did not revoke her letter of representation. I hold this view on account of the fact that the appeal before the Singida DLHT as it is for this appeal, arises from the same Land Case No. 18 of 2018. For all these reasons and the holding in the case of **Lujuna Shubi Ballonzi, Senior** (supra), it is my firm opinion that the respondent had *locus standi* to institute the suit as she did. Accordingly, the first issue is answered in the affirmative.

Coming to the second issue as to whether the appellant's evidence during trial managed to prove his ownership of the suit house. It is a well-known principle of law that in civil cases a party who alleges anything has a duty to prove the same, on balance of probabilities. In **Jasson Samson Rweikiza V. Novatus Rwechungura Nkwama**, Civil Appeal No. 305 Of 2020, the Court of Appeal of Tanzania at Bukoba clearly narrated this principle by stating;

"It is a cherished principle of law that, generally, in civil proceedings, the burden of proof lies on the party who alleges anything in his favour..... It is also common knowledge that in civil proceedings, including matrimonial causes and matters, the party with legal burden also bears the evidential burden and the standard in each case is on the balance of probabilities".

The said principle simply requires Courts to assess the evidence which is more credible than the other to prove a particular fact to reach its conclusion.

In this case, the evidence adduced in the trial Tribunal by the appellant was on the contention that he is the owner of the suit house after purchasing it from ASHA NKHANDI. To prove his statement the appellant produced before the Tribunal a sale agreement which was received by the trial Tribunal. He also brought witnesses to prove the said sale. Therefore, because the sale agreement is the main evidence to prove ownership of the suit house by appellant, I am required to assess the same to determine its legality and adequacy.

It is a principle of law under S. 47(1) of the Stamp Duty Act, [Cap 189 R.E 2019] that any document chargeable with duty shall not be admitted in evidence unless it is duly stamped. The law provides: -

"No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive the evidence authenticated by any such person or by any public officer, unless such instrument is duly stamped"

The sale agreement on immovable property, being a chargeable instrument under the Stamp Duty Act, [Cap 189 R.E 2019] was supposed to be stamped. I have examined the sale agreement in question and I am satisfied that it was not duly stamped as required as required by law. As such the trial Tribunal erred in admitting the same in evidence, hence the agreement has to be expunged from record of the Tribunal as I hereby do. As a consequence of expunging the said sale agreement, the appellant's alleged ownership of the suit house is not proved.

Besides, the sale of a surveyed land which is not village land, as is the case in this appeal is governed by the Land Act, [Cap 113 R.E 2019]. This means, the appellant had to abide with the provisions of the Land Act in order to validate the sale. See S. 61 of the Land Act. It provides;

"No right of occupancy, lease or mortgage shall be capable of being disposed of or dealt with except in accordance with this Act, and any attempt to dispose of any right of occupancy, lease or mortgage otherwise than in accordance with this Act, shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in land, or in the right of occupancy, lease or mortgage".

[Emphasis added]

In this case, it is not disputed that the suit house is registered in the name of ASHA NKANDI as per the land rent assessment forms produced by both the appellant and the respondent during trial. Since her ownership has not been revoked as per available evidence and no any subsequent ownership has been registered thereon, ASHA NKHANDI is the legal owner as per section 2(1) of the Land Registration Act, [Cap 334 R.E 2019], read together with S. 33(1) of the same Act, which provide;

"2(1)....."owner" means, in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered".

"33-(1) the owner of any estate shall except in case of fraud, hold the same free from all estates and interests whatsoever," other than: -

a. Any incumbrance registered or entered in the land register;

- b. The interest of person in possession of land whose interest is not registrable under the provision of this Act.*
- c. Any rights subsisting under any adverse possession or by reason of any law of prescription.*
- d. Any public rights of way*
- e. Any charge on or over land created by the express provisions of any other law, without reference to registration under this act, to secure any unpaid rates or other moneys.*
- f. Any rights conferred on any person under the provisions of the mining Act, the petroleum Act, the Forests Act or the Water Resource Management Act (other than easements created or saved under the provisions of the last mentioned Act), and*
- g. Any security over crops registered under the provisions of the chattels transfer Act”*

From the provision of S. 33(1) above, it means the ownership by ASHA NKANDI could only be challenged by showing existence of one or more of the exceptions mentioned above and not otherwise. Neither the fact that the appellant has been residing in the suit house since 2004 nor the renovation conducted therein do confer ownership to the appellant.

The decision in of **Farah Mohamed** (Supra) is also relevant here. It clearly states that documents purporting to transfer ownership of a right of occupancy must be registered otherwise those documents are invalid and ineffectual.

Having demonstrated that the alleged ownership of the suit house by the appellant was not proved, I proceed to answer the second issue in the

negative. Thus, the suit house remains in the ownership of ASHA NKANDI as it was decided by the Singida DLHT.

For end of justice to be fully realized, the appellant may pursue his right to recover the money paid to ASHA NKHANDI in an appropriate avenue. For the above reasons, the purported purchase of the suit plot by the appellant is hereby invalidated for being illegal, and in the upshot, the appeal lacks merits and I hereby dismiss it.

I accordingly uphold the decision of the District Land and Housing Tribunal for Singida. Since this matter involves relatives, I make no order to as to costs.

Dated at Dodoma this 18th Day of May, 2022.



A handwritten signature in blue ink, appearing to read "Abdi S. Kagomba".

ABDI S. KAGOMBA

JUDGE