

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**(PC) CIVIL APPEAL NO. 196 OF 2020**

*(Appeal from the Decision of the District Court of Ilala in Civil Case  
No. 05 of 2020)*

**AMINA RAMADHANI.....APPELLANT**

**VERSUS**

**ELIAS ROBERT KIONDO .....RESPONDENT**

**JUDGMENT**

*29<sup>th</sup> September & 05<sup>th</sup> October, 2022*

**BWEGOGGE, J.**

Way back in 2011, the respondent herein had purchased a piece of land from one Robert Masheyo, now demised, at the tune of Tshs. 7,250,000/= . The deceased was the husband of the appellant herein above named. Later on, the purported agreement for purchase of land was held to be void on the ground of lack of spousal consent by the Land

and Housing Tribunal for Ilala District. The respondent sued the appellant in her capacity as administrator of the estate of the late Robert Masheyo (her deceased husband) at Buguruni Primary court for recovery of money paid to the deceased person as a consideration for the purchase of the piece of land. The trial court had decided in favour of the respondent. The appellant, seeking to defeat the decision of the trial court, had appealed at Ilala District Court. To her dismay, the first appellate court upheld the decision of the primary court.

Undaunted, the appellant had appealed to this court on two grounds, as hereunder reproduced in verbatim:

- 1. That the trial court erred in law and fact by deciding in the favour of the respondent while the trial court had no jurisdiction.*
- 2. That the trial court erred in law and fact by not considering the evidence of the appellant.*

Before embarking to determine the merit or otherwise of this appeal, this court shall state its background, albeit briefly, as follows: On 15<sup>th</sup> January, 2011, the respondent and Robert Masheyo (hereinafter the deceased) had executed the contract for purchase of a piece of land located at Lawiti Segerea, within Dar es Salaam City. When the respondent cleared the land for building, one Kelvin Andrea Tarimo claimed to have bought the

respect piece of land earlier from the deceased person. The same had eventually instituted an application to the Ilala Land and Housing Tribunal against the deceased and respondent herein seeking a declaration that he was the lawful owner of the disputed land. Unfortunately, the seller, Robert Masheyo, had died while the suit was still pending at the tribunal. And, the appellant being the administratrix of the deceased estate, had stepped into the shoes of the deceased for the interest of the deceased estate. The appellant had deposed in court to have been a stranger to the agreement entered by both parties with the deceased person purporting to dispose of the matrimonial property. And, the tribunal, according weight on the evidence adduced by the appellant, had declared the agreements entered by the deceased and both parties thereto void for want of spousal consent. The property was restored to the ownership of the appellant by the order of the tribunal dated 28<sup>th</sup> September, 2016.

It seems, out of empathy, the appellant had made a promise to reimburse the respondent his purchase money when she would sell the said property at a higher price later on. And the respondent had relied on the appellant's promise. However, after a long wait, the respondent was disillusioned to find that the appellant had resold the land to one Josephat Luambano sometime in May, 2019 and utilised the money herself. And, after his

attempt to seek restitution from the appellant proved futile, he resorted to the classical court for redress. The respondent commenced civil proceedings in the Primary Court of Buguruni for recovery of his consideration paid to the deceased as purchase price at the tune of Tshs. 7, 250,000/= and general damages at the tune of Tshs. 5,000,000/-. The trial court, having heard both sides, had held that the respondent was entitled to recover his money paid as the purchase price for the disputed piece of land after the contract executed was declared void.

The appellant had filed an appeal in the District Court of Ilala on the ground that the trial court had no jurisdiction to entertain the matter seeking to reverse the decision entered by the trial. As aforesaid, the appeal failed as the first appellate court found that the trial court was clothed with both pecuniary and subject matter jurisdiction to entertain the matter and upheld the decision. The appellant had preferred the 2<sup>nd</sup> appeal herein on the grounds aforementioned.

The appellant fended for herself whereas the respondent enjoyed the services of Mr. Charles Lugaila, the learned advocate. This court had instructed the parties herein to argue the appeal by way of written submissions. Both parties duly filed their written statement of arguments

as per the schedule of this court. This court shall explore the written statement of arguments of both parties herein as under.

In substantiating the first limb of the appeal herein, the appellant charged that the court of first instance had no jurisdiction to preside over this case. Hence, it erred both in law and fact to have decided the case in favour of the respondent. That the civil suit commenced by the respondent originated from the land matter which the trial court had no jurisdiction to adjudicate. To bring her point home, the appellant has directed the mind of this court to the provision under s. 18 (1) (a) of the Magistrates Courts Act (Cap. 11 R.E. 2019) which prohibits matters relating to land to be instituted at the Primary court.

The gist of the appellant's contention is premised on the fact that, since the Land and Housing Tribunal for Ilala District which is vested with jurisdiction had already presided over the matter and decided in favour of the appellant, the trial court could not have admitted the same suit and allowed the claim through the back door.

And, in respect of the 2<sup>nd</sup> limb of this appeal, the appellant submitted that the trial court failed to consider and, or analyse the evidence she had tabled. That, the appellant had tendered documentary evidence

pertaining to the invalidation of the contract entered between the respondent and the deceased person. Likewise, the appellant has it that the trial court failed to consider her defence that she was a stranger to the agreement entered between the respondent and the deceased person which would have insulated her from being sued and held liable for restitution.

On the above premises, the appellant prayed this court to allow her appeal, quash the decision of the lower courts and set aside the order entered against her.

On the other hand, Mr. Charles Lugaila, counsel for the respondent in replying to the submission made by the appellant in respect of the 1<sup>st</sup> ground of appeal, contended that land is no longer the centre of the dispute as the tribunal had finally settled the matter between the parties herein. That, the claim instituted by the respondent at the trial court is a normal civil suit premised on a breach of promise to reimburse/refund the respondent of his purchase money. To validate his point, the counsel directed the mind of this court to the provision of *s. 18 (1) (a) (iii)* of the Magistrates Courts Act (Cap. 11 RE:2019).

And, in respect of the 2<sup>nd</sup> ground of appeal, the counsel contended that the appellant never denied the respondent's claim that she had promised to refund the respondent, neither refuted the fact that she had resold the piece of land to a third party and selfishly appropriated the proceeds of sale. Thus, the counsel opined, the trial court had taken into consideration all the evidence brought to the scales of justice and vouched for a just decision in the circumstances of this case. Based on the above submission in reply, the counsel prayed this appeal to be dismissed for want of merit with costs. This is all about the submission of the parties herein.

Now the ball is on this court to determine the merit or otherwise of the appeal herein. This court shall canvass the grounds of appeal in *seriatim* commencing with the 1<sup>st</sup> limb of preferred grounds of appeal with regard to the complaint that the court of first instance had no jurisdiction to preside the matter herein. The same complaint was lodged at the first appellate court and was well attended. And, in addressing this complaint, this court finds it pertinent to revisit the undisputed facts of this case as under.

**First**, it is common ground that the respondent herein had entered into agreement with the appellants' husband for the purchase of the piece of land. **Second**, it is also common ground that the respondent, in believing that the deceased was acting in good faith, had discharged his contractual obligation by paying consideration at the tune of Tshs. 7,250,000/. **Third**, the record speaks volumes that the District Land and Housing Tribunal for Ilala District, in acting on the evidence of the appellant, had declared the said agreement void for lack of spousal consent. and placed the disputed property into the appellant's possession. **Fourth**, it is apparent that the appellant is the appointed administratrix and, or legal representative of the deceased estate to whom the disputed property was vested; **Fifth**, it goes without saying that the appellant never controverted the evidence that she had promised to reimburse the respondent as well as the fact that she had already resold the property to a third party and appropriated the proceeds of sale.

Having explored the undisputed facts of this case, this court shall examine the law allegedly trespassed by the respondent in conspiracy with the trial court. The provision of *s. 18 (1) (a)* of the Magistrates Courts Act [Cap. 11 RE: 2019] aptly provides as under:



**"18. Jurisdiction of primary courts**

*(1)A primary court shall have and exercise jurisdiction*

*(a)in all proceedings of a civil nature—*

*(i)where the law applicable is customary law or Islamic law:  
Provided that no primary court shall have jurisdiction in any  
proceedings of a civil nature relating to land;*

*(ii).....(inapplicable)*

*(iii)for the recovery of any civil debt arising out of contract,  
if the value of the subject matter of the suit does not exceed  
thirty million shillings, and in any proceeding by way of  
counterclaim and set-off therein of the same nature not  
exceeding such value; ....." (Emphasis mine).*

Based on the provision afore reproduced, this court subscribes to the appellant's submission in that the primary court is not clothed with jurisdiction to preside over any proceedings of a civil nature relating to land. However, this court differs with the appellant in that the suit instituted by the respondent at the trial court was not a land matter. It was a claim for recovery of money paid as consideration for the contract entered which was later declared by the tribunal to have been void on technical ground. The provision of *s. 18 (1) (a) (iii)* of the Magistrates

Courts Act plainly provides that the primary court shall have jurisdiction in all proceedings of a civil nature for the recovery of any civil debt arising out of contract, if the value of the subject matter of the suit does not exceed thirty million shillings. Therefore, the first appellate court was justified to hold that the trial was clothed with both the subject matter and pecuniary jurisdiction to preside over the matter and determine the same.

The appellant should be aware that though the tribunal had invalidated the agreement in question, the said decision doesn't bar the respondent to sue for recovery of his money paid in good faith to the appellant's deceased husband. The provision of s. 65 of the Law of Contract [Cap. 345 RE: 2019] aptly provides:

***"65. Obligation of person who has received advantage under void agreement or contract that becomes void***

*When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it:"*

(Emphasis mine]

The above provision speaks volumes of what this court attempt to instill into the mind of the appellant in that the invalidation of the agreement for the purchase of land between the respondent and the deceased created a right for the respondent to sue for compensation, not otherwise. Likewise, it is a rule of law of this land that "*where there is a right, there is a remedy.*" See **Thomas Peter @ Chacha Marwa vs. Republic**, Criminal Appeal No. 322 of 2013 CA; [2015] TZCA 186. And, this court further asserts that the appellant's right to sue provided by the law seeks to protect the innocent party to the contractual agreement who acts in good faith by relying on the promise of the other party to their financial detriment. In plain words, among other things, the law seeks to prevent dishonest people from unjust enrichment. In this respect, this court finds obliged to borrow a leaf from the holding of the superior court in that "*the law frowns at unjust enrichment.*" See **Trade Union Congress of Tanzania (TUCTA) vs. Engineering Systems Consultants Ltd and 2 Others**, [2020] TLR 647.

On the foregoing, hopefully, this court has answered the appellant's complaint that the lower court had admitted, heard, and granted the respondent's claim without being clothed with requisite jurisdiction. It is obvious, from what this court has endeavoured to explain, that the trial

court had acted within the ambits of law in remedying the appellant of what is rightfully his. The first limb of the appeal herein collapses.

Now at this juncture, this court proceeds to canvass the 2<sup>nd</sup> and last limb of the appeal advanced by the appellant. The complaint herein is that the trial court failed to consider the evidence of the appellant at the trial court. This ground of appeal, need not detain this court. The record of the trial court indicates that the respondent had deponed in court the circumstances upon which he had entered into the contract for purchase of land with the appellant's deceased husband, the ensued land dispute by the third party, and the consequential invalidation of the said agreement by the tribunal. Likewise, the respondent had testified pertaining to the promise made by the appellant that she would compensate the respondent upon selling the disputed piece of land at a lucrative price. And the respondent had waited for good two years, until 2019, to learn that the property had been sold to a third party and no compensation was paid to him notwithstanding his attempts to engage the local government leaders to resolve the dispute. The appellants procured the attendance of two (2) witnesses to buttress his case. And the record is clear in that the appellant never cross-examined the witnesses to discredit their testimonies.

Apart from what is observed above, the record of the trial court entails that when the appellant was called upon to make defence, never controverted the evidence brought against her. She had merely deponed to be stranger to the contract in question entered by her late husband and the respondent and the decision of the tribunal which had invalidated the same. She had avoided to reply on the evidence brought in respect of her promise to compensate the respondent or otherwise her obligation as administratrix of the deceased estates.

This court is of the considered opinion that, notwithstanding the respondent's statutory right to sue for compensation explained above, the same had recourse to sue based on the promise to pay made by the appellant through the application of the *doctrine of the promissory estoppel*. The amplification of this principle is found in the scholarly work of the learned author, Shreya Dave, titled "*The Doctrine of Promissory Estoppel*" cited by the superior court in the case of **Trade Union Congress of Tanzania (TUCTA) vs. Engineering Systems Consultants Ltd and 2 Others** (supra) as thus:

*"The true principle of promissory estoppel is where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations*

*or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact acted upon by the other party the promise would be binding on the party making it and he would not be entitled to go back upon it."*

The above extract is an apposite restatement of the law of this land under the provision of s. 23 of the Evidence Act, [Cap. 6 RE:2022). It is needless to point out that the appellant was estopped from refraining to do what he had promised and committed herself to do. More so, this court would like to reiterate that, even without the application of this principle, the respondent had legal recourse against the respondent for compensation based on the factual background of this case and applicable law.

Based on the above discussion, this court can safely opine that the trial court had legally acted on evidence brought to the scales of justice by both parties herein and found the respondent liable to compensate the appellant for the loss he had incurred. The 2<sup>nd</sup> limb of the grounds of appeal herein collapses as well.

In fine, this court finds the appeal herein based on the ground that the court of first instance had acted without jurisdiction and failed to analyse

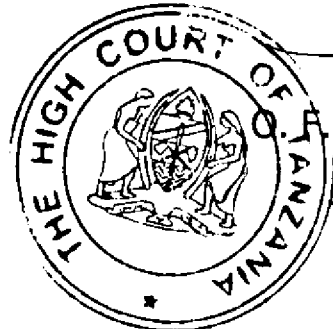

properly the evidence tabled before it, devoid of merit. The appeal herein is doomed to be dismissed, as I hereby do. The decision of the court of first instance is hereby upheld. The respondent shall have his costs.

It is so ordered.

**DATED at DAR ES SALAAM** this 5<sup>th</sup> of October, 2022.

   
O. F. BWEGOGHE  
JUDGE

The judgment has been delivered this 05<sup>th</sup> October, 2022 in the presence of the appellant. Right of appeal explained.

   
O. F. BWEGOGHE  
JUDGE