

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. LAND CASE APPEAL NO. 25 OF 2019

[Arising from the decision of the District Land and Housing Tribunal of Dodoma District at Dodoma in Land Application No. 209 of 2016, and which originated from Miyuji Ward Tribunal in land case No.39 of 2016.]

TABIA ABUBAKARI NGAZI APPELLANT

VERSUS

JANETH J. OMOLLO RESPONDENT

JUDGMENT

2nd August, 2021 & 9th February, 2022

M.M. SIYANI, J.

The respondent, allegedly, bought the dispute land from the late Abubakari Ngazi, father of the appellant. The land is known as Plot No. PT 527 Block "BB", Miyuji. According to the respondent evidence, the purchase price was Tshs. 1,700.000/= (say One Million Seven Hundred Only Shillings). In September 2016, the appellant filed a case at the Ward Tribunal of Miyuji for recovery of her father's land. She lost and appealed to District Land and

Housing Tribunal which also decided in favor of the respondent, hence, this appeal which is premised on the following grounds of appeal:

- 1. That, the Honourable Chairman erroneously erred in law and fact in favor of the respondent while relied on the transfer which has a number of discrepancies in that the appellant's father was seriously sick under the care of the appellant and her relatives hence was not in a position to sign the same.*
- 2. That, the Honorable Chairman erroneously erred in law and fact in in respondent's favor of which soon after the death of the appellants father in September 2012 the respondent's father trespassed into the plot in dispute.*
- 3. That, the honorable chairman erroneously erred in law and fact in deciding for the respondent whereas failed to examine critically the strong evidence adduced by the appellant and her witnesses.*

The appeal was argued by way of filing written submissions. The appellant is represented by Sostenes Peter Mselingwa learned counsel whereas the respondent is served by Charles Peter Simon, learned advocate.

Counsel for the appellant consolidated all the grounds of appeal for a reason that they are intertwined. Then he made a general submission that the late Abubakar Ngazi could not have sold the land because at the time of the alleged sale he was too sick to sign the sale agreement which has no witness.

Counsel for the respondent replied by raising a preliminary objection that the appeal is time barred. As the appellant did not file a rejoinder, this objection was not replied to. While it is unusual to raise preliminary objections in written submission, I shall still attend to it because it involves matters of time limitation. Time limitation matters are fundamental to justiciability of rights and can be raised at any time.

Indeed, this court granted the appellant leave to file this appeal within thirty days from 8th April, 2021. Section 19 (1) of the Law of Limitation Act [Cap. 89 R.E 2019] provides:

'In computing the period of limitation for any proceeding, the day from which such period is to be computed shall be excluded'.

If 8th April, 2021 is excluded in computing the limitation period, that period expired on 8th May, 2021 which is the date when this appeal was filed. Therefore, the appeal is within time. The objection is misconceived and it is overruled.

On merits of the appeal, counsel for the respondent submitted that at the time of sale the seller was okay and that is why his signature and a picture affixed on the contract were obtained.

The appellant is challenging the concurrent finding of two lower tribunals that the suit land belongs to the respondent after he bought it from the appellant's father. To disturb such a finding the appellant must prove that

the finding is based on a misapprehension of evidence. Even if it is not expressly stated, the appellant suggests that the lower tribunal misapprehended the evidence that the appellant's father was incapable to enter any agreement at the time when the sale agreement of the dispute land was executed.

I have reviewed the evidence tendered at the ward tribunal and it is my view that the appellant did not prove that her father was incapable to enter into a contract for health reasons. Three witnesses including the appellant testified on the appellant side. None of them said the late Abubakar Ngazi was mentally incapacitated. The witnesses who supported the appellant are Amina Abubakar Ngazi, her sister and Anna Mahembe Mkwachi, the ten-cell leader. To the contrary, the respondent and her witnesses who are Joakimu Braham Lunguli, the broker who connected the buyer and the seller and Athman Benkiko said the seller had hard life for lack of care by his family including his children due to old age but they never said he was mentally incapacitated. General health problems which do not affect mental ability do not affect a person's ability to contract. In this case, there is enough evidence that the seller was sick at the time of sale but there is no evidence that the

infirmity retarded his thinking ability. Therefore, he sold his land voluntarily and the respondent acquired title by purchase.

In the event I find the lower tribunal properly analysed the evidence and rightly decided that the land belongs to the respondent. The appeal is without merits. I dismiss it with costs

DATED at **DODOMA** this 9th day of February, 2022.



M.M. SIYANI
JUDGE