

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

AT DODOMA

(APPELLATE JURISDICTION)

LAND APPEAL NO. 48 OF 2018

*(Original Application No. 21 of 2017 of the Dodoma District Housing Tribunal before
Honorable Mwihava – Chairman)*

ANDERSON WILSON & 7 OTHERS APPELLANTS

VERSUS

**REGISTERED TRUSTEES OF
PENTECOSTAL HOLINESS MISSION RESPONDENT**

JUDGMENT

2nd August, 2021 & 24th February, 2022

M.M. SIYANI, J.

The respondent instituted a suit against Anderson Wilson, Selina Samson, Evodi Masha, Doris Matonya, Samson Yoram, Iman Samson, Abdul Adam and Doris Anderson (the appellants) claiming for a declaration that she is the legal owner of the Plot No. 2, Block "D", Ipagala East within Dodoma Municipality currently known as Dodoma City. The respondent won the case and the appellants were ordered, among others, to give vacant possession

of the suit land. Being dissatisfied with such decision, the appellants preferred the instant appeal on the following grounds:

- 1. That, Dodoma district land and housing tribunal aforesaid grossly erred in law and in fact in finding that the respondent is the owner of the suit land while the respondent is not a legal entity.*
- 2. That, Dodoma District Land and Housing Tribunal erred in law and fact that, the appellants should be paid compensations by the allocating authority (Dodoma Municipal Council) while there was no evidence that prove the case.*
- 3. That, Dodoma District Land and Housing Tribunal erred in law and fact by ignoring the evidence that the appellants have been in uninterrupted possession of suit property for over 40 years and were therefore entitled to judgment in their favour.*

The appeal was heard by way of filling of written submissions. While the appellant's submissions were filed by counsel Antony Kanyama, those of the respondent were filed by counsel Zakayo Ezekiel Njulumi. The submissions

being filed as ordered; the matter was set for Judgment. In the course of composing the decision, it was noted that during the hearing of the suit at the trial tribunal, a point of preliminary objection on the locus standi (non-existence of the applicant as a legal entity) and cause of action was raised by the appellants herein against the respondent. It was further observed that having heard the parties on the raised preliminary objections, the trial tribunal found that the raised points of objection were short of what amounts to a preliminary objection as the same required evidential proof. As such, the tribunal went on to frame issues, and recording of evidence. The framed issues did not however, include the question of locus standi and cause of action, consequently no evidence was tendered to that effect. The tribunal therefore did not make any finding on these issues.

With that background, I formed an opinion that since the question of locus standi was raised during trial and the tribunal observed that the same could only be determined after receiving evidence, then such an issue ought to have been part of the framed issues to enable parties' tender evidence in that respect. As no evidence was tendered with regard to locus standi, I decided to invoke the provision of section 42 of the Land Disputes Courts

Act Cap 216 RE 2019 and invite parties to give additional evidence on that question. On 2nd August, 2021, both parties appeared for recording of additional evidence. While the respondent who was the applicant at the tribunal had one witness, the appellant herein opted against procuring further evidence.

As noted, Mr. Daima Amos Kabogo, (Pentecostal Holiness Mission's Secretary) was the respondent's sole witness. His testimony was to the effect that the mission was registered way back in 1972 and its board of Registered Trustees, was incorporated on 23rd June, 1999. According to him, despite being procured in 1997 which is before incorporation of its Trustees Board, the disputed piece of land belongs to the respondent.

The above being the summary of additional evidence recorded in compliance to my order dated 1st September, 2020, I will now revert to the presented grounds of appeal and the written submissions by the learned counsel. As noted, there were three grounds of appeal. Submitting in respect of the first ground, it was contended that the trial tribunal erroneously overruled the preliminary objection raised by the appellant side that the respondent is not

a legal entity, therefore, had no legal personality to sue. The learned counsel argued that, in her evidence the respondent did not prove that it has a permanent address, a common seal and a perpetual succession as required by section 8 (1) (a) and section 11 of Trustees Incorporation Act [CAP 318 R.E 2002]. Mr. Kanyama was of the view that upon the question of legal personality of the respondent being raised, the trial Tribunal was stripped off the jurisdiction to try the matter which became justiciable exclusively by the High Court in terms of section 26 of Cap 318 of the laws.

On the second ground of appeal that Dodoma District Land and Housing Tribunal acted on a wrong principle of law by ordering that the appellant be compensated by Dodoma Municipal Council, a successor of Capital Development Authority (CDA) who was not a party to the suit, the learned counsel submitted that according to the evidence of Selina Samson (DW2) the appellants made a formal agreement with the respondent to compensate them but later he dishonoured the agreement. Therefore, the learned counsel concluded, the tribunal acted on a wrong principle of issuing an order against a stranger.

Submitting on the third ground of appeal, it was contended that the trial tribunal ignored the appellant's evidence that two appellants were in occupation of the suit premises for more than 12 years and three of them for more than 40 years as reflected in their respective testimonies. He argued that according to their evidence, DW1 had stayed on the disputed plot since 1988, DW2 since 1988, DW3 since 1972, DW4 since 1995, DW5 since 1980 and DW6 stayed since 1996. Therefore, they are protected by the principle of adverse possession.

In reply Zakayo Ezekel Njulumi, Advocate for the respondent submitted that the respondent proved her case by tendering a letter offer as exhibit P1 granted by Capital Development Authority. On the appellants' argument regarding the overruled preliminary objection, the learned counsel submitted that the same was overruled as it was not substantiated. Counsel for the appellant filed a rejoinder. However, I find no reason to state the contents therein for want of relevance.

I shall determine this appeal by dealing briefly with one ground after the other starting with the first ground. This ground has two limbs. The first one

is the legal status of the respondent. Indeed, the respondent is a registered trustee. Therefore, it has sued in its incorporation name. The law under section 110 (1) the Evidence Act [Cap. 6 R.E 2019] burdens whoever alleges anything, to prove the same. Since it was the appellants who claimed that the respondent was not so incorporated, it was their duty to prove such an allegation for their objection to succeed. The record indicates that the appellants were not accorded a chance to lead evidence in respect of that issue by the trial tribunal through the framed issues. However, they were given such chance by this court when additional evidence was recorded. But besides the mere allegation to that effect, they led no evidence to prove the allegation. The first limb of the complaint therefore fails.

The second complaint in the first ground goes to the merits of case. There is no dispute that the respondent has a letter of offer over the suit land. That letter of offer was tendered and admitted as exhibit P1 without objection. According to the said offer, the respondents were allocated the disputed piece of land by the responsible authority (The then Capital Development Authority) and paid the required fees. In the case of **Amina Maulid Ambali**

& 2 Others v. Ramadhan Juma, Civil Appeal No. 5 of 2019, Court of Appeal – Mwanza (unreported) it was held:

'... when two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be the lawful owner unless it is proved that the certificate was not lawfully obtained'.

It is my view that since there is no fraud allegation, the trial tribunal rightly decided in favour of the respondent based on the allocation done after surveying the land. The second limb of the first ground of appeal also lacks merits and as it was for the first limb, it is hereby dismissed.

I move to the second ground of appeal. Indeed, the trial tribunal held that if the appellants as original owners of the land were not compensated when the land was surveyed, their claim lies against the municipal council. However, this decision was an orbiter dictum because the question of who ought to have paid the compensation was not an issue for determination by the tribunal. I find the second ground of appeal as misconceived and I dismiss it too.

The third ground of the appeal is about the appellants being adverse possessor of the disputed land. The trial tribunal made a special finding that the appellants are original owner of the land who deserve compensation after their customary rights were extinguished by surveying the land by the appropriate authority. In the circumstances the question of adverse possession does not arise. I am in agreement with the trial tribunal that after the survey and allocation of the land to the respondent, the appellants' right is limited to compensations which was not the issue for determination by the tribunal. The issue for determination was "who between these parties is a lawful owner of the suit land?" This issue was duly determined by the tribunal. The third ground of appeal has no merits as well. I dismiss it.

In the event, I dismiss the whole appeal with costs. It is so ordered.

DATED at DODOMA this 24th day of February, 2022.



M.M. SIYANI
JUDGE