

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MBEYA  
AT MBEYA**

**LAND APPEAL NO. 53 OF 2021**

(Originating from the District Land and Housing Tribunal for Mbeya  
at Mbeya in Land Application No. 236 of 2017)

**JONAS JOSHUA BUSHAMBALI..... APPELLANT**

**VERSUS**

**1. ANDOBWISYE MWAKASELO.....1<sup>ST</sup> RESPONDENT**

**2. NANDI JOSEPH CHALLE.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

*Date of last Order: 14.12.2021*

*Date of Judgment: 25.02.2022*

**Ebrahim, J.**

The herein appellant, JONAS JOSHUA BUSHAMBALI filed an instant appeal challenging the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (the DLHT) made in Application No. 236 of 2017 dated 18<sup>th</sup> March, 2021.

The subject matter is the house in Plot No. 22 Block 25 in Sokomatola area in the City of Mbeya (the disputed premises). Before the DLHT, the 1<sup>st</sup> respondent herein sued Jeremiah Joseph

Challe, and Jonas Joshua Bushambali (the appellant) for recovery of the disputed premises. Jeremiah passed on before the matter was determined, latter on Nandi Joseph Challe took over as the administrator of his estates.

Though the title above does not feature, it is the undisputed fact from the record that Andobwisye Mwakaselo (1<sup>st</sup> Respondent) and Nandi Joseph Challe (2<sup>nd</sup> Respondent) appeared in this case as the administrator of the estates of the late Andrea Mwambapa and Jeremiah Joseph Challe respectively. I have decided to make it clear from the outset on my understanding of the law that the capacities of the respondents herein that are administrators should have been reflected in the title of the case; see the case of **Suzana S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44 of 2017, Court of Appeal of Tanzania (CAT) at Mwanza (unreported). However, the omission is not fatal given that it was clear throughout in the District Land and Housing Tribunal (DLHT) that they appeared under that capacity and its judgment; the subject of the instant appeal indicates so at the very outset.

Having heard the evidence from both sides, the DLHT decided in favour of the 1<sup>st</sup> respondent who was the applicant. It decided that the disputed premises is the property of the deceased Andrea Mwambapa hence part of his estates. It also ordered vacant possession by the appellant. Aggrieved, the appellant has preferred this appeal raising a total of seven grounds of appeal. Six (6) grounds were contained in the original memorandum of appeal while the rest was raised through supplementary memorandum of appeal. These grounds of appeal are as follows:

1. The trial chairman erred in law and fact by failure of analyzing and evaluating the evidence adduced by parties hence reached to unjust decision.
2. The trial chairman erred in law and fact when he pressed the burden of prove to the appellant that he failed to discharge his duty on the allegation that Andombisye Mwakaselo and Pardon Andombwisye Mwakaselo are the same and one person and failed to interpret that the duty was already shifted to the 1<sup>st</sup> respondent.
3. The trial chairman misdirected himself when he invalidated the sale agreement without clearly ordering as to who has a duty to reimburse the appellant's purchasing and renovating costs on the suit premise.
4. The tribunal chairman wrongly departed from the opinion of the wise assessors who opined on favour of the appellant without any cogent reasons.
5. Trial tribunal erred in law and fact to order that the contract was void for being signed by a person who had appointed a legal administrator

contrary to the Exhibit D2 which shows that the sale agreement was signed by Pardon Andobwisye Mwakaselo as legal administrator of the estate of the late Andrea Mwambapa.

6. That the trial court erred in both law and fact when failed to account for the time the appellant had been in use of the premise without any interruption from the 1<sup>st</sup> respondent.

The additional ground of appeal was that:

The trial Tribunal Chairman misdirected himself when decided case in favour of 1<sup>st</sup> respondent who being an administrator who filed the case out of time in the DLHT at Mbeya.

Basing on those grounds of appeal the appellant prayed for this court to allow the appeal, quash and set aside the decision with costs.

During the hearing of the appeal, the appellant was represented by Ms. Tumaini Amenye, learned advocate from E.A Mwampaka & Co. Advocates, whereas the 1<sup>st</sup> Respondent enjoyed the service of Mrs. Joyce M. Kasebwa, learned advocate. The 2<sup>nd</sup> respondent appeared in person, unrepresented. The appeal was heard by way written submissions. The appellant and the 1<sup>st</sup> respondent duly filed their respective submissions while the 2<sup>nd</sup> respondent did not file any. The appeal will thus be determined *ex parte* against the 2<sup>nd</sup> respondent.

I will start with the additional ground of appeal since it is a point of law. Counsel for the 1<sup>st</sup> respondent citing the decision of this court in the case of **Shilalo Masanje v. Lobulu Ngateya [2001] TLR 372** and **Kasim Ngimba v. Adija A. Kavinga (an administratrix of the late Benito Joseph Kigwite)** Land Appeal No. 10 of 2019 HCT at Mbeya, encouraged this court not to deal with the additional ground of appeal on the reason that the same was an afterthought since it ought to have been raised in the trial Tribunal. However, on my side I will determine the same since a point of law can be raised at any stage and the court is constrained to determine it before determining the merits of the matter; see the decision by the Court of Appeal of Tanzania (CAT) in **Richard Julius Rukambura v. Issack Ntwa Mwakajila and Tanzania Railways Corporation**, Civil Application No. 3 of 2004, CAT at Mwanza (Unreported).

The appellant's claim on the additional ground of appeal is that the DLHT determined a matter which was time barred. According to the Counsel's submission, the claim based on **section 9(1) of the Law of Limitation Act Cap. 89 R.E. 2019** that the

right to claim the deceased land accrues from the time of deceased's death.

Indeed, that is the position of the law. However, the circumstance of the matter at hand does not suit to the said provision. This is because, the evidence on record shows that the disputed premises was owned and occupied by the late Andrea Mwambapa (the deceased). The record further shows that the deceased died intestate in 1980 leaving no issue. From that year, the disputed premises was occupied by different relatives of the deceased, one of them was one Upendo who was licenced to live there. It is undisputed fact that the 1<sup>st</sup> respondent became aware that the appellant is occupying the disputed premises in 2016. It is also undisputed that the 1<sup>st</sup> respondent was appointed as an administrator of the deceased's estates in 2016 and the suit was instituted in the DLHT in 2017.

In that regard, it is my view that section 9 of Cap. 89 can be well construed in relation to the matter at hand if read together with section 35 of the same Act. It reads:

**"35; For the purposes of the provisions of this Act relating to suits for the recovery of land, an**

**administrator of the estate of a deceased person shall be taken to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration or, as the case may be, of the probate."**

Under these circumstances, I find that the matter was not time barred since the 1<sup>st</sup> respondent was appointed as administrator of the estates of the deceased in 2016, thus, the cause of action accrued in that year. The additional ground of appeal therefore, has no merit, I hereby dismiss it.

Coming to the merits of the appeal, the appellant raised six grounds as I have indicated above. However, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> grounds of appeal can be combined and determined together since all of them are relating to the issue of analysing and evaluation of evidence. Thus, I will determine the 4<sup>th</sup> ground of appeal independently.

In support of the appeal, counsel for the appellant argued the 4<sup>th</sup> ground of appeal that the DLHT did not assign cogent reasons for departing from the assessors' opinion. He contended that the law mandatorily requires the chairman to give reasons for his departure from the assessors' opinion. She cited the case of

**Selina Kea v. Marugwe Gwarai**, Land Appeal No. 43 of 2019 HCT, at Dodoma. He argued that the assessors opined in favour of the appellant but the chairman did not clearly show the reasons for abandoning their opinion.

In reply, counsel for the 1<sup>st</sup> respondent argued on the point that the DLHT chairman considered the opinion of the assessors but he differed with them on clear reasons. Counsel for the 1<sup>st</sup> respondent referred this court at some pages of the impugned judgment where the chairman gave reasons.

In her rejoinder, counsel for the appellant reiterated the contents of her submission in chief. I have considered the arguments by the counsels for the parties. I am aware of the provision of **section 24 of the Disputes Courts Act, Cap. 216 R.E. 2019** that the DLHT Chairman is bound to take into account the opinion of assessors. Nevertheless, the law is clear that he is not bound by their opinion as long as he gives reasons for differing from them.

As to the matter at hand, at pages 13 – 14 the learned Chairman after recording the opinion of the assessors, he categorically stated that he concurred with them on rejecting the



applicant's claim of Tsh. 50,000,000/= as compensation. However, he stated further that he differed with them on the opinion that the appellant had legally purchased the suit property from the late Jeremiah Joseph Challe. He gave reasons that the DLHT could not question the legality of the letters of administration tendered by the 1<sup>st</sup> respondent since the DLHT has no jurisdiction to do so.

In my view, that was enough reason for his departure from the opinion of assessors. This court cannot confidently agree with the appellant that the learned Chairman did not give clear reasons. That being the case, the 4<sup>th</sup> ground of appeal also lacks merits. It is thus, dismissed.

As to the combined grounds of appeal, the task before this court being the first appellate court is the re-evaluation of evidence. I will not reproduce the submissions by the parties since they are based on the evidence on record. Among the issues dealt by the DLHT was whether or not the disputed premises was one of the estates of the late Andrea Mwambapa. I will not discuss this issue since the evidence on the record do not dispute

that the disputed premises was the property of the deceased Andrea Mwambapa.

What remains as the issue for determination is whether or not the disputed premises was transferred to the appellant by the late Jeremiah Joseph Challe. On its part, the DLHT discussed the issue of whether the late Jeremiah Joseph Challe had a title over the disputed premises which he could transfer to the appellant. At the end it reached to the conclusion that the late Jeremiah had no such title.

On that regard, the evidence available is that of the appellant who purchased the disputed premises from the late Jeremiah. The evidence of Nandi Joseph Challe who was the 1<sup>st</sup> respondent on behalf of the late Jeremiah Joseph Challe was to the effect that he knew that his brother Jeremiah was residing in the disputed premises as an invitee since he married Upendo who was leaving in that disputed premises.

The appellant's evidence was to the effect that he bought the disputed premises from Jeremiah Joseph Challe at the price of Tshs. 13,000,000/= which at the time of the case it was estimated

at the value of Tshs. 50,000,000/= after the renovation made therein.

The appellant also testified that before purchasing the premises, he made search to the land offices and found that the it was registered in the name of Andrea Mwambapa. He doubted how Jeremiah could sell the house to him. Jeremiah told him that he bought the house from the family members of the late Andrea. Then the appellant doubted how the family members could have sold the house in the absence of the administrator of the estates of the late Andrea. In assuring him, Jeremiah availed the appellant with the letters of administration of the estates of the late Andrea by Pardon Andobwisye Mwakaselo. The letters showed that it was issued on 26/8/2011 by Iyunga Primary Court of Mbeya District.

That the said Pardon and Jeremiah also availed the appellant with the loss report to show that they lost the document in relation to the registration of the disputed premises. Relying on those evidence the appellant purchased the disputed premises. He transfer it and he was availed with certificate of Title for the same in his name. It is also in the evidence that there was a sale

agreement of 2008 between one Pardon Andobwisye Mwakaselo and Jeremiah Joseph Challe. Then the sale agreement of 2011 between Jeremiah and the appellant. Nevertheless, both agreements were not received as evidence since they had no stamp duty. It was also alleged by the appellant that the said Pardon Andobwisye Mwakaselo is the one who is now suing by the name of Andobwisye Mwakaselo.

On the other side, the evidence by Andobwise Mwakaselo who was the applicant was to the effect that the family of the late Andrea Mwambapa had never transferred the disputed premises to the late Jeremiah. It was his evidence also that before he was appointed as an administrator of the estates of the late Andrea in 2016, there was no any other administrator. He tendered the letters of administration issued on 19/07/2016 by Ikama Primary Court of Rungwe District.

Andobwisye Mwakaselo and his witness one Exson Mwakalobo also testified that one Pardon Andobwisye Mwakaselo referred by the purchaser/appellant was the brother to Andobwisye Mwakaselo but he passed away in 1986. Exson tendered a death certificate to that effect. They denied the fact

that Andobwisye Mwakaselo is one and same person to Pardon Andobwisye Mwakaselo as it was alleged by the appellant.

It was also testified that after the death of Andrea, the suit premises was resided by one Upendo who was allowed by family members of the late Andrea. Later on, the said Upendo married to Jeremiah. It was the evidence therefore that Jeremiah conspired with his wife Upendo to sell the house to the appellant. The disputed house was registered but he had no document he thus tendered loss report from police.

Applying the evidence as I have analysed, it is obvious that both sides tendered letters of administration of the estate of the late Andrea Mwambapa. Also, both sides tendered loss report in relation to the loss of documents of the disputed premises. The difficult encountered by this Court was the same encountered by the DLHT. This is because, the legality or validity of the letters of administration cannot be questioned by this court or by the DLHT since they ought to be challenged in the same Courts that issued them. This is also due to the fact that letters of administration are about probate and administration matters, while the matter at hand is the land issue.

The DLHT in its reasoning was of the view that any challenge regarding the appointment of the administrator would have been made before the same court which made the appointment. Yet, it declined to consider the letter of administration which was issued by Iyunga Primary court. Since DLHT reasoned that the validity cannot be questioned at the Tribunal, I cannot comprehend how DLHT disregarded the letters of Administration issued to Pardon Andobwisye Mwakaselo and reached to the conclusion that Jeremiah did not purchase the disputed premises from him whilst there is no any other decision of the relevant court revoking the letters which were issued on 26/08/2011 prior to the letters of administration issued by Ikama Primary Court on 19.07.2016.

Considering the circumstances prevailing in the matter at hand, I feel indebted to go further resolving the issue of whether or not the appellant bought the disputed premises from Jeremiah so as to determine the rights of the purchaser, and if the appellant was bona-fide purchaser for value. The same was not resolved by the DLHT, but failure to do so led to injustice to the appellant. My observation is based on the illustration made by the CAT in the

case of **Suzana S. Waryoba v. Shija Dalawa** (supra). The Court, quoting the definition of bona-fide purchaser from Oxford Scholarship Onlinen, stated that:

*"bona-fide purchaser is someone who purchases something in good faith, believing that he/she has clear rights of ownership after the purchase and having no reason to think otherwise. In situations where **a seller behaves fraudulently, the bona-fide purchaser is not responsible.** Someone with conflicting claim to the property under discussion would need to take it up with the seller, not the purchaser, and the purchaser would be allowed to retain the property. "*

Equally, in the case of **Stanley Kalama Masiki v. Chihyo Kuisia w/o Nderingo Ngomuo [1981] TLR 143** it was held that:

*"...where an innocent purchaser for value has gone into occupation and effected substantial development on land **the courts should be slow to disturb such a purchaser and would desist from reviving stale claims.**"*

Applying the above observation by the CAT in the matter at hand, as there was no contradicting evidence to the fact that the appellant took necessary steps before purchasing the disputed premises from Jeremiah. I have already analysed the evidence on record herein above, but for clarity of this issue the necessary steps include; making inquiry by the appellant on whom the disputed premises was registered, taking precautions that the seller could not pass title without being the administrator of the estates of the late Andrea Mwambapa, that the seller (the late Jeremiah Joseph Challe) assured the appellant that he purchased it from the members of the family of the late Andrea. And upon being availed with the letters of administration of the estates of Andrea; and the sale agreement between Jeremiah and the administrator of the estate of Andrea; the appellant could not find anything illegal or abnormal.

More so, the appellant bought the disputed house in 2011 made the renovation therein, until 2016 i.e after five years when the dispute arose gave the assurance on the validity of the purchase. Which, in my view qualifies the appellant to a bona-fide purchaser.



The foregoing circumstances therefore, goes on to dispose of the grounds of appeal that have been raised by the appellant that, the DLHT did not properly evaluate evidence adduced by the parties.

Owing to the findings I have made, the appeal is allowed with costs. The judgement of the DLHT is quashed, the orders made therein are set aside.

Ordered accordingly.



A handwritten signature in black ink, appearing to read "R.A. Ebrahim", written over a circular stamp.

**R.A. Ebrahim**

**JUDGE**

**Mbeya**

**25.02.2022**

**Date:** 28.02.2022.

**Coram:** Hon. P.R. Kahyoza -DR.

**Appellant:** Present.

**For the Appellant:** Ms. Msuya/Mr. Mwampaka, Advocate.

**1<sup>st</sup> Respondent:** Present

**2<sup>nd</sup> Respondent:** Present.

For the Respondents: Ms. Febby Cheyo for 1<sup>st</sup> Respondent.

**B/C:** P. Nundwe.

**Ms. Febby Cheyo:** This matter is scheduled today for judgement. We are ready.

**Ms. E. Msuya:** We are ready too.

**Court:** Judgement delivered in the presence of parties.



P.R. Kahyoza

Deputy Registrar

28/02/2022