

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY  
IN THE HIGH COURT OF TANZANIA  
SUMBAWANGA DISTRICT REGISTRY  
AT SUMBAWANGA  
LAND DIVISION  
MISC. LAND APPEAL NO. 01 OF 2020**

*(Originating from the Decision of District Land and Housing Tribunal of Rukwa at Sumbawanga in Land Appeal No. 117 of 2014, Original Case from Nkandasi Ward Tribunal Land Case No. 30 of 2014 )*

**JOSEPH KALUKULA..... APPELLANT**

**VERSUS**

**ANETHA KASONSO.....RESPONDENT**

**Date of Last Order: 12<sup>th</sup> April, 2022**

**Date of Judgment: 24<sup>th</sup> May, 2022**

**NDUNGURU, J**

This is a second appeal, after being aggrieved by the decision of Nkandasi Ward tribunal (Trial Tribunal), the appellant herein unsuccessfully appealed to the District Land and Housing Tribunal (Appellate Tribunal) which upheld the decision of the Trial Tribunal. Earlier, the respondent had sued the appellant at the trial tribunal for ownership of unregistered piece of land and was declared the rightful owner.

The appellant seeks to overturn the table and be declared the owner of the suitland, by filing this appeal to this court having six (6) grounds which are as follows;

1. That, the honorable Chairperson misdirected herself in holding that the appellant had failed to prove legality of ownership of the land by the appellant claiming that his, appellant's, evidence was weak compared to that of the respondent.
2. That the honorable Chairperson disregarded the evidence of the appellant that the respondent was a witness in Nkandasi Ward Tribunal Case No. 04/2011 where the appellant had sued one George Mwanambula over the same piece and parcel of land where the appellant was successful, and termed the case which the tribunal ordered execution thereof as none existent and the appellant's imaginary one.
  - 2.1. That the said document was disregarded by the chairperson.  
(Copy thereof is attached herewith and marked 'A').
3. That the honorable Chairperson disregarded the period of occupation of the land by the appellant commencing from the year of purchasing the same in 1992 to that of commencement of the case in 2011 continuously.

4. That the honorable Chairperson erred in law and fact in deciding that the vendor of the suit land to the appellant one David Kanyama had no locus standi in the suit.
5. That the honorable Chairperson erred in law in shifting the burden of proof of the case to the appellant.
6. That the honorable Chairperson erred in law in disregarding the fact that the respondent was not the administrator of the estate of her father.

On the hearing date, the appellant was unrepresented while the respondent was under the legal umbrella of Mr. Peter Kamyalile learned Advocate.

As he has to go first, the appellant submitted on the 1<sup>st</sup> ground that the person who sold the farm (suitland) to him was proper one as he was instructed by his father who was attending hospital treatment. He added, that he was shown the boundaries and when his father recovered, they went to the suitland to confirm the boundaries of the same which he was shown by his son.

On the 2<sup>nd</sup> ground of appeal, the appellant submitted that the exhibit he attached from the Ward Tribunal, the first appellate tribunal did not consider. When the respondent wanted to sell the farm, he stopped her. She then went to file a complaint to the village counsel,

which he attended the village counsel and it was revealed that the appellant has no fault as the seller gave explanation on what happened. The appellant added that, thereafter, the respondent went to file a complaint to village Land tribunal. Before it made decision, she had sold the land in dispute.

The appellant continued that, he reported the matter to the Ward Tribunal, where the respondent said he has to sue George Mwanambula who is said to have the farm in his supervision, although he denied it. The Ward Tribunal delivered its judgment which is the exhibit No. 1, whereas the 2<sup>nd</sup> exhibit is the judgment of Tribunal after he was sued by the one who purchased the farm from respondent. The appellant insisted that, he too has also filed it as exhibit.

On the 3<sup>rd</sup> ground, the appellant submitted that the chairman did not consider the time he has occupied the farm from 1992 when he bought the farm and used it until 2011 when he was sued.

Coming to the 4<sup>th</sup> ground, the appellant submitted that, the chairman weakened the testimony of the witness who sold to him the farm/land in dispute.

On the 5<sup>th</sup> ground, he submitted that the Chairman grabbed him the right which he was given by the District Land and Housing Tribunal and gave it to the respondent, while all the exhibits were at his disposal.

The appellant then lastly submitted on the 6<sup>th</sup> ground that, the respondent was not the owner of the land in dispute, she was not a heir/inheritor of the said suit land. He furtherly added, if she was so, she could have intervened the sale and the use of the said suit land. The appellant continued, when George Mwanambula denied he was the supervisor, who gave the respondent the right to sell the suitland. Conclusively, the appellant prays his appeal be allowed with costs.

Responding to the submission made by the appellant, Mr. Peter Kamyalile, learned Advocate submitted that this is the 2<sup>nd</sup> appeal, where the appellant is aggrieved with the decision of two tribunals below. Thus, this court can only go to the evidence under special circumstances to do that.

However, he continued by arguing that, looking at the grounds of appeal raised he finds it not to be proper for this court to interfere the concurrent decisions. He added, from the appellant's submissions, he said the farm was sold to him by the son of the owner, but the one who can sell the plot is the owner or one under special power of Attorney. Learned Advocate insisted that, it is the position of law that the one who has no title cannot pass the title otherwise the transaction is a nullity. He referred this court to the case of **Asia Sima vs Thabitha Haule Misc. Land Case No. 8 of 2014** (HC) Unreported. Mr.

Kamyalile added, it is his submission that if the appellant bought the plot the sale was void thus the tribunal was correct to hold so.

As regard to the 2<sup>nd</sup> ground, the learned Advocate submitted that, it is the position of law that the first appellate court/Tribunal has the power to evaluate evidence and refer to the exhibits tendered during trial. If the exhibit was not tendered during trial the appellate court cannot rely to it, again Mr. Kamyalile referred this court to the following cases of **Mwajuma Mbega vs Kitwa Manni (2004) TLR 410 CAT** and **Albina Pambazu vs Midimu Khanda Misc. Land Appeal No. 9 of 2017 (HC) Sumbawanga** (Unreported).

Submitting on the 3<sup>rd</sup> ground, Mr. Kamyalile had this to say; that, the principle of adverse possession cannot apply when the appellant alleges to have come into possession of land by sale (buying it) also where there is illegal possession. The learned Advocate directed this court to the case of **Hon. AG vs Mwahezi Mahomed (As administrator of the Estate of the late Dorry Maria Euslance) & 3 Others Civil Appeal No. 391 o 2019 CAT (Tanga) Unreported**. That the fact that the seller was not the owner the principle cannot be used.

Mr. Kamyalile argued the 4<sup>th</sup> and 5<sup>th</sup> grounds together that the appellant has not submitted on how the tribunal weakened his evidence,

thus it lacks merit, and that the 6<sup>th</sup> ground is a new ground it should be dismissed at this stage. He stressed that the District Land and Housing Tribunal could not discuss the contents of documents which were not part in the trial proceedings.

He conclusively submitted that the respondent is the lawful owner of the land in dispute as decided by two tribunals below. The learned Advocate therefore prays that the appellant's appeal be dismissed with costs.

In rejoinder, the appellant argued that the respondent's case before the tribunal was not cogent, the witnesses contradicted themselves before the trial Tribunal. The seller was authorized to sell the suit land by his father who was hospitalized. The father having got discharged he took him to the shamba again to authenticate the boundaries that he was shown and that the sale had his blessings.

The appellant continued that, he tendered the documents at the Ward Tribunal but if there was no need why the file from the Ward Tribunal was remitted to the District Land and Housing Tribunal, he questioned.

He then added that, the respondent told the tribunal that she left the farm in the hands of George Mwanambula, but George denied the



assertion at the Ward Tribunal, but how did the respondent get such a right following the denial of George Mwanambula, he again questioned.

Lastly, the appellant submitted that, if real the respondent owned the farm, why did she not stop the sale of the said farm to him, he questions for the third time, and thereafter prays for his appeal be allowed.

I have gone through the entire submissions by both camps, and read between the lines the grounds for appeal as filed by the appellant herein. I affirm that, all these shenanigans are brought forthwith as the result of purchase of the suitland by the appellant. Therefore, **the determination of whether the sell of the suitland to the appellant was valid**, would suffice to dispose of this appeal entirely.

To begin with, I wish to state the standard of proof in civil cases that, it is on balance of probabilities. This position has been stated by the Court of Appeal in a number of decisions. For instance, in **Mathias Erasto Manga vs Ms. Simon Group (T) Limited, Civil Appeal No. 43 of 2013** (unreported), while reversing the finding of the trial High Court, the Court of Appeal held that:

*"The yardstick of proof in civil cases is the evidence available on record and whether it tilts the balance one way or the other.*



*Departing from this yardstick by requiring corroboration as the trial court did is going beyond the standard of proof in civil cases."*

Now then, the appellant claimed to have bought the suitland from the son of the owner. The son himself testified this in the trial court, that as his father was sick, he sold the suitland to the appellant and after the recovery of his father, the appellant was shown the boundaries of the land he purchased.

On the other hand, going by the records in my disposal, beginning with this matter at the trial tribunal, the respondent claimed to have ownership of the suitland by way of inheritance from her father. She had two witnesses who corroborated her testimony as they were neighbors at the suitland.

Without any delay, I borrow my reasoning from **Sarkar on Evidence 14th Edition Vol. II 1993** at page **1455**, where it states:

*"If there are two persons in a field each asserting that the field is his, and each doing some act in the assertion of the right of possession, and if the question is which of the two is in actual possession, the answer is, **the person who has the title is in actual possession and the other person is a trespasser.**"*

[Emphasis is Mine]

It is with no doubt that the appellant bought the suitland, but did he purchase it from a person with title over the land in question? Without blinking of eyes, the answer to that it is in the negative, because the seller did not possess any title over the suitland and yet sold it as he testified. In the eyes of the law, the transaction was void, unless the seller had possessed a special power of attorney to represent his sick father in the completion of the transaction, then it would have been valid. Whereby, Power of Attorney is normally given for a person who is either outside the country and cannot appear in court or is sick or mentally disturbed.

it is clear that, the seller of the suit land had no legal basis for selling the suit land to the appellant. I agree with Mr. Kamyalile on the fact that the seller had no title to pass over to the appellant as stated by the Court of Appeal in the case of **Salima Hussein vs Hussein Ibrahim Sadiki & Sons, Civil Appeal No. 55 of 2000, CAT** (unreported) which state that;

*"On the evidence and particularly the decision of the Court of Appeal, Sofia Said was not the direct heir and could not, therefore, have title to pass to the defendant."*

It is therefore evident that the sale conducted between the appellant and the seller of the suitland is void ab intio, if indeed the

owner wished to sell the suitland, he would have authorized his son to dispose the suit land through a special Power of Attorney, so he would authenticate the transaction. The learned Advocate was correct to cite the case of **Asia Sima vs Thabitha Haule ( Supra)** which insisted the fact.

Conclusively, I need not to retain much of my time in this appeal, for I see no sufficient reason of interfering the decisions of the lower tribunals, I therefore dismiss this appeal with costs.

It is so Ordered.



  
**D. B. NDUNGURU**

**JUDGE**

**24/05/2022**

Date - 24/05/2022  
Coram - Hon. S. Kasonde – DR  
Appellant - Present in person  
Respondent - Mr. Peter Kamyalile – Advocate  
B/C - Zuhura

**Mr. Peter Kamyalile Advocate for Respondent:** Your honour, this matter comes for Judgment and we are ready.

**Appellant:** I am prepared too.

**Court:** Judgment delivered this 24<sup>th</sup> day of May, 2022 in the presence of the Appellant in person and Mr. Peter Kamyalile Advocate for the Respondent.



A handwritten signature in blue ink, appearing to read 'M.S. Kasonde'.

**M.S. KASONDE**

**DEPUTY REGISTRAR**

**24.05.2022**

**Court:** Right of appeal fully explained.



A handwritten signature in blue ink, identical to the one above.

**M.S. KASONDE**

**DEPUTY REGISTRAR**

**24.05.2022**