

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MANYARA SUB REGISTRY**

**AT MANYARA**

**LAND APPEAL NO. 24 OF 2022**

(Originating from District Land and Housing Tribunal for Mbulu on Land Application  
No. 7 of 2022)

**JOHN PAULO JOROJICK.....APPLICANT**

**V**

**JANUARY GAGRIEL NARI.....1<sup>ST</sup> RESPONDENT**

**SIFAEEL NYAMBI.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

21<sup>st</sup> February, 2023 and 21<sup>st</sup> March, 2023

**BARTHY, J.**

The appellant John Paulo Jorojick, has brought this appeal seeking to challenge the decision of the district land and housing tribunal for Mbulu (to be referred to as the trial tribunal) on the seven grounds.

Basically the appellant is faulting the trial tribunal's decision to have declared the suit land to belong to the first respondent without having sufficient evidence; contract of sale with no consideration and failure to find that the appellant was on uninterrupted possession of the suit land for 12 years. The appellant also challenged the trial tribunal to have failed

to identify issues for determination and therefore arrive at an unreasonable decision.

The transitory background of this matter is that, the appellant filed the land matter before the trial tribunal seeking to be declared the lawful owner of the suit and the contract of sale between the respondents be declared unlawful.

The appellant also sought for demolition order of the house, latrine pit toilet and block fence and the suit land be handed over to the appellant. Also the appellant prayed for orders to restrain the respondents permanently and their agents from interfering with the appellant's possession of the suit land.

The appellant claimed to have bought the suit land from the first respondent on behalf of his deceased father in the year 2008 and they signed the sale agreement. The appellant therefore has been living in the house that was in the suit land ever since.

In the year 2017 the appellant started to pay for the levies of the suit land, only to find that the second respondent also paid for the same in the year 2020. The appellant instituted the suit before the tribunal and called witnesses and tendered the exhibits to prove his claim.

On the other hand, the respondents denied the appellant to be the owner or buyer of the suit land. The appellant was said to be a mere tenant in the suit land and his sale agreement tendered before the trial tribunal was said to involve the deceased father of the first respondent who died in the year 2006 prior signing of the agreement and therefore claimed to be forged.

The respondents tendered the sale agreement between them and called the witnesses to prove their case.

The trial tribunal having heard the matter, on its findings it was decided that application lacks merit and went on to dismiss the same. It was further held that the suit land belonged to the first respondent and the appellant was declared to be the trespasser on the suit land and was ordered to give vacant possession.

The appellant was not amused with the decision of the trial tribunal, hence this appeal.

During the hearing of this matter, the appellant enjoyed the services of Ms. Asha Mussa the learned counsel and the respondent fended for themselves.

With the leave of the court, this appeal was argued by way of written submission, the parties filed their submissions timely according to the schedule of the court. However, the appellant opted not to file the rejoinder submission.

On the submission in chief filed by Ms. Asha Musa Qambadu the counsel for the appellant, she submitted the appellant is against the decision of the trial tribunal. However, Ms. Asha opted to abandon the fourth and fifth grounds of appeal and submitted on the remaining grounds.

Addressing the first ground, Ms. Asha argued the trial tribunal decided the suit land belong to the first respondent in the absence of evidence to support the same.

Ms. Asha was of the view that there was the valid written contract between the appellant and first respondent, signed in the presence of witnesses which is enforceable by the law under section 10 of the Law of Contract, Cap 345 R.E. 2019.

She added that the contract signed later between the respondents was meaningless and lacked necessary ingredients, even those who witnessed it could not appear to testify.

It was further submitted by Ms. Asha that; the appellant had the proof of various receipts of government levies paid over the suit land while the second respondent had none.

On the second ground, Ms. Asha submitted that the appellant was in the undisturbed possession of the suit land for about 12 years, from 30/6/2008 until 6/6/2020. It was also stated that the appellant had made various development on the suit land including building structure and agriculture items. Therefore, the doctrine of adverse possession was said to apply.

To buttress her point Ms. Asha made reference to Item No. 22 of the First Schedule of the Law of Limitation Act [Cap 89 R.E. 2002]. She also cited the case of **Nengilang'et Ngalesoni v. William Emmanuel**, Misc. Land Appeal No. 4 of 2022 where the court ruled the suit was time barred as the appellant did not claim the suit land when respondent's father was alive.

Turning to the third ground, Ms. Asha challenged unjustified evidence of the first respondent's side which was contradicting on each other. However, the trial tribunal relied on it to decide in favour of the first respondent.

She further pointed out that, it was also not clear as to when the father of the first respondent had passed away as seen on page 20 and 21 of the typed proceedings of the trial tribunal. As there was contradicting evidence between the year 2006 or 2016.

Again Ms. Asha pointed out on the exhibit which was the latter dated 10/10/2020 which was tendered as the exhibit before the tribunal, it shows that the suit land belonged to the appellant but it was mistakenly sold to the second respondent.

She further pointed out on page 22 of the proceedings where the appellant claimed to be the owner of the suit land after he was given by his father in the year 2004.

She also added that between the first respondent and his third witness they differed on the size of the house on the suit land. With respect to the contradictions pointed out, she made reference to the case of **Mohamed Said Mutula v. Republic** [1995] TLR 3, cited in the case of **Happy Ibrahim v. Patric Paulino Mikindo**, Land Appeal No. 11 of 2019, where the court held that the court should rule out if the contradiction and inconsistencies are only minor or they go to the root of the matter.

On the fourth ground Ms. Asha faulted the trial tribunal to have determined the matter without visiting '*locus in quo*' (scene of the suit land). In order to ascertain the state, size and location of the suit land. With respect to that argument Ms. Asha made reference to the case of **Mhela Bakari and another**, Land Appeal No. 23 of 2021.

She also referred to the case of **Nizai M.H. v. Gulamau Fazal Jarimohamed** [1980] TLR 29 and further argued that in the circumstances of this case it was important to visit the *locus in quo* to avail on the contradictions raised.

Submitting on the last fifth ground concerning the determination of the matter without framing of issues, Ms. Asha argued that if the issues were identified well it could have led to just, fair and reasonable decision.

She thus prayed to this court to set aside the decision of the tribunal and order retrial due to inconveniences found. Thus, she prayed the appeal be upheld with costs.

The respondents' reply submission was prepared by Mr. John Lundu the learned advocate who counter argued on each ground of appeal as submitted in chief by the counsel for the appellant.

Responding to the first and second grounds, he contended that, the evidence on record shows that the plot sold to the second respondent was on plot 235 and not 237 at Haydom.

He further added that the sale contract between the respondents was in writing and it had witnesses as well.

He went on to counter argue that the appellant did not own the suit land, as the owner he would not have started to pay relevant taxes in the year 2018.

It was the argument of Mr. Lundu that the first respondent inherited the suit land from his father who owned it under customary law and died in the year 2006. Therefore, it was proper the said contract to be entered in his capacity with the appellant. He thus urged this court to find the 2008 agreement to have been forged.

He further retorted that, the cause of action on this matter arose in the year 2020 when the appellant learned that the second respondent has paid the levies of the suit land. Since the suit was instituted in the year 2021, the appellant cannot raise the issue of limitation by herself.

He further stated, the respondent had called Philipo Bura (SU5) who was the long-time member of the village council and now the chairperson of



the hamlet, but he proved there was no record of the sale agreement of the suit land or proof of levies paid by the appellant.

He contended there was no contradiction on the evidence tendered as the first respondent was able to prove that he was the owner of the suit land, as the appellant had no valid contract.

He went on to challenge the submission in chief made by the counsel for the appellant who earlier on abandoned the fourth and fifth ground but again addressed them on her submission. As they were based on the existence of valid contract.

On the ground that the trial tribunal could not visit the locus in quo, Mr. Lundu pointed out that the respondents prayed for the trial chairperson to visit the land in dispute but the appellant resisted as the record shows.

Mr. Lundu further argued that, the fifth ground is challenging the first respondent to be declared the lawful owner of the suit land in the absence of documentary evidence. However, the appellant's counsel on that ground has argued on the absence of issues for determination which led to unjust and unreasonable decision.

It was also countered that; the issues were framed by the trial chairperson as seen on page 3 of the typed judgment. He went on to state the trial

tribunal had thorough discussed the evidence and made its findings on the balance of probabilities that the first respondent was the owner of the suit land. He therefore prayed the appeal to be dismissed with costs.

Having gone through rival submissions of both sides, this court has to determine if this appeal has the merit.

I will address the first and second grounds of appeal as they are related. The appellant is faulting the trial tribunal to have decided the matter in favour of the first respondent without supporting evidence and considering the adverse possession of the suit gland by appellant for about 12 years.

The basis of the appellant claiming to be the lawful owner of the suit land was the sale agreement tendered before the tribunal as the exhibit of the same.

In the said agreement, the appellant had entered into the agreement with Gabriel Nari who is said to be the father of the first respondent. However, the first respondent was to hand over the suit land on behalf of his father and he signed the said agreement as the witness.

Therefore, according to the said agreement it was made between Gabriel Nari (the deceased) and John Paulo Jorojick.

The first respondent had claimed to have inherited the suit land from his father who passed away in the year 2006. However, the first respondent did not have any proof of the ownership of the suit land.

According to the facts gathered on this matter, it is not in dispute that the said Gabriel Nari had passed away. It is however not clear who is the personal representative of his estate.

In determining this ground, the trial tribunal on page 9 of its judgment held that, the appellant failed to prove on the balance of probabilities that he had bought the suit land from the first respondent. As the sale agreement tendered clearly show the appellant entered into the agreement with Gabriel Nari who was the deceased.

However, another witness for the appellant pointed out that Gabriel Nari is the baptism name of the first respondent as well. Therefore, leaving a contradiction and the trial chairperson was of firm view that it was not clear the sale agreement was entered with the first respondent on his own personal capacity or as the representative of the deceased.

I would partly agree with the trial tribunal's findings that the appellant sued the first respondent on his personal capacity and not the representative of his father who is claimed to have died sometime back even before the signing of the sale agreement.

Part of the sale agreement between the appellant and the Gabriel Nari reads;

*YAH: MAKUBALIANO KATI YA NDG. GABRIEL NARI NA NDG. JOHN PAULO JOROJICK...*

*Hivyo mimi ndugu Gabrieli Nari kwa nia njema nimemkabidhi ndugu John Paulo Jorojick akimiliki na kukiendeleza kuwa mali yake halali: Aliyekabidhi kiwanja No. 237 BLOCK D kwa niaba ya baba yake Ndugu (signed by Januari)...*

It is clear that the first respondent is not clearly seen to be the one selling the suit land according to the sale agreement tendered by the appellant. The proper procedure therefore was to sue the administrator of the estate of the deceased Gabriel Nari.

As the first respondent did not enter into that contract on his personal capacity, he could not be sued on his name as the necessary party. Facing with similar situation, it was decided by this court in the case of **Adeoh Watson Weggah v. Andson Chole Weggah**, (PC Civil Appeal 22 of 2019) [2020] TZHC 1932; citing with approval the case of **Ibrahimu Kusaga v. Emanuel Mweta** [1986] T.L.R 26 where it was held;

*"There may be cases where the property of deceased person may be in dispute. In such cases all those interested in determination of the dispute or establishing ownership may institute proceedings against the administrator or the administrator may sue to establish a claim of deceased property".*

In the same fate, in the case of **Rashid Qambo v. Odilia Ingi Mefurda** (Land Appeal 81 of 2020) [2021] TZHC 6352 this court faced with the same scenario held that;

*The appellant and or trial tribunal ought, in my view to have caused and amendment of the appellant's application by substituting the respondent with the administrator instead of proceeding with hearing of the matter. As doing so without joining necessary party to the suit would make a decree emanating from such proceedings nugatory.*

It goes without mincing words that, the absence of the personal representative of the deceased (Gabriel Nari) who is the necessary party, no effective decree will be passed by any tribunal/court.

In the circumstances of this case, this ground alone is able to dispose the entire appeal, the only remedy therefore is to dismiss the appeal, quash

and set aside the proceedings and judgment of the tribunal. Considering the nature of this appeal, I give no order as to costs.

It is so ordered.

**DATED** at **Babati** this 21<sup>st</sup> day of March, 2023.



**G.N. BARTHY**  
**JUDGE**  
**21/3/2023**

Judgment delivered in the presence of the Ms. Asha Musa the counsel for the appellant, the appellant in person and the second respondent in persons.