

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND APPEAL NO. 140 OF 2022**

(C/F Original Application No. 66 of 2018 in the District Land and Housing Tribunal of Babati at Manyara)

**MOHAMED ALLY.....APPELLANT**

**VERSUS**

**ABUBAKARI IBRAHIM SINDILA..... RESPONDENT**

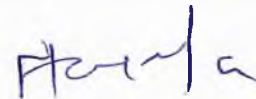
**JUDGMENT**

24/04/2023 & 29/05/2023

**MWASEBA, J.**

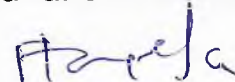
Being aggrieved by the whole decision of the District Land and Housing Tribunal of Babati at Manyara, the appellant appealed to this court based on the four grounds as follows:

- 1. That, the trial Tribunal Chairman erred in law and fact to hold that the Respondent is the lawful owner of the property in dispute without establishing which is the valid Title Deed between Title No. 54321 L.O No. 286137 in the name of Ibrahim Selemani Sindila and Title No. 6794 L.O No. 121264 in the name of Nada Mughusi Shauriy.*



2. *That the Trial Tribunal erred to accuse the vendor of the house in dispute to the Appellant on the reason that he failed to transfer the ownership of the property in dispute from the original owner Nada Mughusi Shaurily to himself from when he won the case against Ibrahim Seleman Sindila without taking notice that after winning of the case in the District Land and Housing Tribunal the said Ibrahim Seleman Sindila appealed to the High Court Land Division at Arusha and to the Court of Appeal of Tanzania.*
3. *That the Trial Tribunal erred in law and in fact for not holding that the Title Deed No. 54321 Land Office No. 286137 Block "M" Registered in the name of Ibrahim Selemani Sindila on 01/01/2016 was obtained fraudulently because there was in existence of Title Deed No. 6794 L.O No. 121264 on the same plot No. 57 Block "M" Registered since 01/01/1990 in the name of Nada Mughusi Shaurily.*
4. *That the trial Tribunal erred in law and fact to hold that the respondent herein proved his case beyond probabilities that he is the owner of the suit property.*

Briefly, the facts leading to this appeal are as follows: the respondent herein filed an application at the District Land and Housing Tribunal



(herein DLHT) for Babati at Manyara claiming to be declared as the lawful owner of the disputed Premise Plot No. 57 Block "M" with the certificate of the Right of Occupancy No. 54321, LO No. 286137, Oysterbay, Babati Town measuring 393 square meters. And the appellant be ordered to vacate from the suit land and hand over the disputed house to the respondent herein. On his side, the appellant objected the application by filing a Written Statement of Defence and argued that the legal owner of the disputed premise is Ahmed Juma who purchased the same from the previous owner namely Nada Mughusi through his caretaker Juma Nada Mughusi in 2006 and handed over the certificate No. 6794, Land Registry Moshi, land Office No. 121264; Plot No. 57 Block "M" Babati Urban in the name of Nada Mughusi Shauriy. He argued further that the respondent unsuccessfully sued Ahmed Juma at the District Land and Housing Tribunal of Babati the case which went up to the Court of Appeal of Tanzania where it was struck out with costs for being incompetent.

Having heard both parties and their witnesses, the trial tribunal decided that the respondent is the lawful owner of the disputed premise and the appellant to vacate from the suit premise. Being dissatisfied, the

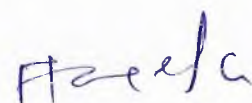


appellant is now before this court challenging the said decision armed with four (4) grounds as submitted herein above.

During the hearing of this appeal, Messrs John J. Lundu and Paschal Peter, both learned counsels represented the appellant and the respondent respectively. The appeal was argued orally.

Arguing in support of the 1<sup>st</sup> and 3<sup>rd</sup> grounds of appeal jointly, Mr. Lundu told the court that it was wrong for the DLHT to declare the respondent as the lawful owner while there was a dispute as to which was the valid Certificate of Title between Title No. 6794 Land Office No. 121264 Plot NO. 57 Block "M" which was in the name of Nada Mughusi Shauriy registered on 1/1/1990. And the title No. 54321 Land Office No. 286137 with the name of Ibrahim Selemani Sindila, Plot No. 57 Block "M" registered on 1/01/2016.

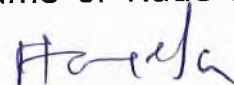
Mr Lundu stated further that at the trial tribunal, the Registrar of Title One Japhary Beatus Mpelembwa told the tribunal that they were in the process to revoke the certificate of Title issued in 2016 but the Trial Chairman neglected this evidence. He argued further that currently the certificate which was issued in 2016 regarding the premise in Plot No. 57 Block "M" has already been revoked.



Opposing these two grounds of appeal, Mr Paschal stated that the certificate of title issued on 1/1/1990 in respect of Plot No. 57 Block "M" was already revoked as the disputed land was sold to Ibrahim Simbila who was given a new title No. 54321 Land Office No. 286137 in the name of Ibrahim Selemani Sindila. Thereafter he sold the same to Abubakari Ibrahim Sindila. He stated further that the appellant presented a certificate which was already revoked and the same is not recognized by the Land registry and he is staying in the house with no ownership. He cemented his arguments with several cases including the case of **Nacky Ester Nyange vs Mihayo Marijani Wilmore and Another**, Civil Appeal No. 272 of 2019.

On the 2<sup>nd</sup> ground of appeal, Mr. Lundu submitted that it was wrong for the trial Chairman to fault the appellant herein for not changing the certificate of occupancy to bear his name. He argued that there was a case involving the previous owner who sold the suit property to the appellant. Currently, the certificate of title has been changed to the name of the appellant herein.

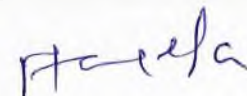
Responding to the 2<sup>nd</sup> ground of appeal, Mr. Pascal stated that the certificate of title owned by the respondent was not obtained by fraud, it was obtained after the previous title with the name of Nade Mughusi



Shauriy being lost and he was the person who sold the premise to the respondent herein. Further to that the allegation of fraud was not pleaded at the trial Tribunal that's why the tribunal did not deal with it. He supported his argument with the case of **Twazihirwa Abraham Mgena vs James Christian Basil (As Administrator of the Estate of the late Christian Basil Kiria)**. Thus, this ground has no merit too.

On the last ground of appeal, Mr Lundu averred that at the tribunal the appellant proved his case on the balance of probabilities since the respondent failed to state how he got the suit premise and how his father got the title which is in dispute. In the end, he prayed for the appeal to be allowed with costs and the decision of DLHT be set aside and the appellant be declared as the lawful owner of the disputed premise.

Replying to the last ground of appeal, Mr Paschal for the respondent stated that the respondent proved his case on the balance of probabilities. He added that the respondent presented his certificate of title at the tribunal and the same was not objected. Thus, there was no need to bring more witnesses. His argument was cemented with the case of **Paulina Samson Nawalanya vs Theresia Thomas Madaha,**





Civil Appeal No. 45 of 2017. Therefore, he prayed for the appeal to be dismissed with costs and for the decision of DLHT to be upheld.

In a brief rejoinder, Mr Lundu reiterated what had already been submitted earlier and added that the allegation that the previous certificate of title was lost and the certificate of title of the appellant was revoked has no proof.

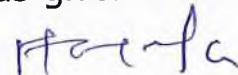
Having gone through the submissions made by both counsels for the parties, and the records of this appeal, the issue for determination is whether the appeal has merit or not.

I will start with the first and fourth grounds of appeal in which the appellant faults the Trial Tribunal Chairman to hold that the respondent is the lawful owner of the property in dispute while the application at the trial tribunal was not proved on the balance of probabilities. **Section 110 (1) of the Law of Evidence Act**, Cap 6, R.E 2022 provides that:

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."*

See also **Section 111** of Cap 6 R.E 2022.

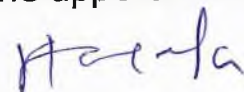
At the trial tribunal, the respondent submitted that he bought the house from his father Ibrahim Selemani Sindila and he was given a Certificate



of Occupancy. Thereafter, he changed it to the name of Abubakar Ibrahim Sindila and he has been paying tax on that land. He tendered exhibit P1 which was admitted as an exhibit without any objection from the appellant herein and his counsel.

On the other hand, the appellant herein stated that he rented the house from Ahmed Juma on 25/01/2017 as per exhibit R4. In 2018 he received notice from the respondent herein to vacate the house. He informed his landlord who told him not to vacate the house. Thereafter, in 2019 his landlord sold the house to him and gave him his right of Occupancy and a copy of judgment that he won the case on the disputed land. He further stated that the original Certificate of Occupancy was at the Bank (NMB) and it was in the name of Nada Mughusi Shauriy.

His evidence was supported with that of RW1 (Ahmed Juma Hamudi) who claimed to be the previous owner of Plot No. 57 "M" located at Babati. RW1 stated further that he once had a case with Ibrahim Seleman Sindila from 2008 at the District Land and Housing Tribunal of Babati which went up to the Court of Appeal of Tanzania in 2013 and the court declared him the lawful owner of the disputed property, Plot No. 57 "M". In 2019 he sold the same to the appellant herein. Therefore, the disputed property is now the lawful property of the appellant herein.





To prove his arguments, he tendered exhibit R2 which is a letter from land officer stating that his certificate of occupancy was genuine. And the certified copies of Certificate of occupancy were admitted as exhibit R3.

Having gone through the evidence of both parties this court noted that there are two Certificates of Title deed on the same plot which are Title No. 54321 L.O No. 286137 in the name of Ibrahim Selemani Sindila and Title No. 6794 L.O No. 121264 in the name of Nada Mughusi Shauriy. However, before this court, the respondent tendered the original certificate issued in 2017 whereas the appellant tendered a certified copy which was issued in 1990. This was supported with the evidence of land officer namely Japhary Beatus Mpelembwa who was summoned by the tribunal as an expert from the office of registrar of title. In his evidence he recognised both titles. However, he averred that the valid title bearing the name of Nada Mughusi who was registered in 1990. And his office started the procedure to revoke the 2<sup>nd</sup> title of Ibrahim Selemani Sindila.

In these circumstances, even if the tribunal believed that the respondent was properly allocated that land, the issue of double allocation would arise. The tribunal was supposed to apply the known principles relevant

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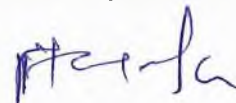
to issues of double allocation. This court in the case **Victor Sungura Toke vs Regina Chaula and 2 others**, Land Case No. 27 of 2014, (HCT, Dsm), observed that: -

*"Whenever there is double allocation of land, consideration has to be given to the person who was first allocated the land in dispute, unless there is a sufficiently cogent and qualitatively good version of the evidence to the contrary."*

The above is known as the priority principle. The Court of Appeal in several cases has insisted on the need to follow that principle. In the case of **Ombeni Kimaro vs Joseph Mishili t/a Catholic Charismatic Renewal**, Civil Appeal No. 33 of 2017, (CAT, Dsm) held: -

*"The priority principle is to the effect that where there are two or more parties competing over the same interest, especially in land each claiming to have title over it, a party who acquired it earlier in point of time will be deemed to have a better or superior interest over the other."*

Therefore, in the case at hand, the second allocation on the same piece of land whether by proper or improper authority yet was invalid in law because the second allocating officer had no land to offer to the respondent. For that reason, I agree with the appellant that the



respondent did not prove his case to the balance of probabilities and therefore this court finds merit on the first and fourth grounds of appeal.

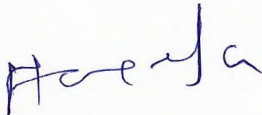
As the above discussed grounds dispose of the whole appeal this court finds no need to determine the remaining grounds.

In the event and for the reasons so stated, this appeal is meritorious, the same is allowed. I, therefore, proceed to set aside the judgment and decree of the trial tribunal. Consequently, the appellant is declared the rightful owner of the disputed piece of land. Considering the circumstances of this appeal and bearing in mind that the respondent acted in believing that he was properly allocated such land, then it is just and equitable to order each party to bear his/her costs.

Order accordingly.

**DATED** at **ARUSHA** this 29<sup>th</sup> day of May 2023.



  
**N.R. MWASEBA**

**JUDGE**