

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

AT BUKOBA

MISC. LAND APPEAL NO. 82 OF 2022

(Arising from Muleba District Land and Housing Tribunal's Application No. 23/2019 I)

**ATHANASIO KATALILA..... 1ST APPELLANT
HABIBU SWEDI.....2ND APPELLANT**

VERSUS

HUSSEIN RWABATWA..... RESPONDENT

JUDGEMENT

***Date Judgement: 19.05.2023
A.Y. MWENDA***

The decision of the District Land and Housing Tribunal in Land Application No. 23 of 2019 was made on 17.10.2022 in favor of the respondent one Habibu Swedi. The said Tribunal declared the respondent herein above as a lawful owner of the land in dispute which by then was in occupation of the first appellant hereinabove. The first appellant alleged to have acquired the said land through purchase in an auction. That auction arose from the court's order of execution of decree in favor of the 2nd appellant in Civil Case No. 4 of 2015 before Rushwa Primary Court, where the respondent was a judgment debtor. The appellants surfaced before this court challenging the lower tribunal's decision with three grounds of appeal. The said grounds reads as follows, that:-

1. That, the trial tribunal erred in law and facts without considering the evidence of the 1st appellant who was the bonafide purchaser of the suit land(sic).

2. That, the trial tribunal erred in law and facts without considering the Appellant proves the case as to the required standard than the respondent(sic)

3. That the trial tribunal decision is tainted with some illegalities. (sic)

On his part, the respondent filed his reply opposing the present appeal. The reasons advanced is that the respondent proved his case on the standard required before the trial tribunal.

When this matter was set for hearing, the appellants had the services of Mr. Dereck Zephurine, learned Counsel whilst the respondent appeared solo without legal representation.

Before he could start submitting, Mr. Zephurine abandoned the 3rd ground of appeal and retained the 1st and 2nd grounds which he informed the court that he was going to argue collectively.

In support of the 1st and 2nd grounds of appeal, Mr. Zephurine submitted that the 1st appellant is a bonafide purchaser of the land in dispute. He said that following an auction's advertisement to the public made by the Ward Executive officer, the 1st Appellant decided to participate. The learned counsel said that the said

advertisement followed an execution's order made in Civil Case No. 4 of 2015. On top of that the Learned Counsel highlighted various correspondences between the District Resident Magistrate I/C for Muleba and the District Commissioner as well as the ones between the District Commissioner and the Ward Executive Officer as executing officer. According to him, the said correspondences were regarding the execution order in Civil Case No. 4 of 2015 and how the same ought to be conducted. According to Mr. Zephurine, having attended at an area for auction, the 1st Appellant saw the respondent (the judgement debtor) who described boundaries of the land in question. Further to that he submitted that the trend on how the auction process was carried out attracted the 1st Appellant to participate in the auction in which he became the highest bidder. On that basis the learned counsel went on submitting that, being a bonafide purchaser, the 1st Appellant should be protected. To support this contention, he cited the Case of JOHN BOSCO MAHONGOLI VS. IMELDA ZAKARIA NKWIRA AND TWO OTHERS, LAND APPEAL NO. 101 OF 2016, HC (Unreported) and TOM MORIO V. ATHUMAN HASSAN & 2 OTHERS, CIVIL APPEAL NO. 179 OF 2019, at page 36-37.

To wrap up his submission, he prayed the present appeal to be allowed and the judgment and orders of the District Land and Housing Tribunal to be set aside. He also prayed the 1st appellant to be declared as the lawful owner of the land in dispute.

In reply to the submission by the learned Counsel for the appellant, the respondent submitted that the decision of Rushwa Primary Court in Civil Case No. 4 of 2015 did not please him and as such he filed Civil Appeal No. 19 of 2019 which ended in his favor by reversing the decision and its orders (i.e., Civil Case No. 4 of 2015). According to him, having won the said appeal he decided to sue the appellants claiming back his piece of land. He then prayed this court to dismiss the present appeal with costs.

In his rejoinder Mr. Zephurine said that the purported District Court's decision which reversed the judgment and orders of Civil Case No. 4 of 2015 was issued on 13.10.2016 when the auction was already completed. He added further in that during that time, there was no information that there was any pending appeal or any order for stay of execution. To conclude, he reiterated to his previous submission in chief by praying this appeal to be allowed and for a declaration that the 1st appellant is the lawful owner of the land in dispute.

That being the rival submissions by the parties, the issue for determination is whether the 1st Appellant is the bonafide purchaser of the suit land.

To respond to the raised issue, I found it pertinent to go through the records to satisfy myself on the legality of the so-called execution process.

As I have summarized above, following the judgement in Civil Case no 4 of 2015, an execution order was issued by the court instructing attachment and sale of the respondent's property/farm. The District Resident Magistrate I/C wrote a letter to

the District Commissioner dated 17.05.2016 attached with an attachment order. The said letter instructed the District Commissioner to supervise the execution exercise. On his part, the District Commissioner wrote another letter to the Ward Executive officer for Kabirizi instructing him to attach and auction the respondent's farm within 30 days from the date of that order. The Ward Executive officer for Kabirizi complied with the District Commissioner's instruction by advertising the auction to the public. After the said advertisement, the records are silent as to who was the highest bidder. But interestingly it is revealed from the records that the first appellant came into possession of the land in question after he had purchased it from the 2nd Appellant (A transfer deed between the duo is available in the records). If the 2nd Appellant sold the land to the 1st Appellant, then the 2nd Appellant (decree holder) participated in the auction. That was illegal as the law forbids the decree holder to participate in an auction without express permission from the court. This is by virtue of Order XX1 Rule 70 (1) of the Civil Procedure Code reads

"No holder of the decree in execution of which property is sold shall without express permission of the court for or purchase the property."

At the hearing of the present appeal, the learned counsel for the appellant submitted that the 1st appellant purchased the land in dispute in a legal auction. But as I have stated earlier on, the sale agreement between the 1st and 2nd

appellant implies that what the 2nd Appellant participated in the auction which is illegal in the eyes of the law. During his submissions, Mr. Zephurine cited the case of JOHN BOSCO MAHONGOLI VS. IMELDA ZAKARIA NKWIRA AND TWO OTHERS, LAND APPEAL NO. 101 OF 2016, HC(Unreported) and TOM MORIO V. ATHUMAN HASSAN & 2 OTHERS, CIVIL APPEAL NO. 179 OF 2019, but having read the same I found them distinguishable to the circumstances of this case. This is so because in the cited cases, the auctions were legal as opposed to the one in the present matter which was illegal.

From the foregoing observations, I found no merits in the present appeal and it is hereby dismissed in its entirety with costs. The decision of the District Land and Housing Tribunal' Application No. 23 of 2019 is hereby upheld.

It is so ordered.


A.Y. Mwenda

Judge

19.05.2023

Judgment delivered in chamber under the seal of this court in the presence of the Appellants Mr. Athanasio Katalila and Habibu Swedi and in the present of Mr. Hussein Rwabatwa the Appellant


A.Y. Mwenda

Judge

19.05.2023

