

IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISTRY

AT DODOMA

LAND APPEAL NO. 24 OF 2023

(Arising from Land Application No.89 of 2020 before District Land and Housing Tribunal for Dodoma at Dodoma)

JOINA MOMBO CHIPANHA.....APPELLANT

VERSUS

SIGFRID B. NGOWI.....RESPONDENT

JUDGMENT

14th August & 25th September, 2023

HASSAN, J.:

In the District Land and Housing Tribunal (DLHT), the respondent herein sued the appellant claiming to be a lawful owner of the disputed land located at Ntyuka Ward within Dodoma City Council. The application was heard and decided in favour of the respondent. The Appellant being unsatisfied with the said decision lodged this appeal on the following grounds: -

- 1. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts to pronounce decision*

without considering the facts that the land in dispute belongs to the appellant herein since 2018 thereof.

- 2. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by pronouncing decision in favour of the Respondent while failed totally to evaluate the evidences adduced clearly thereof.*
- 3. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by pronouncing decision without considering the principle of natural justice since respondent herein failed totally to attend tribunal sessions even once thereof.*
- 4. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by pronouncing irrational judgment since the respondent herein claimed only four acres (4) but the trial Tribunal gave him four acres and half (4 1/2) thereto.*
- 5. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by not considering the weight of the credible evidence adduced by the appellant's witness at the instead considered the*



evidences adduced by respondent's in trial Tribunal which were weak and contradictory thereto.

6. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts since pronounced irrational and tainted with irregularities and unprocedural thereof.

7. That, the District Land and Housing Tribunal for Dodoma at Dodoma erred in law and facts by pronouncing decision in favour of the respondent without considering the opinions of assessors thereof.

8. That, the District Land Housing Tribunal for Dodoma at Dodoma erred in law and facts since pronounced irrational decision thereof.

On 14th day of August, 2023, when the appeal was called on for hearing the appellant appeared in person while the respondent was represented by Sara Makonda, learned counsel.

The appellant prayed to adopt her grounds of appeal to form part of her submissions in support of the appeal and submitted further that, the respondent failed to prove that he was the rightful owner of the disputed land. That, she bought that land from the village authority as per

the procedure but the respondent had only claimed ownership of the land based on mutual trust. That, the respondent has his land located close to hers.

That, the respondent was looking for the person who sold the disputed land to the appellant for him to buy it at Tshs 6,000,000/= for the second time while the appellant bought it for 4,000,000/=. That, after that Mr. Zebedayo Mnyogo who sold the land to her approached her to compensate to her the sale price Tshs 4,000,000/= in order for him to keep the remaining 2,000,000/=. That the appellant refused the proposal since she has had the plot for years and she had already planted trees and other crops.

The appellant prayed the court to allow the appeal and set aside the decision of the DLHT for Dodoma with costs.

On his part, the respondent through his learned counsel submitted against the 1st ground of appeal that, the rightful owner of the disputed land was not the appellant but Zebedayo Chipanha who then sold the same to the respondent on the 9th day of November, 2018 as shown in exhibit P1. The court posed a question to the learned counsel as to whether the procedure to tender and admit an exhibit P1 was followed. The learned counsel responded that the procedure was not followed since

the exhibit P1 was not read over to the adverse party. That the procedure is applicable in both civil and criminal cases. Thus, since it was not read it was the respondent's submission that the same should be expunged.

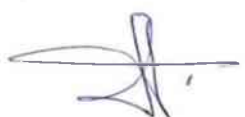
On the 2nd ground of appeal, the respondent submitted that, the trial Tribunal made a decision based on the strong evidence which shows that the respondent was the rightful owner of the disputed land.

On the 3rd ground of appeal, the respondent submitted that the respondent had legal representation and for that he was attending the court through his advocate.

On the 4th ground of appeal, the respondent submitted that he was awarded what he had claimed in his application.

On the 5th and 6th grounds, the respondent submitted that, the DLHT considered the relevant evidence and the respondent was able to prove that he is the rightful owner of the disputed land, hence the DLHT decided in his favour.

On the 7th ground of appeal, the respondent submitted that assessors' opinion was considered by the chairman as it is shown at page 28 of proceeding and at page 10 and 11 of the judgment.



In the light of what was submitted by the parties, and having carefully gone through the available record, the issue for determination is whether this appeal has merit.

The appellant is claiming to be the rightful owner of the disputed land by reasoning that the previous owner, Mr. Zebedayo Chipanha (PW2) who is also the Respondent's father had sold the land to her, prior to selling it to the respondent. That, the respondent has forged his sale agreement.

The record in the trial Tribunal shows that in the respondent testified to have bought the land from PW2 on the 9th day of November, 2018 for consideration of Tshs 6,000,0000/=. He alleged that, the agreement was that he would pay the money in two instalments, that is on the 9th day of November, 2018 he paid Tshs 2,000,000/= and finalised payment on the 19th day of October, 2019 by paying Tshs 4,000,000/=. The respondent tendered the sale agreement (exhibit P1), loss report of the original document of finalising payment and handing over document (exhibit P2) to support his allegations. The exhibits were not read in the trial Tribunal as well conceded by the Respondent's counsel. In **Robinson Mwanjisi and Three Others v. Republic [2003] T.L.R 218**; *"Whenever it is intended to introduce any document in evidence it should first be cleared*

*for admission\ and be actually admitted, before it can **be read out**, otherwise it is difficult for the Court to be seen not to have been influenced by the same." [Emphasis added].*

The importance of reading out exhibits after they are admitted in court was explained in ***Lack Kilingani v The Republic, Criminal Appeal No. 402 of 2015*** (unreported) where the Court stated:

"Even after their admission, the contents of cautioned statement and the PF3 were not read out to the appellant as the established practice of the Court demands. Reading out would have gone along way, to fully appraise the appellant of facts he was being called upon to accept as true or reject as untruthful."

The requirement of reading out the contents of exhibits after their admission in court is applies both in criminal and civil cases. The remedy thereto is to expunge the exhibits P1 and P2 from record of the respondent's evidence.

Thus, we remain with the evidence of three witnesses on the respondent's case, the respondent (PW1), the previous owner (PW2), Kedmon Zebedayo (PW3), who is also the appellant's brother and PW2's son, and Christina Mtete (PW4)] who is the Ward Executive Officer who

witnessed the sale agreement. All prosecution witnesses testified in support of the respondent's evidence that, PW2 sold the land to the respondent prior to selling the same to her daughter, the appellant at Tshs 4,000,000/=. Even the respondent made efforts to refund the appellant but his efforts bore no fruits. The appellant had three witnesses, Abel Jacob Mazengo (DW1), Piason Zebedayo (DW2) and Asinath Patrick Hosea (DW3) who was the legal representative for the appellant in the trial Tribunal under a special power of attorney. Both the DW1 and DW2 admitted that the respondent bought the land prior to the appellant.

Thus, there is no dispute that PW2 sold the land to both parties in this suit, one of whom is his daughter, the appellant. The evidence in record shows that the 1st person to buy the disputed land is the respondent who made payment in two instalments. All witnesses including the appellant's admitted that fact. PW2 also testified in support of the respondent's claim. The appellant's allegations that the respondent has forged the sale agreement has no legs to stand since she failed to prove the same in the trial court contrary to the position of the law that whoever alleges must prove as per section 110 of The Evidence Act, Cap 6.

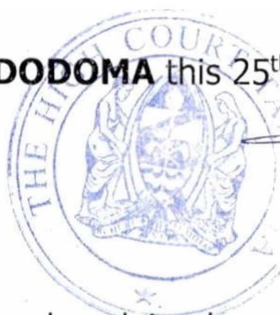
I find that the respondent evidence in the trial tribunal had more weight than of the appellant's, bearing in mind that the appellant's

witnesses also admitted the fact that the respondent bought first the disputed land. It is trite law that he who alleges has a burden of proving his allegation as per the provisions of section 110 of the Tanzania Evidence Act, Cap 6, R.E. 2002. It was therefore the duty of the appellant to prove the ownership of the suit land on a balance of probabilities as the standard of proof in civil cases. In **Paulina Samson Ndawanya v. Theresia Thomas Madaha, Civil Appeal No. 45 of 2017** (unreported), the Court stated that;

"It is equally elementary that since the dispute was in civil case, the standard of proof was on a balance of probabilities which simply means that the Court will sustain such evidence which is more credible than the other on a particular fact to be proved."

All said and done, the appeal is dismissed for want of merit with costs.

DATED at **DODOMA** this 25th day of September, 2023



S. H. HASSAN

JUDGE

Right of appeal explained

S. H. HASSAN

JUDGE

