

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

LAND APPEAL NO. 204 OF 2022

(From Original Application No 47 of 2022 of the District Land and Housing Tribunal
for Arusha at Arusha (Hon. Makombe, Chairperson, dated 31st day of October 2022)

NAOMI LOSIOKI APPELLANT

VERSUS

MALI LAIMER RESPONDENT

JUDGMENT

17th July & 09th October, 2023

KAMUZORA, J.

The current appeal emanates from the decision of the District Land and Housing Tribunal for Arusha at Arusha in Application No 47 of 2022. (herein to be referred to as the trial tribunal). Briefly, Appellant herein sued the Respondent herein for trespass into his pieces of land located at Tarakwa Street in Tarakwa Ward, within the region and City of Arusha. It was alleged that in 2019 the Respondent herein entered into the suit land and claimed to be the owner of the same without any colour of right. The Appellant instituted an application before the trial tribunal seeking to be declared lawful and the Respondent be declared a

trespasser thereof. He also sought for eviction order against the Respondent. The Appellant's application was dismissed and the Respondent was declared lawful owner of the suit land. Aggrieved by the decision of the trial tribunal, the Appellant knocked the door of this with 9 grounds of appeal hereunder reproduced;

- 1) That, the trial tribunal erred in law and fact in not holding that the purported purchase agreement for the suit lands did not meet any legal standard or requirements, including the essentials of a simple contract.*
- 2) That, the trial tribunal erred in law and fact in holding that the Respondent occupied the suit land for period exceeding 12 years, thus, legal owner of the same without sufficient evidence.*
- 3) That, the trial tribunal erred in law and fact in not taking into consideration the reality that the Respondent did not abide by the principle of buyer beware and did not conduct due diligence before purchasing the suit land.*
- 4) That, the trial tribunal erred in law and fact in not holding that no legal tittle over the suit land was transferred to the Respondent from the Appellant's husband since the latter had no tittle whatsoever to pass.*
- 5) That, the trial tribunal erred in law and fact in relying on the Respondent's mere statement that he is known by two names and that the seller was also known by the names MENYALI MEMANDOKI without any proof thereof.*

- 6) *That, the trial tribunal erred in law and fact in relying on the Respondent's weak and contradictory evidence thus, reaching to a controversial decision.*
- 7) *That, the trial tribunal erred in law and fact in not evaluating properly the Appellants evidence thus, reaching to a wrong decision.*
- 8) *That, the trial tribunal erred in law and fact in relying on the distinguishable case of **Issa Ahmed Vs. Abdul Mohamed**, HC Land case No 72 of 2010 in deciding case against the Appellant.*
- 9) *That, the trial tribunal erred in law and fact in disregarding Appellant's crucial evidence and omitting PW3's testimony.*

On the hearing date, Mr. Julius Sabuni appeared representing the Appellant while Mr. Nelson Merinyo appeared representing the Respondent. In submitting for the Appeal, Mr. Sabuni argued jointly grounds 3 and 4 and grounds 7 and 8. Other grounds were argued separately but the ground 9 was abandoned.

In his submission in support of the first ground, the counsel for the Appellant argued that the purported contract did not meet the legal requirement of a contract. He referred to essential elements of a contract stipulated by the law of contract; parties must be competent to enter into contract, free consent, lawful consideration with a lawful object and that, agreement should not have been expressly declared to be void by the law. He was of the view that since the Appellant's

husband denied to have entered into a contract with the Respondent, the element of free consent is missing. He added that the contract does not show if there was an offer or acceptance of the same or the buyer and seller of the land. He added further that the heading of the documents varies; from "*Makabidhiano ya shamba to mazungumzo ya Mitipo na Sanare to Kuuziana Shamba*". That, the alleged contract is confusing and does not stand as contract recognised by the law.

Arguing for the second ground based on limitation period, the counsel for the Appellant submitted that the trial tribunal made general statement by adopting the Respondent's evidence that the Respondent was in possession and use of the suit land for over 12 years. The Appellant contended that even if we assume that the agreements were valid, the agreement for shamba B allegedly bought in 2006, took effect in march 2008. That, counting from 2008 when the agreement when the sale took effect to 2019 when the suit was instituted, only 10 years has lapsed. To him, the trial tribunal was wrong by making general statement that the Appellant was barred by law of limitation for both farm as the suit was instituted after the lapse of 12 years. The Appellant's counsel also submitted that the cause of action arose when the Appellant discovered of trespass in 2019. He was of the view that

the Respondent could not claim adverse possession as there was no evidence to prove adverse possession.

On the third and fourth grounds, the counsel for the Appellant referred the rule buyer be aware and submitted that the Respondent was abound to take due diligence by consulting the Appellant neighbours bordering the land and the family members, children or clan leaders before buying the land. He added that, the Respondent admitted to know that the seller had a family; wife and children when he was purchasing the suit land thus, he knew that the suit land did not belong to the seller. The Appellant insisted that the Respondent is not a bonafide purchaser of the suit land and that there is no good title that passed to the Respondent from the seller. Reference was made to the case of **Farah Mohamed Vs. Fatuma Abdalah** [1995] TLR 205.

On the fifth ground, the counsel for the Appellant argued that, when the dispute arose in 2019 and reported at the Ward Tribunal, the Respondent was known as Mali Laimer. That, there is no record where he was referred as Sanare Laimer but the said names appeared in the written statement of defence (WSD). The counsel for the Appellant was of the view that bringing the new name was afterthought when the Respondent realised that his official names appeared in the purported

agreement. That, while the Respondent alleged that the seller is also known as Minyali Memandoki, the said seller denied being known by that name and the Respondent did not tender any affidavit showing that those names are used interchangeably.

On the sixth ground, the Appellants submitted that the trial tribunal failed to consider that there existed weak and contradictory evidence. The contradictions on variance of names in the documents tendered as they did not show the seller and the buyer. He contended that, the Respondent's claim over ownership and occupation of Shamba B was never collaborated by any witness as DW2 only claimed to have witnessed payment for shamba A but never knew the boundaries or exact location. He added that no reason was advanced by the Respondent for his failure to involve the seller's wife and family for the transaction. That, while the Respondent's WSD shows that shamba B was purchased in 2007 his testimony shows that it was bought in 2006 hence, contradiction on the Respondents' evidence.

On the seventh and eighth grounds, the counsel for the Appellant submitted that, there was no proper analysis of evidence by the trial tribunal. That, the Appellant's evidence was straight forward, credible and collaborated by all her witness that she was given the shamba by

her mother-in-law one Naimasie in the presence of PW2 and another person. That, the Appellant never sold the Shamba and when she was not around, she left the farm in the hand of her sister-in-law. The counsel for the Appellant insisted that since the Appellant's evidence was credible and heavier than that of the Respondent hence, appeal be allowed with costs.

Contesting the appeal, the counsel for the Respondent submitted that, the sale agreements which are disputed by the counsel for the Appellant were admitted before the trial tribunal without any objection. That, the agreement are legal documents recognised under the law and all the requirements under section 10 of the Law of contract section 64(1) (a) of the Land Act were met.

He insisted that the law requires all transaction to be in writing but there is no any specific format of a contract for transacting land. He explained that before the trial tribunal, the appellant's claim was not on the validity of the contract rather her claims was based on trespass. He insisted that the Appellant cannot raise issue over the valid of contract in this appeal since it was not heard before the trial tribunal. To cement on his submission the Respondent referred the case of **Paulina Samson Ndawavya Vs. Theresia Thomasi Madaha**, Civil appeal No 45 of

2017 Tanzlii. He was of the view that the Appellant failed to prove her case. He urged this court to consider the decision in the case of **Hemed Said Vs. Mohamed Mbilu** [1984] TLR 113 and hold that the DLHT was correct in concluding that the Respondent's evidence was water heavier thus, the same be upheld.

Regarding variance of names in the sale agreement, the counsel for the Respondent submitted that the Respondent's name was mentioned in his defence and when testifying under oath. He insisted that, the Appellant never pointed out any irregularity in the Respondent's evidence. He added that the Appellant failed to also demonstrate how the decision of the trial tribunal contradicted the evidence tendered before it. He prayed this court to be guided by the decision of the case of **Yasini Ramadhani Chang'a Vs Republic** [1999] TLR 89 on the circumstances under which the court can differ from the decision of the trial court.

Regarding the argument that the buyer beware, the counsel for the Respondent submitted that the Appellant was not a party to the contract. that, the Appellant cannot challenge the validity of the sale agreement after the lapse of 12 years for the contracts that were executed in 1992 and 2006. He insisted that the decision of the trial

tribunal was not based on time limitation only but on other issues as well. The Respondent maintained since there is no any ground of appeal which touched the credibility of Respondent's evidence, the Appellant's claim that the Respondent's evidence was weak or contradictory is baseless. The Respondent prays for the appeal to be dismissed with costs.

In rejoinder, the counsel for the Appellant reiterated his submission in chief and added that, the trial tribunal used two factors in deciding the matter, the time limit and validity of contract. The Appellant's counsel maintained that the Respondent's evidence was not enough to prove the case in his favour but the trial tribunal used the weak evidence of the Respondent in its decision.

I have gone through the record of the trial tribunal, the grounds of appeal and submissions for and against the appeal. Starting with the first ground, the Appellant challenged the validity of the contracts that were admitted before the trial tribunal on account that they did not meet the essential requirements of a valid contract. Looking to the said contracts admitted before the trial tribunal as Kielelezo D2 and D3, this court support the trial tribunal's findings approving the same as valid contracts. As well submitted by the counsel for the Respondent, there is

no clear format of contracts for land. However, what matters is that there must be parties capable of entering into agreement, a property and consideration amount.

In this matter, the Appellant claim that her husband did not sell the suit land and her husband also disputed to have sold the disputed land. However, the evidence reveals that there were sale agreements between the Appellant's husband and the Respondent. Such agreements basically meet the essential requirement of a contract for the Appellant's husband was capable of entering into agreement and both documents shows that consideration amount was paid. The contention by the Appellant that there was contradiction on the title of the alleged sale agreement is wanting. Despite having different title, the contents of the documents indicate clearly the purpose of its execution. The Appellant's husband exchanged land for money thus, a pure contract for land disposition. I therefore find this argument baseless.

Regarding the time the Respondent occupied the suit land, I agree with the counsel for the Appellant that having determined that the Respondent legally purchased the land, the trial tribunal could not assess Respondent's right based on adverse possession principle. The principle of adverse possession does not apply where there is proof of

purchase. It only applies where a person occupies someone's land without permission, and the property owner does not exercise his right to recover it within the time prescribed by law which is 12 years. Such person (the adverse possessor) acquires ownership by adverse possession. That was the holding of the Court of Appeal in Civil Appeal No. 222 of 2017 **Bhoke Kitang'ita Vs. Makuru Mahemba**. The Court insisted that adverse possessor have to be in uninterrupted occupation of the property.

That was not the case in the matter at hand because the Respondent did not claim unpermitted occupation of the suit land rather, he claimed to have purchased the suit land from the Appellant's husband. Therefore, the trial tribunal erred in invoking the principle of adverse possession in this matter.

However, adverse possession was not the only reason considered by the trial tribunal in concluding that the Respondent was the rightful owner of the suit land. The trial tribunal was also discussed the Respondent's right based on the sale agreement between the Respondent and the Appellant's husband. The trial court was satisfied that the Respondent legally purchased the suit land from the Appellant's husband, the holding which I also adopt. Having said that the

Respondent legally purchased the suit land, this court finds that the Appellant's claim that the Respondent trespassed in the suit land in 2019 cannot stand.

On the third and fourth ground of appeal, the Appellant claims that family members were not involved in the sale thus, the Respondent was bound by the principle of buyer beware. While I agree to the principle of buyer beware where the buyer is warned to conduct due diligence prior to the purchase of the land, I do not see if the Respondent disregarded such principle. There is no evidence presented which shows that Appellant's husband had no good title over the suit land which he could pass to another person. There is technical denial of even the seller himself over the sale of the suit land. This implies that the facts were set to deny the Respondent's right over the suit property and this had nothing to do with buyer beware principle. If the seller is denying selling the suit land, how can one claim that the Respondent did not involve family members. The record shows that the seller signed the sale documents by thumb print and no evidence denying the said thumb print. In my view, the trial tribunal was correct to conclude that there was legal sale of the suit property by the Appellant's husband to the Respondent.

On the fifth ground that the Respondent used different names, I find the Appellant's argument baseless. The record shows that the Respondent and the seller are relatives. They both know each other and they know if anyone uses more than one name. The Respondent pleaded in his WSD that he is also known by the names Sanare Laimer. Since no one else was referred using the names found in the document, it cannot be said that the suit becomes incompetent merely because the Respondent or the seller was referred by more than one name.

On the sixth ground, I find the pointed contradiction and weakness in Respondent's evidence, unwarranted. The contradiction in names is already discussed above. The evidence clearly proved ownership of both two pieces of land, the boundaries and location were well indicated in the pleadings. The argument that the wife was not involved cannot stand where the seller denies selling the suit land and where no evidence showing that the disputed land was a matrimonial property. From her evidence the Appellant claimed to have inherited the land from her mother-in-law. Thus, the contention that she was to be informed as a wife is baseless.

On the 7th and 8th grounds, the Appellant faults the trial tribunal for failure to properly evaluate the evidence in record. Going through the

judgement of the trial tribunal, this court is satisfied that the trial tribunal properly evaluated and analysed parties' evidence before it came to its decision.

In addition to what was discussed by the trial tribunal, the record shows that while the Respondent claimed to have purchased the suit land from the Appellant's husband, the seller denied without indicating how his finger print found its way in the sale documents. There was no claim for forgery as with regard to his signature and to me, this signifies that he entered into agreement with the Respondent. While the Respondent proved how he got the suit land, the Appellant only claimed inheritance without proof of the same.

In concluding, it is my firm stand that the Respondent discharged the burden under section 110 and 111 of the Evidence Act Cap 6 R. E 2019 by proving case in his favour. See also the decision of the Court of Appeal of Tanzania in the case of **Jasson Samson Rweikiza Vs. Novatus Rwechungura Nkwama**, (Civil Appeal No. 305 of 2020) [2021] TZCA 699 (29 November 2021).

In the upshot the appeal is devoid of merit and it is hereby dismissed with costs.

DATED at **ARUSHA** this 09th day of October, 2023



A handwritten signature in blue ink, appearing to read "D. Kamuzora", is written over the printed name.

D.C. KAMUZORA

JUDGE

