

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

AT DODOMA

LAND CASE APPEAL NO. 35 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Dodoma
at Dodoma in Land Application No.106 of 2018)

ELIAS TAWA.....APPELLANT

VERSUS

APOLINALI MASANIKA MIRAMBO..... RESPONDENT

JUDGMENT

27/6/2023 & 26/9/2023

KHALFAN, J.

The Appellant, Elias Tawa, sued the Respondent, Apolinali Masanika Mirambo, for trespassing in the District Land and Housing Tribunal for Dodoma at Dodoma. At the end of the trial, the trial tribunal dismissed the suit for non-joinder of the buyer of the suit land by the Appellant and lack of locus standi on the Respondent. Aggrieved with the trial tribunal's decision, the Appellant has come to the Court by way of an appeal.



The Appellant's Memorandum of Appeal is made up of three (3) grounds of appeal praying the Court to allow the appeal with costs. The Respondent contested the appeal and he filed his reply to the Memorandum of Appeal which is made up of three (3) grounds against the appeal praying the Court to dismiss the appeal with costs.

When the appeal was heard in the Court on the 27th day of June, 2023, the Appellant was in the service of Mr. Sosteness Mselingwa, the Learned Counsel, while the Respondent was represented by Ms. Josephine Mnzava, the Learned Counsel.

Submitting in support of the appeal, in respect to the first ground of appeal, the Appellant argued that he proved the case on the probabilities since he brought three witnesses including himself. On the second ground of appeal, the Appellant submitted that the trial tribunal erred in law and fact to struck out the application *suo moto* basing on the fact on non-joinder of the buyer without considering that the Respondent never mentioned/knew the buyer. On the third ground of appeal, the Appellant submitted that the trial tribunal erred in law and fact to struck out the application *suo moto* basing on the issue of locus

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standi whilst the Respondent himself believes that the suit land belongs to him. The Appellant prayed the Court to allow the appeal with costs.

The Respondent contested the appeal by adopting his reply to the Memorandum of Appeal. On the first ground of appeal, he submitted that the trial tribunal decided the matter in accordance with the law as it can be so learnt on page seven (7) of its decision where it guided the parties on the procedure to be adhered to.

In response to the second ground of appeal, the Respondent submitted that it is the position of the law that a necessary party must be joined in a suit as rightly guided by the trial tribunal on page three (3) of its decision, that in the instant case, it was mandatory that '*Mswahili*' be joined. To cement his argument, the Respondent referred the Court to the case of **Car Truck Distributors Limited v. MKB Security Company Limited and Another** (HC) Land Case No. 169 of 2021, Dar-es Salaam Registry (unreported).

Responding to the third ground of appeal, the Respondent submitted that the position of law is that a person cannot stand in the place of the deceased unless he is appointed as an administrator of his estate of that particular deceased person as rightly stated by the trial

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tribunal on page three (3) of its decision. The Respondent thus submitted that the appeal was brought prematurely from an interlocutory order and prayed the Court to dismiss it with costs.

In rejoinder submissions, the Appellant maintained his submissions in chief and added that as per the evidence on record, there is no implications on the existence of so alleged buyer '*Mswahili*', and further that the Respondent had not sold any land to that '*Mswahili*'. The Respondent further stated that the appeal did not arise from an interlocutory order because it was in the instant case delivered by the trial tribunal.

The Appellant's testimony in the trial tribunal was to the effect that the suit land was given to him by his late father in 1972 before his demise in 1974. A fact which was consistently testified by the two Appellant's witnesses (PW2 and PW3). In the circumstances, the Court is of the considered reasoning that the trial tribunal misdirected itself when it held that there was no any piece of evidence tendered before it to prove the said transaction between the Appellant and his father.

The Respondent allegedly testified that he was the owner of the suit land because the same belonged to his late father, who after his

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death, left it to his two wives who later also passed away. Then he began to use it. That, later he (the Respondent) decided to sell (in writing) a portion of the land to one person whom he does not remember his name thus termed him as 'Mswahili', and that 'Mswahili' buyer never used the same. The Respondent summoned only one witness (DW2) whose testimony differed from that of the Respondent since DW2 testified that the Respondent was given the suit land by his both parents.

At any rate, the Respondent could not therefore have interest in the suit land as rightly observed by trial tribunal on page four (4) of its judgement since he did not testify how the same passed to him upon administration of the estate of his late father. But the Appellant had in the circumstances the necessary locus because he was bequeathed the suit land by his father as a gift a fact which was also noted by the trial tribunal on page three (3) of its judgement.

Basing on the evidence adduced by both parties in the trial tribunal, as briefly reproduced herein above, the Court is of the considered position that since in civil cases the Courts of law and the land tribunals are enjoined to decide the civil suits basing on the balance

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of probability, in the instant case, the Appellant's evidence in the trial tribunal was credible and had weight compared to that of the Respondent.

The Court is of the further considered position that the trial tribunal misdirected itself when it held that non-joinder of the buyer '*Mswahill*' in the instant suit was fatal because the Appellant had no dispute against such buyer. Taking into account, even the Respondent and his witness testified to not even remember the name of that anonymous buyer, the same remains as an afterthought as there was no proof of this fact.

As a matter of fact, and legally speaking, the Respondent's case in the trial tribunal was too weak to prove the ownership of the suit land compared to the Appellant's case which was capable of proving the legal ownership of the suit land which the trial tribunal objectively considered and evaluated the evidence adduced by both parties.

Accordingly, the appeal is found meritorious and therefore allowed. The impugned decision and decree of the District Land and Housing Tribunal for Dodoma at Dodoma are hereby severally and together nullified, quashed and set aside accordingly. In lieu thereof, the

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Appellant is hereby declared the legal owner of the suit land. In the circumstance, each party shall bear its own costs.

It is so ordered.



[Handwritten Signature]
F. R. KHALFAN
JUDGE
26/9/2023