IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF DODOMA

AT DODOMA

LAND APPEAL NO. 41 OF 2022

(Originating from Land Application No.133/2021, District Land and Housing Tribunal for Dodoma)

JOHARI SELEMANI SELEMANI..... APPELLANT

MWAMBA AUCTION MART..... .....APPELLANT

VERSUS

BLAS SEBASTIAN ELIAS.....RESPONDENT

JUDGMENT

Date of last Order: 29/09/2023

Date of Judgment: 19/10/2023

A.J. MAMBI, J

In the District Land and Housing Tribunal, the respondent successfully sued the appellants in Land Application No.133/2021.This means that, the District Land and Housing Tribunal the Tribunal made the decision in favour of the respondent. Having aggrieved by the decision of the District Land

and Housing Tribunal In her appeal, the appellant stepped to this court by preferring four grounds of appeal as follows:

1. That, the Trial Tribunal erred in law and fact by delivering the judgment in favour of the Respondent despite the strong evidence of the Appellants who established that their acts and deeds were by operation of the law which were never appealed against.
2. That, the Trial Tribunal erred in law and fact by differing with the assessors opinion without assigning strong reason to differ with them in the fact that the house in dispute was sold by an order of court.
3. That, the Tribal Tribunal erred in law and fact by proving the case against the Appellants who are acts and by deeds have been involved by the court orders.
4. That, the Trial Tribunal erred in law by delivering the judgment which is against justice and equity.

During hearing, the appellants were represented by the learned counsel Mr Kalonga while the respondent appeared under the service of Adrian Ndunguru.

The appellant counsel Mr. Kalonga briefly submitted that the trial tribunal was wrong as the appellants evidence was based operation of law. He averred that the 2nd appellant was given permission to sell the disputed house in the land after the 1st appellant won the case against the 3rd respondent at the Tribunal namely Iddi Mabala Yazidi. He argued that the

house belonged to Iddi Mabala Yazidi. Mr. Kalonga further submitted that after the decision of the primary court the second respondent sold the property in dispute. He contended that instead of objecting the auction, the respondent instituted the fresh case at the Tribunal. He was of the view that it was wrong for the respondent to institute the case at the Tribunal while the trial court had made an order.

Addressing the second ground of appeal, the learned counsel for the appellant submitted that, all assessors opinioned that the house was properly sold but they wonder why the tribunal chairman differed with assessors without strong reason. He was of the view that, the decision of the tribunal is against justice and equity as the appellants were ordered to pay costs while they were not responsible.

In response, learned Counsel for the respondent Mr. Ardian submitted that the respondent was not part of the suit at the primary court and was also not part of the contract that had to the decision of the primary court. He argued that the primary court of Chamwino had no power to attach the house of the respondent. He was of the view that, the court was required to find the property of the third respondent (Iddi Mabala) who secured that loan from Johari Selemani (1st appellant). He thus argued that, the primary

court attached the property that did not belong to the judgment debt. The respondent counsel averred that the attachment was made on 2021 while the respondent was the bonafide purchase in 2020. He argued that the respondent submitted the document from the local government showing he bought the house as per exhibit 1 admitted at the court. He was of the view that, by the time the court made an order, the respondent was already a bonafide purchaser.

The learned Counsel further submitted that, as bonafide purchaser, the respondent is protected by the law. With regard to the issue of assessors the learned Counsel for the respondent submitted that, the tribunal chairman gave his reason in his judgment at page 15. As per section 24 of Act No. 2 of 2002 (land Disputed Settlement). He was of the view that the law does not say anything about strong reason as claimed by the appellant counsel.

The learned Counsel further submitted that the tribunal chairman followed Land Regulation 19(2) of 2003. He argued that d, the assessors submitted their opinion in writing on 24/4/2022 before the judgment was read on 16/6/2022. He was of the view that, since the house was being owned by

the respondent and not Iddi, the primary court of Chamwino had power to attach it.

I have carefully gone through the grounds of appeal and submission by both parties. The main issues in my considered view is whether the respondent was the lawful owner of the disputed land as decided by the trial tribunal. The other issue is whether the trial tribunal chairman departed from the opinion of assessors with reasons.

Starting with an issue of assessors, I am aware that the law requires the Tribunal Chairman to record and consider the assessors' opinion before making his decision and in case of departure from the assessors' opinion he/she must give reasons. 23(1) and (2) of the Land Disputes Courts Act, Cap. 216 [R.E. 2019] provides that;

> *"23 (1) The District Land and Housing Tribunal established under section 22* ***shall be composed of one Chairman and not less than two assessors.***
>
> *(2) The District Land and Housing Tribunal* ***shall be duly constituted*** *when* ***held by a Chairman and two assessors*** *who* ***shall*** *be required to*

give their opinion before the Chairman reaches the judgment."

In the similar way, Regulation 19(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 provides that;

> *"Notwithstanding sub-regulation (1)* ***the Chairman shall, before making his judgment,*** *require every assessor* ***present at the conclusion of hearing to give his opinion in writing*** *and the assessor may give his opinion in Kiswahili."*

It is trite law that the chairman of the DLHT is not bound by the opinion of the assessors but where he differs, he has to give clear reasons as per section 24 of Cap 216. The law (the Land Disputes Courts Act, Cap 216 [R.E.2019] under section 24 clearly provides that:

> *"In reaching the decision the Chairman shall take into account the opinion of the assessors but shall not be bound by it, except that the Chairman* ***shall in the judgment give reasons for differing with such opinion".***

The word **"shall"** under the last paragraph implies mandatory that where it appears the chairman has differed with the opinion of the assessors he is required to just give reasons. The law does not specify the extent of the reasons to be given by the chairman in case he differs with his assessors. Indeed, the judgment of the tribunal at page 15 shows that the chairman differed from the opinion of his assessors, but he gave his reasons. In his

decision while departing from the assessors' opinion, the chairman had this to say;

> *" I have heard their opinion but in do not joined my hands with the same as the same have not pointed out whom exactly is the lawful owner of the suit land indeed the applicant has proved the case compared to the respondents."*

Reading between the lines on the above paragraph, the above reasons made by the chairman are self-explanatory. In this regard the claim by the appellants that the chairman differed from the opinion of his assessors without reasons has no merit.

Looking at the evidence, it is on the records that the trial tribunal held that the respondent was the lawful owner of the land in dispute since he legally bought that land with the house. My analysis from the evidence of both parties reveals that the respondent is the lawful owner of the disputed house. It is also on the records that PW1 one BLAS SEBASTIAN ELIAS in his testimony testified that he purchase the suit premise from the 3rd respondent one Iddi Mabala Yazidi and transaction was done at the office Ward Executive Officer where they executed the sale agreement. Indeed the records show that the sale agreement was tendered and admitted as exhibit P1 and the appellant did not object. The evidence of PW1 is also

clear that having bought the land he stated to develop the land. It is also on the records that the land in dispute which has house show that all bills of water Bills and electricity read in the name of the respondent. Indeed, the documents showing bills of water and electricity with the names of the respondent were tendered at the tribunal the and admitted as exhibits P2 collectively. These in my view the documents showing payment of bills on the name of the respondent are one of the documentary evidence to prove that the respondent was the legal owner of the house.

The evidence of PW1 is corroborated by the evidence of PW2 who witnessed the sale agreement. PW2 in his evidence testified that the seller was the 3rd respondent who sold the property to the respondent. PW2 further testified that the execution of the sale agreement was done in his office where the seller paid Tsh 15,000,000.00. PW2 further testified she witnessed the sale agreement with one Ester Mwigani who is the WEO.

Additionally, the evidence of PW1 and PW2 was further corroborated by the evidence of one ALLY KHAMIS BAKARI (PW3), who testified that the respondent purchased the suit premise which was unfished house and he paid Tsh 15,000.000.00 and executed the sale agreement.

In my view the evidence of PW1, PW2 and PW3 who testified similar testimony is reliable with high probative value as compared to the evidence of the appellants.

Basing on my observation and above reasoning, I am of the settled view that since the respondent was legally allocated the land in dispute by the Singida Municipality which is the local government authority with mandate to allocated surveyed land within the municipality of Singida the respondent had legal ownership over the disputed area. Therefore, since the appellant was claiming that the land belonged to her and the respondent is not the owner of the land, it is the duty of the appellant to disclose all the facts. Basing on the analysis of the evidence from the trial court in line with the grounds of appeal and submission made by both parties, I am the considered view that the respondent at the trial tribunal proved his ownership on the disputed land as per Section 110 and 111 of the Evidence Act Cap 6 [R.E. 2019]. Indeed, section 110 of the Evidence Act, cap 6 [R.E.2019] provides that:

> *"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by law that the proof of that fact shall lie on any other person"*

The court in ***NATIONAL BANK OF COMMERCE LTD Vs DESIREE & YVONNE TANZANIA & 4 OTHERS, Comm. CASE NO 59 OF 2003 ( ) HC DSM,*** observed that:-

> *"The burden of proof in a suit proceeding lies on their person who would fail if no evidence at all were given on either side".*

The importance and extent of proof in Civil Cases was well underscored by the court in ***MCLVER V. POWER [1998] PFIJ No 4, Prince Edward Island Supreme Court,*** Trial Division where Moc Donald C.J. TD started that:

> *"In any Civil Case the plaintiff* ***must prove their case on a balance of probabilities if they are to succeed.*** *This means that the plaintiff must prove that his facts tip the scale in his favour even if it is only 51% probability that he is correct"*[emphasis is mine].

Various authorities have clarified the meaning of balance of probability. A good example is the remarkable decision of the court (a persuasive decision) in ***RE H (MINORS) [1996] AC 563,*** where Lord Nichollas observed that:

> *"The balance of probability standard means that the Court is satisfied an event occurred if the Court considers that on the evidence the occurrence of the event was more likely than no"*

From my analysis and observations, I find the appellant's grounds of appeal are non-meritorious and I hold so. In the premises and from the foregoing reasons, I have no reason to fault the findings reached by the District Land and Housing Tribunal rather than upholding its decision and it is hereby declared as done by the decision of the District Land and Housing Tribunal that the respondent is the lawful owner of the suit land. In the event I make no orders as to costs. Each party to bear its own costs.

A. J. MAMBI

JUDGE

19.10. 2023

Judgment delivered in Chambers this 19th day of October, 2023.

A. J. MAMBI

JUDGE

19.10. 2023

Right of appeal explained.

A. J. MAMBI

JUDGE

19.10. 2023