

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF TABORA

(LAND DIVISION)

AT TABORA.

LAND APPEAL NO. 23 OF 2023

(Arising from Land Application No. 28 of 2019 of the District Land and Housing Tribunal of Tabora at Tabora)

DOTTO HASSAN 1ST APPELLANT

FESTO IBRAHIM 2ND APPELLANT

MIRAJI KAGOMA 3RD APPELLANT

MAGAYANE WILA 4TH APPELLANT

VERSUS

MOHAMED SHABANI RESPONDENT

RULING

Date of Last order: 19/09/2023

Date of Ruling: 16/11/2023

MATUMA, J

This is an appeal against the Judgment of the District Land and Housing Tribunal for Tabora in Land Application no. 28 of 2019. It was the respondent Mohamed Shabani who instituted the case at the trial tribunal

against the appellants herein claiming for ownership of a piece of land situated at Kidatu area within Tabora Municipal.

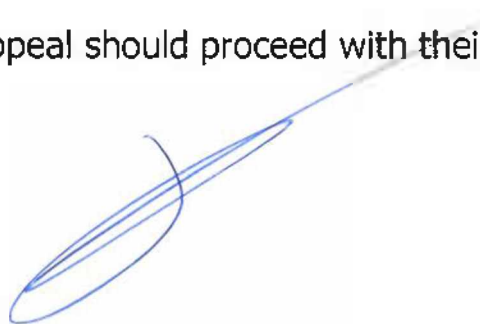
After a full trial the trial tribunal adjudged for the respondent after having been satisfied that the respondent bought the suit land from the 4th appellant and that such 4th appellant was the lawful owner and thus passed a good title to the respondent.

The appellants as are seen on the Memorandum of appeal lodged this appeal with a total of eight (8) grounds impeaching the trial court judgment.

At the hearing of this appeal, only the 2nd appellant was present and had the legal service of Mr. Timothy Sichilima learned advocate. The respondent was present in person.

Having inquired the whereabouts of the 1st, 3rd and 4th appellants, advocate Timothy Sichilima informed this court that they did not appeal and it was the 2nd appellant alone who prepared this appeal and made such other appellants parties to this appeal because he has some grievances against them.

The respondent on his part argued that the appellants as they appear in the memorandum of appeal should proceed with their case.



In the circumstances I invited the parties to address me on the competence of this appeal having been filed in the names of the appellants who are not even aware of it.

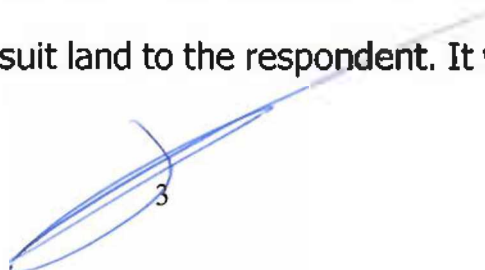
Mr. Timothy Sichilima learned advocate submitted that the absent appellants are in collusion with the respondent to con the 2nd appellant and that is why they have seen it important to join them in this appeal although they themselves did not join the 2nd appellant to make this appeal.

The respondent simply submitted that he doesn't know the law and left the court to determine the competence or otherwise of this appeal.

It is an elementary principle that appeals are lodged by an aggrieved party to the proceedings of the lower court or tribunal. If a party to the proceedings is not aggrieved by the judgment, order or ruling is not forced to appeal nor any third party is entitled to appeal on behalf of a party who is not aggrieved.

In the instant matter all the appellants were respondents at the trial tribunal but did not stand together. They were fighting against each other although they were all respondents because they didn't share the same interest in the suit land.

To make it clear, the facts speak by itself in that the 4th appellant herein on the 14/12/2011 sold the suit land to the respondent. It was however later



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discovered that the 3rd appellant had on the 28/10/2011 sold the same land to the 2nd appellant who in turn sold it to the 1st appellant.

The 3rd appellant did not dispute to have sold the suit land to the 2nd appellant but claimed to have sold it as the property of his parents;

"Nakumbuka ilikuwa tarehe 28/10/2011 niliuza eneo la shamba la wazazi wangu kwa Festo Ibrahimu mjibu maombi na. 2 eneo lenye urefu wa hatua 25 kwa upana wa hatua 17."

The 4th appellant also did not dispute to have sold the same land to the respondent herein but claimed that he sold it as his own property and not a family property.

The trial tribunal found that the suit land was the lawful property of the 4th appellant and he legally sold it to the respondent herein. It further ordered the 3rd appellant Miraji Kagoma to return back the purchase money to the 2nd appellant and the 2nd appellant was ordered to return the purchase money to the 1st appellant.

It seems that the 3rd appellant was not aggrieved with the order against him to return the purchase money to the 2nd appellant but the 2nd appellant was aggrieved with the order against him to return the purchase money to the 1st appellant.

It is also apparent that the 1st appellant was not aggrieved with the findings that the 2nd appellant had no title to pass to him and thus satisfied with the order that the purchase price he paid to the 2nd appellant be returned to him.

Only the 2nd appellant was dissatisfied with the decision and is seeking to disturb it. It is my firm finding that since the rest of the appellants were not aggrieved with the trial tribunal's decision, it was wrong to use their respective names as appellants. Only the aggrieved party may appeal as against all those other parties in the proceedings who were satisfied with the decision.

In that regard the aggrieved party should turn the rest of the parties into being respondents so that he serves them with his grounds of grievances for them to answer.

That is the principle enshrined in the Constitution under Article 13 (6) (a) which provides that;

"when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing. . . ."

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In the matter at hand the 1st, 3rd and 4th appellants are absent. As such Order XXXIX Rule 17 of the Civil Procedure Code Cap 33 R.E 2019 requires dismissal of the appeal for want of prosecution.

If I have to dismiss their appeal, then they shall not have opportunity to be heard and that would require the trial court decision which was made either in their favour or against their favour to remain undisturbed without affording them opportunity to be heard.

The appeal by the 2nd appellant alone cannot therefore stand to change the impugned decision to the detriment of the 1st, 3rd and 4th appellants who are not parties to this appeal. The reason is obvious; the 4th appellant successfully established at the trial tribunal that the suit land was his own property and lawfully sold it to the respondent.

We cannot on this appeal overturn the trial court decision to that effect without the 4th appellant being made a party herein to defend his interests and to accord the respondent to have a substantial remedy against him in case this court finds against the trial court's decision.

As I have said earlier, the 2nd appellant instead of purporting to join the 1st, 3rd and 4th appellants as co-appellants should have brought them as respondents to establish his grievances against them and to spare them with consequentials in case the court determines against the appeal.

Dealing with the matter of similar nature this court at Kigoma in the case of ***Nyamunini Ntarambigwa versus Simon Kikoti, Misc. Land Application no. 19 of 2021*** held at page 7 that;

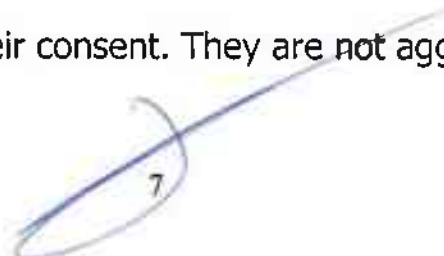
"This is very dangerous in the administration of justice in case an adverse order is issued against the party who although appears in the matter but was not aware of the matter altogether."

In the instant matter advocate Timothy Sichilima ought to have advised the second appellant accordingly. He abrogated his duty and drew the incompetent appeal by purporting to have been instigated by the appellants who are not even aware of this appeal.

In the case of ***Daudi Bujenjedeli and two others versus Village Council of Mnanila Village, Misc. land Application no. 53 of 2020***, this court at Kigoma speaking on a matter of less similar facts to the instant one held;

"It is very dangerous for advocates to act on instructions of third parties to a suit or case without knowledge and consent of the real parties. Parties to the suit or case have to abide with the outcome of the matter. Nobody should be made as an applicant or plaintiff unless himself or his recognized agent so desires."

In the like manner, the 1st, 3rd and 4th appellants should have not been made appellants without their consent. They are not aggrieved with the trial

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court's decision and not appealed. It is thus wrong to force them to challenge such decision. Only he who is aggrieved should do so and those who are not aggrieved be left to defend such decision by being made opponents to the appeal.

With the herein above observations and analysis, I find this appeal incompetent for it does not bear the real appellants. I accordingly stuck it out. Since the respondent is yet to file any document (reply), I grant no costs.

It is so ordered.



MATUMA
JUDGE
16/11/2023

Order: Ruling delivered in chambers in the presence of the second appellant and his advocate Mr. Timothy Sichilima and in the absence of the rest appellants and the respondent.



MATUMA
JUDGE
16/11/2023