

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND APPEAL NO. 34 OF 2023

(Arising from District Land and Housing Tribunal for Geita in Land Application No.35/2019, Originating from Kalangalala Ward Tribunal in Case No.34/2016)

TWARIBU AMRI APPELLANT

VERSUS

HIDAYA SELEMANIRESPONDENT

JUDGMENT

29/9/2023 & 27/10/2023

ROBERT, J:-

This appeal arises from a decision of the District Land and Housing Tribunal (DLHT) for Geita in Land Application No. 35/2019. The appellant, Twaribu Amri, challenges the decision that declared the respondent, Hidaya Selemani, the lawful owner of a parcel of land measuring $\frac{3}{4}$ of an acre located at Magogo area Bombambili ward in Geita District (disputed land). The appellant contends that the DLHT erred in law and fact in its findings and seeks the reversal of the decision on four grounds.

The factual background of this matter reveals that, the respondent claimed ownership of the disputed land, alleging to have purchased it from Tabu Masudi in 2004. The appellant, however, asserted that he acquired the

land from Tabu Masudi in 2005 and presented a sale agreement (DE1) as evidence. The DLHT found in favor of the respondent, declaring her the lawful owner of the disputed land and ordering the appellant to vacate the premises, pay compensation, and cover costs. Aggrieved, the appellant preferred an appeal to this Court armed with four grounds of appeal as follows:

- 1. That, the Tribunal erred in law and in fact in reaching its decision of ordering the Appellant to vacate the disputed premise and to pay compensation to the Respondent without considering that the contract produced as exhibit to show land ownership of the Respondent was forged.*
- 2. That the Tribunal erred in law and in fact in reaching its decision by refusing to accept exhibits produced by the Appellant on the reason that those exhibits were not paid for the Tribunal.*
- 3. That the Tribunal erred in law and fact to determine the matter in favor of the Respondent without considering the fact that the Appellant 's ownership over the land in dispute was never contested by the Respondent for over ten years since the Appellant started to reside on that land.*
- 4. That the Tribunal erred in law and fact to determine the matter in favor of the Respondent without considering the fact the Respondent never disputed her signatures that appears in the sale agreement of the disputed land which the Respondent was a witness.*

When this Appeal came up for hearing the appellant appeared in person whereas the Respondent was represented by Mr. Siwale, learned counsel. At the request of parties, hearing of the appeal proceeded by way of written submissions.

Starting with the first ground, the appellant contends that the Tribunal erred by ordering them to vacate the disputed premises and pay compensation to the respondent without considering that the sale agreement produced by the respondent was forged. The appellant argues that the respondent's sale agreement (PE1) was allegedly forged, and the Tribunal failed to give due weight to this claim.

The respondent, on her part, counters that the appellant failed to provide cogent evidence to support the claim of forgery. She argues that such serious allegations of fraud require specific pleading and a heavier burden of proof, which the appellant did not fulfill. Further to that, she asserts that the sale agreement she presented was backed by the evidence of the vendor (PW2), who sold the disputed land to the respondent in 2004.

Upon careful consideration of the arguments presented by both parties and a thorough review of the evidence on record, this Court is in agreement

with the findings of the DLHT. The appellant failed to provide substantial evidence to substantiate his claim of forgery. The sale agreement presented by the respondent was supported by the testimony from the vendor (PW2), Tabu Masudi, who confirmed the transaction. The appellant's assertions regarding the alleged forgery remain unsubstantiated. The DLHT's decision on this ground is upheld.

Coming to the second ground, the appellant argues that the DLHT erred by rejecting exhibits, specifically a court decision acquitting him of forgery charges because these exhibits were not paid for. He referred the Court to the Written Laws Amendments Act No. 8 of 2018, which allows courts or tribunals to overlook technicalities. The respondent contends that the rejection of the exhibit was justified since the appellant did not follow the proper procedure for tendering documents in the tribunal.

Having considered the arguments of both parties and the records of this matter, this Court noted that, the Tribunal's rejection was based on the procedural requirements of Regulation 10(3)(a) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 G.N. 174 of 2003** which requires the Tribunal before admitting any document to ensure that a copy of the document is served to the other party.

Further to that, the Tribunal noted that the document was not attached to the list of additional documents and not paid for as an exhibit. The Court finds and holds that, the rejection of the said exhibit by the DLHT was justified under the cited regulations which governs the tribunal proceedings. The appellant failed to comply with the procedural requirements for tendering exhibits, and therefore, the rejection was not erroneous. While the overriding objective is essential, it should not be used as a blanket excuse to admit any document without following the rules of admissibility. I therefore find no merit in this ground of appeal.

On the third ground, the appellant asserts that the Tribunal erred by not considering the fact that the respondent did not contest his ownership of the disputed land for over ten years. He argued that the appellant peacefully resided on the land from 2005 to 2016 without interference from the respondent.

In her counter-argument, the respondent disputes the appellant's claim, stating that there is no evidence to support the peaceful enjoyment of the land. She argued that the appellant's presence on the land was initially welcomed by the respondent, but the relationship soured when the appellant refused to vacate the land and claimed ownership.

Upon review of the evidence in record, this Court finds that the appellant's initial entry onto the land was with permission of the respondent. The tribunal correctly evaluated the evidence and determined that the appellant's occupancy turned contentious in 2016, leading to legal disputes. The appellant's claim of adverse possession is legally untenable due to his status as an invitee, and therefore, the Tribunal's decision to disregard this aspect cannot be challenged. That said, I find no merit in this ground of appeal.

Coming to the last ground of appeal, the appellant contends that the Tribunal erred by not considering that the respondent did not dispute her signatures on the sale agreement. He argued that the respondent's failure to contest her signatures indicates the authenticity of the document.

On her part, the respondent asserts that criminal proceedings were initiated against the appellant, demonstrating a dispute not only over signatures but the entire document. She claimed that the sale agreement itself was dubious, being written by two different persons on different dates.


This Court noted that the DLHT doubted the authenticity of the appellant's sale agreement due to inconsistencies, such as dual handwriting.

However, the question for determination is whether the respondent failed to dispute her signatures on the said sale agreement and whether the alleged failure implies acceptance of the sale agreement's authenticity. This Court finds and holds that, the respondent's initiation of criminal proceedings against the appellant on the said sale agreement suggests a dispute beyond signatures. There is no merit in the appellant's argument in this ground.

In conclusion, considering the analysis above, the DLHT's decision is upheld and the appeal is dismissed with costs.

It is so ordered.




K.N. ROBERT
JUDGE
27/10/2023

