

**IN THE HIGH COURT OF THE UNITED TREPUBLIC OF TANZANIA
IN THE SUB-REGISTRY OF MWANZA
AT MWANZA**

LAND APPEAL NO. 45 OF 2023

(Arising from the Judgment and Decree of the DLHT for Mwanza in Land Appeal No. 63
of 2021 dated 5/5/2023)

SUZANA MUSSA.....APPELLANT

VERSUS

CHRISTINA SHIJA.....RESPONDENT

JUDGMENT

29/2/2024 & 29/2/2024

ROBERT, J

The appellant, Suzana Mussa, having been dissatisfied by the decision of the District Land and Housing Tribunal (DLHT) for Mwanza in Land Appeal No. 63 of 2021 preferred this appeal against the decision of the DLHT.

The appellant initially filed a complaint at the Ward Tribunal for Mahina (Case No. 61 of 2021), alleging the respondent's refusal to rescind the agreement for sale of a house located at Bugarika area dated 1st April, 2021. It was alleged that the Appellant sold a house to the Respondent for TZS 1,700,000/=, of which TZS 1,000,000/= was paid on the date of the agreement, and the remaining balance was agreed to be settled on 15th May

2021. However, after the agreement, the appellant refused to receive the remaining amount, citing a mistake made by selling the house without involving her family. The Ward Tribunal ruled in favor of the respondent, ordering the appellant to vacate the house and further ordered the outstanding TZS 700,000/= to be paid to Zacharia Mussa, a member of the appellant's family. Dissatisfied with this decision, the appellant appealed to the DLHT, which upheld the decision of the Ward Tribunal. Subsequently, the Appellant lodged this appeal armed with the following grounds:

- (a) That the Honourable Tribunal grossly erred in law and fact in its judgment dated 5th May, 2023 by deciding that, on the basis of the evidence given, the sale agreement between the Appellant and the Respondent was properly executed hence valid.*
- (b) That the Hounorable Tribunal grossly erred in law and in fact in its judgment dated 5th May, 2023 in holding that the remaining total sum of TZS 700,000/= be paid to the third party who was not party to the agreement.*
- (c) That, the Honourable Tribunal grossly erred in law and fact in the Judgment dated 5th of May, 2023 for failure to evaluate properly evidence brought before itas adduced by the parties.*

When this appeal came up for hearing, the appellant was represented by Mr. Amos Gondo, learned counsel whereas the respondent appeared in person without representation.

Submitting on the 1st and 2nd grounds together, Mr. Gondo argued that, the DLHT erred in deciding that the sale agreement of the house was complete. First, he maintained that, consideration was not complete contrary to section 10 and 25 of the Law of Contract Act, (Cap. 345 R.E. 2019). He argued that, the required consideration was TZS 1,700,000/= . According to the records the amount paid was TZS 1,000,000/= which was paid to the seller (Suzana Musa). The outstanding balance (TZS 700,000/=) was paid to another person by the name of Zacharia without consent of the seller. It was therefore wrong for the Ward Tribunal and DLHT to justify the payment of the outstanding sum by considering that the payment was complete. Secondly, he maintained that, the contract was not lawful because there was no free consent contrary to section 10, 14 and 19 of the Law of Contract Act. He argued that, at page 13 of the typed proceedings of the DLHT, the seller stated that she had no free consent entering into the agreement. Hence, he submitted that the contract did not have the ingredients of a valid contract.

Coming to the last ground of appeal, he submitted that if the DLHT and the Ward Tribunal had considered the evidence on record, they wouldn't have accepted Christina Shija to be a party to the case because she was not a party to the sale agreement. The agreement was between Suzana Musa Mshahara and Julius George Lufusinza. He maintained that only parties to the contract had locus to sue in respect of the contract. Therefore, he prayed that the appeal be allowed, the proceedings and judgment of the DLHT and the Ward Tribunal be quashed and set aside and decide that the respondent did not deserve to be a party in this case and any other relief.

In response, the respondent submitted that, her aunty Salome Theodore bought two pieces of land next to each other by using the name of her son Julius George Rufansinza, one parcel of land had a foundation and the other one had a house, the parcels of land belonged to one William John and Suzana Musa respectively. The two of them decided to sell their parcels of land together. The sale agreement was witnessed by the street chairman, however, Salome was not present during the said sale and therefore she was the one who signed the agreement. She stated that she paid an advance of TZS 1,000,000/= to Suzana Musa.

Thereafter, she involved the local government chairman when the appellant started to walk out of the agreement and opposing the payment of the outstanding amount on grounds that her family were not involved in the sale of the disputed land. She submitted that, although the disputed property was bought in the name of Julius George Rufansinza who is only four years old, she is the one who signed the document.

In rejoinder submissions, counsel for the appellant stated that, the respondent was never a party in the sale agreement, a guardian of the child, a beneficiary or an interested party. She was sued as a party who was interfering with the sale agreement without interest.

Upon careful consideration of the submissions and evidence presented, this court finds merit in the appellant's contentions. Firstly, regarding the completeness of the sale agreement, it is evident that the full consideration stipulated in the agreement was not tendered to the seller, Suzana Mussa. Section 10 and 25 of the Law of Contract Act require that consideration be adequate and lawfully exchanged for a contract to be binding. In this case, while TZS 1,000,000/= was paid on the date of the agreement, the outstanding balance of TZS 700,000/= was not paid to the seller but to a third party, Zacharia Mussa, without the seller's consent. Such a deviation

from the terms of the agreement renders it incomplete and raises doubts about its validity.

Furthermore, the issue of free consent in the formation of the contract is pivotal. Sections 10, 14, and 19 of the Law of Contract Act mandate that parties enter into agreements voluntarily and without coercion. The appellant's assertion that she did not have free consent due to familial objections to the sale agreement raises serious concerns about the legality of the contract. The evidence presented, particularly the appellant's testimony recorded in the proceedings of the Tribunal, supports the contention that the contract lacked free consent, thus rendering it unlawful.

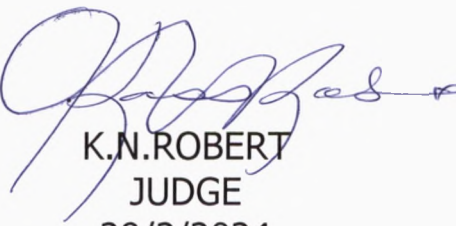
Most importantly, the respondent's status as a party in this dispute warrants scrutiny. Despite her claim to have acted on behalf of her aunty in purchasing the property, there is a lack of clear evidence establishing her authority to represent her aunty in this matter. Moreover, her involvement as a party in the proceedings is legally untenable. The sale agreement was between Suzana Musa Mshahara and Julius George Lufusinza. She was neither a party to the sale agreement, a guardian to the said Julius George Rufansinza nor demonstrated any legal interest in the property. Therefore, her standing as a party to the dispute lacks a legal basis, and any orders or

rights assigned to her by the DLHT and the Ward Tribunal are unsustainable in law. Such orders contravene the principles of contract law and fail to uphold the rights and obligations of the parties as outlined in the sale agreement.

In light of the analysis above, this appeal is allowed to the extent that the respondent is not a party to the sale agreement and was not sued as a guardian of the child. As a consequence, the proceedings and judgments of the DLHT and Ward Tribunal are quashed and set aside. Each party shall bear their own costs.

It is so ordered.




K.N. ROBERT
JUDGE
29/2/2024

