

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
SHINYANGA - SUB REGISTRY**

AT SHINYANGA

LAND APPEAL NO. 55 OF 2023

***(Arising from Land Application No. 12 of 2022, before
Shinyanga District Land and Housing Tribunal)***

- 1. PILI DARUSHI**
- 2. LUKWAJA LUKWAJA**
- 3. PILI MAYALA**

..... **APPELLANTS**

VERSUS

**DOTTO NGASSA (Administrator of
the Estates of the late SOPHIA DARUSHI
SAMAKA).**

..... **RESPONDENT**

JUDGMENT

6th & 21st March 2024

F.H. MAHIMBALI, J

The respondent sued the appellants for the claims of the suit land measuring 15 acres. Further it is also provided that the suit land claimed was owned by her mother namely Sophia Darushi Samaka, a deceased. The said late Sophia had purchased the land in dispute on 07/7/2011 from one Maria Mayala for consideration of Tshs 2,500,000/= and continued to utilized it until when she died. Thereafter, the land in question was put under care taker of the first appellant following the consent of the family.

Suddenly the 1st appellant sold the disputed land to the 2nd appellant and the rest to the 3rd appellant. Being the case, the 1st respondent who is administrator of the estates of her late mother decided to refer the matter before trial tribunal armed that the 1st appellant had no locus stand to dispose the property to the second and third appellants as she has not better title.

After a full trial, the DLHT entered its judgment in favour of the respondent. Aggrieved by such decision, the appellants have approached this court armed with five grounds of appeal which all together fall on the question of evidence; the trial tribunal erred to pronounce its judgement in favour of the respondent against the weight of evidence.

During the hearing of the matter, the appellants appeared in person and unrepresented while Mr. Ibrahim Kwikima learned advocate fended the respondent.

Speaking on behalf of the other appellants, the second appellant Mr. Lukwaja Lukwaja submitted that with this appeal, they have no more to add. They pray for their grounds of appeal to be adopted by the court to form full submission of their case and thus prayed for their appeal to be allowed.

On the side of the respondent, Mr. Ibrahim Kwikima opposed the appeal. He further contended that there has not been evidence by the first appellant if she actually sold the same to the 2nd appellant. Even reading the judgment of the trial tribunal, the 1st appellant who is the purported seller of the disputed plot to the 1st appellant, she had not appeared for her defence testimony herself being the defendant in that case. Thus, there is no much evidence to support the 2nd appellant's assertion. All this, make the appellant's case weaker to the respondent.

Mr. Ibrahim Kwikima also stated that since the said land was the estate of the late Sophia Darushi Samaka, how come that Pili Darushi to have legal mandate to the said sale while she was not the administrator of the deceased estate. As this fact of the said land being the estate of the late Sophia Darushi Samaka, was not disputed even by the 2nd appellant, it is a wonder now how come that he bought it from the unauthorized person. Thus, even if he bought it from the said Pili Darushi, but legally speaking there was a violation of law since the said seller had no legal capacity to sell it as done. On that basis, he prayed the appeal to be dismissed for want of merit.

In rejoinder Mr. Lukwaja Lukwaja (2nd Appellant) submitted that he had purchased the said land from Dotto Ngassa. Thus, the said land was

legally sold to him. The argument that he had bought it from a wrong person is a fictitious story. He had bought it long time and he has already sold it to CWT. Thus, he is no longer a user of it.

Having heard both parties, I have now to determine the appeal and the major issue for consideration is whether this appeal has been brought with sufficient cause. I have gone through the trial tribunal records and submission of the parties and thus the following are my deliberation.

The appellants' complaint that the land in dispute was bought from one Dotto Ngassa and thereafter continued to utilize it and has now sold it to CWT, cannot stand in place of the respondent's strong evidence .

It is the respondent's assertion that the land in dispute was sold by the first appellant to the 2nd appellant without having legal mandate. Therefore, the 1st appellant had no better title to effect disposition of the said land to any other including the second appellant.

I have keenly followed the testimony of the 1st appellant at page 19 of the typed proceedings;

" ... mimi nilinunua eneo tarehe 15/8/2014, katika manunuzi hayo eneo upana mita 110 urefu 160 upande mwingine upana wake ni mita 102. Tulipogawa zikaonekana kama ekari tatu na

nusu. Malipo yalikuwa kwa awamu. Baada ya kufariki Samaka Darushi nilikuwa miaka hiyo kama sumbatale wa Nzengo (nilikuwa mwenyekiti wa vijana) kaka yake ni huyu Dotto aitwaye Kabale, mama yao Njile Darushi waliomba niwadhamini maana walikuwa wanadaiwa Tshs 400,000/= na mwenye eneo alikua amehama akazuia mazishi. Wakaomba niongee nahuyo mama Maria Mayala ili ndugu yao azikwe na hela atachukua kwangu. Akakubali Maria Mayala, Mazishi yakafanyika mali zilizo kuwepo pale hawa vijana Dotto na Kabalo wakawa wanauza vitu, jilani yangu walimuuzia mlango wa bati na baadaye wakatangaza kuuza eneo ekari tatu na nusu, nikahitaji waje tukiandikishane nao. Mama yao mdogo alikua anaishi Kijiji kingine, tulielewana Tshs 480,000/= lakini walichukua keshi Tshs 100,000/= sikuwa na pesa tukathaminisha kwa gunia sita na debe tatu za mpunga. Eneo waliloniuzia nilikuwa napakana nalo upande wa magharibi, nilikuwa na eneo la ekari moja, kaskazini barabarac, kusini ni Nkonya, mashariki lilibakia eneo lao”

From the extract above, I am of the formed view that the testimony itself is not detailed as to whom the suit land was bought by the 2nd

appellant. He generally mentions without exactly pointing the exactly person sold to him the suit land. No exact consideration is provided; is it 100,000/= or 400,000/= or 480,000/= or six bags of pads? It is unknown.

However, the respondent filed the suit on complaint of six acres but the evidence of the 2nd appellant is on three acres and a half. Means that the evidence of 2nd appellant saves nothings and left the evidence of the respondent undisturbed.

SM1 (the respondent);

" eneo la mgogoro ni la mama yangu mzazi alipofariki mama yangu mama mzazi, kukawa na hati ya manunuzi tukapeleka kwa baba yangu. Mama yangu mdogo ndugu wakamteua atulinde sisi Watoto tulikua bado wadogo. Miaka ikaenda kaka zangu wakaenda mjini mama mdogo akawa analima. Alichoka kulima akauza kwa Lukwaja na pili Mayala. Tukaenda kwa babu na kumweleza, babu akasema niende nikakuta hivyo, akanipatia mkataba wa manunuzi ya mama yangu ili niendeleee na madai"

At page 11, the 1st appellant had consented to have bought the disputed land from one Pili; “ *kweli walinunua na Pili aliuza kwangu na Watoto wake Doto na kabalo*”.

Since it has not established that the so called Pili was real owner of the disputed land then the story by the 2nd appellant remain unfounded and cannot be relied. There is no suggestive evidence as to whether the appellants are the owners of the disputed land rather testimonies blessed with full doubts and weaknesses, thus hardly reliable in preponderance of probability.

In a close digest of the respondent's case at trial court and the legal principle cherished in the case **of Hemed Saidi V Mohamed Mbilu [1984] T.L.R 113** at page 116 that a person whose evidence is heavier than that of the other is the one who must win. I fully subscribe to the said position. Further, I am also of the stance that in measuring the weight of evidence, it is not a number of witnesses that matters but rather the quality of evidence. That being the position, the respondent has in balance of probability been able to establish the claims against the appellants. And thus, is entitled for recovery of the disputed land from the appellants. I therefore find the grounds of appeal being devoid of any merit.

With all these observations, I must therefore conclude that this appeal has been brought without sufficient cause and consequently is hereby dismissed with costs for lack of merit, the trial tribunal's judgment is upheld.

It is so ordered.

DATED at Shinyanga this 21st day of March 21, 2024.



F.H. Mahimbali

Judge