

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(IRINGA SUB - REGISTRY)  
AT IRINGA**

**LAND APPEAL NO. 36 OF 2023**

*(Originating from the decision of Iringa District Land and  
Housing Tribunal Land Application No. 113 of 2021)*

**DAIMA YOHANA MADUMBA .....APPELLANT**

***VERSUS***

**TITHO NYAGAWA .....1<sup>st</sup> RESPONDENT**

**FILIMONI MADUMBA .....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order: 09/04/2024  
Date of Judgement: 30/04/2024*

**LALTAIKA, J.**

The Appellant herein **DAIMA YOHANA MADUMBA** is dissatisfied with the decision of the District Land and Housing Tribunal for Iringa at Iringa in Land Application No. 113 of 2021 adjudged in favour of the respondents herein **TITHO NYAGAWA** and **FILIMONI MADUMBA**. He has appealed to this Court by way of a Petition of Appeal containing the following grounds:

1. *That, the honourable Tribunal erred in law and fact by receiving the exhibits contrary to the requirements of the law.*
2. *That, the honourable Tribunal erred in law and fact to decide in favour of the Respondents by relying on weak and contradictory exhibits tendered by the Respondents during the trial.*
3. *That, the honourable Tribunal erred in law and fact for failure to evaluate the entire evidence by the Respondents and its exhibits thereof.*

When the appeal was called on for hearing on the 5<sup>th</sup> day of March 2024, the Appellant enjoyed the legal services of **Mr. Raymond Byombalirwa**, learned Advocate. The Respondents on the other hand, appeared in person without any legal representation.

Following the parties' request to proceed with hearing of the appeal by way of written submissions, the following schedule was ordered. (i) Filing of the Appellant's written submission 19/3/2024 (ii) Respondent's reply filed on or before 2/4/2024, (iii) Appellant's Rejoinder if any 9/4/2024 (iv)

Mention for necessary orders to schedule for the date of judgement 9/4/2024. Needless to say, that the schedule has been spotlessly complied with hence this judgement. The next part of this judgement is a summary of submissions by both parties.

Mr. Byombalirwa, Counsel for the Appellant, argued in support of the appeal, stating that the 1st ground of appeal should be argued separately from the 2nd and 3rd grounds, which would be consolidated and argued jointly. He proceeded to argue the raised ground of appeal as follows:

For the 1st ground of appeal, Mr. Byombalirwa asserted that anyone seeking rights in court must support their testimonies with tangible and genuine exhibits. It was undisputed that during the trial, the tribunal considered two exhibits marked as Exhibit D1 and D2 as sale agreements between the 2nd respondent and the 1st respondent, which were tendered by SU1.

Mr. Byombalirwa emphasized that the tribunal based its judgment in favour of the respondents on these two exhibits, which were tendered and received as evidence contrary to the law, as they were unstamped. He cited Section 5(b) and Section 46(i) of **The Stamp Duty Act** [Cap. 189 R.E. 2019], which prohibits the admission of unstamped sale agreements as evidence in land disposition. He referenced the Court of Appeal of Tanzania's decision in the case of **Malmo Montagekonsult AB Tanzania Branch versus Margaret Gama**, Civil Appeal No. 86 of 2001, where unstamped sale agreements were deemed inadmissible. Based on this, Mr. Byombalirwa

prayed for the appeal to be allowed with costs, nullifying the entire proceeding, judgment, and drawn order, and granting any other reliefs the court deemed fit.

Furthermore, Mr. Byombalirwa argued that the two sale agreements dated May 22, 2021, and August 30, 2021, were questionable, as it was improbable for a single piece of land to be sold on two different dates with two different agreements, without a family meeting and minutes consenting to the sale. He claimed that the 1st and 2nd respondents colluded to deprive the appellant and his family of their rights to the suit land. He also pointed out that the trial tribunal ignored a letter dated December 28, 2021, from the Village Chairman to the Tribunal Chairman, which highlighted the illegitimacy of the May 22, 2021, sale agreement. He argued that the tribunal should have considered this letter in determining the parties' rights to dispense justice.

Transitioning to the **second and third grounds of appeal**, Mr. Byombalirwa asserted that the Chairman of the Tribunal made an error in relying on the sale agreements dated May 22, 2021, and August 30, 2021, which were admitted as Exhibits D1 and D2. Mr. Byombalirwa argued that these exhibits were wrongly relied upon, as they were not duly stamped in

accordance with the law, specifically citing Section 5(b) read in conjunction with Section 46(i) of The **Stamp Duty Act [Cap. 189 R.E. 2019]**. He emphasized that these contradictions, showing different dates of sale for the disputed land, went to the root of the case and created significant doubts.

Mr. Byombalirwa highlighted that the appellant's testimony, asserting that the suit land was family property, was crucial for the administration of justice. He also pointed out that the appellant's argument about the illegality of the conveyancing transaction between the 2nd respondent and the 1st respondent was corroborated by a letter dated December 28, 2021, from the Village Chairman to the Tribunal Chairman, which explained the illegitimacy of the May 22, 2021, sale agreement.

He contended that the trial Tribunal had a duty to consider the letter from the Village Chairman, as the Chairman is a government leader well-acquainted with local affairs. Mr. Byombalirwa argued that the failure to consider this letter amounted to a failure to evaluate the evidence presented by the appellant. He stressed that the disputed property was family land under the care of the appellant, not the personal property of the 2nd respondent.

Mr. Byombalirwa concluded that the appellant's testimony before the trial Tribunal was strong and outweighed the respondents' contradictory and doubtful sale agreements (Exhibits D1 and D2), which were tendered to mislead the Tribunal.

In his conclusion, Mr. Byombalirwa prayed that this Court, as a fountain of justice, agree with the appellant's submissions by allowing the appeal with costs, nullifying the entire proceeding, judgment, and orders of the trial Tribunal, and granting any other reliefs the court deemed fit, just, and equitable.

**The Respondents, in their joint reply to the submission by Counsel for the Appellant,** argued that the appellant's claim regarding Exhibits D1 and D2 (sales agreements) being admitted contrary to the law due to lack of stamp duty is a mere afterthought. They pointed out that the appellant did not object to these exhibits in the trial tribunal, rendering the current objection baseless. The Respondents referenced the principle of overriding objective, stating that the 1st Respondent could pay the stamp duty, and the documents would still be admissible, as supported by the case of **Baghat v. Rattan Chand** (1930), A.I.R. Lah. 854. This case, they argued, established that before a document is held inadmissible for not being

properly stamped, the court should give the party producing it an opportunity to pay the stamp duty and penalty.

The Respondents contended further that there is no doubt regarding the ownership of the land, as alleged by the appellant. They asserted that the land in question does not belong to the appellant's family but is the personal property of the 2nd respondent, thereby negating the need for a family meeting.

They further argued that the evidence provided by the plaintiff's witnesses during the trial was tainted with numerous contradictions, unlike the consistent evidence provided by the defense witnesses. This evaluation of evidence led the trial tribunal to find the Respondents' evidence more credible and heavier than that of the appellant.

It is the Respondents' conviction that the trial tribunal's decision in favour of the 1st respondent was guided by the principle of civil justice, as illustrated in **Hemed Said v. Mohamed Mbilu** [1984] TLR 113, which suggests that when parties to a suit present conflicting evidence, the party with the heavier evidence should prevail.

In conclusion, the Respondents prayed that the appellant's appeal be dismissed with costs and that the decision of the District Land and Housing Tribunal of Iringa at Iringa be upheld.

In his rejoinder submission, Mr. Byombalirwa argued that sale agreements, specifically in the disposition of land (conveyancing), are chargeable and must be duly stamped to acquire the legal force necessary for being tendered and admitted as exhibits during the trial. He cited the mandatory requirements of the law under Section 5(b) read mutatis mutandis with Section 46(i) of **The Stamp Duty Act** [Cap. 189 R.E. 2019]. Therefore, Mr. Byombalirwa argued, the sale agreements, Exhibits D.1 and D.2, were not duly stamped according to legal requirements and should not have been admitted as evidence.

Mr. Byombalirwa further stated that the requirement of stamp duty is statutory and not subject to the parties' discretion. He referred to the Court of Appeal's decision in **Josephat L. K. Rugaimukamu v. Kanut J. Mziwanda** [1986] T.L.R 69, where it was held that sale agreements not bearing the requisite stamp duty are inadmissible. He also referenced the case of **Malmo Montagekonsult AB Tanzania Branch versus Margaret Gama** (supra)



Furthermore, Mr. Byombalirwa argued that the two sale agreements dated May 22, 2021, and August 30, 2021, are questionable because it is improbable for a single piece of land (family land) to be sold on two different dates with two different sale agreements, without a family meeting and minutes consenting to the sale. He dismissed the respondents' argument that the issue of stamp duty is a mere afterthought, emphasizing its statutory importance. He also argued that the issue of objecting to the exhibits during the trial does not hold, as the respondents were represented by learned counsel familiar with the stamp duty requirements before tendering Exhibits D.1 and D.2.

Mr. Byombalirwa highlighted that Exhibits D.1 and D.2 cannot be stamped at the appellate stage, as the requirement must be met at the trial stage. He warned that accepting the respondents' arguments would violate the mandatory requirements of The Stamp Duty Act (Supra) citing **Njake Enterprises Limited versus Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017 (Unreported), where the Court held that the principle of overriding objective does not allow for the blind disregard of mandatory procedural rules.

Going deeper with regards to invocation of overriding objective principles by the Respondents, Mr. Byombalirwa referenced the case of **Mondorosi Village Council & 2 Others versus Tanzania Breweries Limited & 4 Others**, Civil Appeal No. 65 of 2017, Court of Appeal of Tanzania at Arusha (Unreported), where Justice Kwariko, J.A., stated that the overriding objective principle cannot be applied blindly against mandatory procedural provisions.

Mr. Byombalirwa argued that the case of **Bagahat versus Rattan Chand** (supra), cited by the respondents, is distinguishable from the current case. He asserted that the court should adhere to its own decisions regarding the admissibility of sale agreements and the requirements set forth by the Court of Appeal.

He concluded that the trial Tribunal's decision was primarily based on the sale agreements marked as Exhibits D.1 and D.2, in addition to the testimonies of the witnesses. He emphasized that the tribunal had a duty to evaluate the legality of the sale agreements, which is crucial to the question of ownership. Given the issues with the sale agreements, he argued that the respondents' witnesses' testimonies alone could not determine the parties' rights.

Mr. Byombalirwa prayed the Court to agree with the appellant's submission, allow the appeal with costs, nullify the entire proceeding, judgment, and orders of the trial Tribunal, and grant any other reliefs deemed fit, just, and equitable.

**I have dispassionately considered the rival submissions** in the light of the grounds of appeal. I have also carefully examined the lower tribunal's records. Let me start by saying that many if not most families have one member of the family whose appetite to squander family property is unimaginable. He or she would sell anything to satisfy immediate needs. While some of these unusual members of the family are influenced by some sort of addiction such as alcohol, others are free from any sort of addiction but would do the squandering as a hobby if not a calling.

Luckily, our law has put in place some safety valves against such unwarranted behaviour. For example, while spousal consent is now mandatory requirement for disposition of family landed property, courts can enlarge the territory to ensure that families are protected from impoverishment caused by selfish individuals.

The above illustration comes closer to the matter at hand. The appellant and the second respondent are siblings. The first respondent, on the other hand, is a dealer in real estate who happens to know the Madumba's family very well. One can safely assume that he has tried to capitalize on the weakness of the second Respondent for gain. What are the ramifications of allowing him to benefit from this kind of unregulated business? I will come back to this later.

The primary issue in this appeal is the admissibility of the sale agreements (Exhibits D.1 and D.2) and their compliance with statutory requirements for stamp duty. The law under Section 5(b) read in conjunction with Section 46(i) of The Stamp Duty Act [Cap. 189 R.E. 2019] mandates that sale agreements must be duly stamped to be admitted as evidence. This requirement is non-discretionary and fundamental to the legality of the documents.

The case of **Josephat L. K. Rugaimukamu v. Kanut J. Mziwanda** [1986] T.L.R 69 and **Malmo Montagekonsult AB Tanzania Branch v. Margaret Gama**, Civil Appeal No. 86 of 2001, Court of Appeal of Tanzania at Dar-es-Salaam (Unreported), provide clear precedents that unstamped

sale agreements are inadmissible as evidence. The Tribunal's reliance on these unstamped documents was a fundamental error.

Moreover, the contradictions in the sale agreements dated May 22, 2021, and August 30, 2021, raise serious doubts about the authenticity and legality of the transactions. The inconsistencies regarding the dates and the absence of a family meeting and minutes further undermine the credibility of the documents.

While the Respondents **cited Bagahat v. Rattan Chand** (1930), A.I.R. Lah. 854, I subscribe to Mr. Byombalirwa's argument that this case is distinguishable from the present matter. The overriding objective principle cannot be applied blindly to disregard mandatory statutory requirements, as emphasized in **Njake Enterprises Limited v. Blue Rock Limited & Another**, Civil Appeal No. 69 of 2017 (Unreported) and **Mondorosi Village Council & 2 Others v. Tanzania Breweries Limited & 4 Others**, Civil Appeal No. 65 of 2017, Court of Appeal of Tanzania at Arusha (Unreported). Apparently, this analysis is sufficient to grant this application. However for purposes of record keeping, I am inclined to go back to the argument I left halfway on the conduct of the 1<sup>st</sup> Respondent.

As alluded to earlier, I examined the records of the trial tribunal. I must emphasize that, with due respect, I found the analysis of evidence that led to the decision in favour of the respondents extremely shallow, wanting in rigour and depth. Plausibility of the appellant's story, supported by testimonies of a village leader and family members, left no iota of doubt that the Respondents were merchants of deceit masquerading under freedom of contract for purposes of land grabbing.

In this country, land has always been too precious a resource to be left, unreservedly, to free market principles such as willing buyer and willing seller. Policy and legal interventions in place are meant to protect the weak from being rendered landless due to factors beyond their immediate ability to grasp. The Land Policy and the Land Acts along with a myriad of decisions of this Court and the Court of Appeal clearly point to the fact that consideration of land matters must go beyond simple narratives such as the present "gentlemen agreement" purported to be a sale agreement.

The Tribunal should have gone an extra mile to examine the purported sale agreements (Exhibits D.1 and D.2) in the light of in-built safety valves to protect family land especially after hearing clearly and repeatedly on this point from members of the family and local leaders. Although sometimes

members of the family can collude against an innocent buyer, a careful examination of the records leaves no iota of doubt that there was no attempt by the siblings (appellant and second respondent) to act against the first respondent.

The DLHT should have been able to tell from the demeanour of the respondents who were the only defendant's witnesses that they were in a mission to mislead the tribunal. Intriguingly, while it appears that the first Respondent had been in land buying business for some time, he did not bother to involve village leaders. This gives the impression that he was aware of the illegality of the transaction. Section 142(1) of the **Local Government (District Authorities) Act Cap 287 RE 2002** clearly provides that: "A village council is the organ in which it is vested all executive powers in respect of all the affairs and the business of a village."

In the case of **BAKARI MHANDO SWANGA v. MZEE MOHAMED BAKARI SHELUKINDO** Civil Appeal No 389 of 2019 CAT, Tanga p. 8 the Court of Appeal of Tanzania discussed the importance of involving village leaders in land transaction. Failure to involve the village leaders results into never ending conflicts in the society. Such involvement is also a social safety net to protect weak from unscrupulous land grabbers. The wisdom embodied

in the maxim no one should be allowed to benefit from an evil act applies to those who wilfully bypass these legal and regulatory safeguards.

In the upshot, I allow the appeal with costs. For avoidance of doubt, I declare the appellant the rightful owner of the suit land. The decision of the District Land and Housing Tribunal of Iringa at Iringa to the contrary is hereby nullified. The proceedings, judgment, and orders of the trial Tribunal are set aside.

It is so ordered.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
30.04.2024**

**Court**

Judgement delivered under my hand and the seal of this Court this 30th day of April 2024 in the presence of the Appellant and the Respondents who have appeared in person, unrepresented.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
30.04.2024**



**Court**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



*E.I. Laltaika*

**E.I. LALTAIKA  
JUDGE  
30.04.2024**