

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA SUB – REGISTRY)

AT ARUSHA

LAND CASE APPEAL NO. 93 OF 2022

***(C/F Land Application No 31 of 2021, District Land and Housing Tribunal
for Babati)***

RUTH ALLAN GURISHA (Administratrix of the estates

of the late ROSE ELIREHEMA MGONJA)APPELLANT

VERSUS

ALLEN G. MNDEME1ST RESPONDENT

LAWRENCE EBENEZER KILEO @ LEKIMA.....2ND RESPONDENT

JUDGMENT

9th April & 24th May 2024

KIWONDE, J.

The appellant, Ruth Allan Gurisha, being dissatisfied with the decision of the District Land and Housing Tribunal for Babati in Land Application No.31 of 2021, preferred an appeal to this court armed with seven (7) grounds namely: -

- 1) That, the honourable Chairman of the District Land and Housing Tribunal grossly erred in law and fact by not finding that the first



respondent lacked authority to sell the land in dispute which is in the hands of the administratrix.

- 2) That, the honourable chairman of the District Land and Housing Tribunal grossly erred in law and fact when he failed to consider and give weight to the appellant's evidence adduced at the trial.
- 3) That, the honourable chairman of the District Land and Housing Tribunal grossly erred in law and fact by declaring the first respondent owner of the disputed land while he denied it.
- 4) That, the honourable chairman of the District Land and Housing Tribunal erred in law and fact by denying calling of the advocate Pallangyo who attested several contracts of sell at Babati while he is living in Arusha and his office is located at Arusha to prove or answer the second issue raised at the trial.
- 5) The honourable Chairman erred in law and fact when answering the first issue in a contradictory way which led to unfair and unjust judgment.
- 6) That, the honourable chairman of the District Land and Housing Tribunal grossly erred in law and fact by not believing the

appellant's witness, PW1 who was the Village Council's leader and was present in all events to date.

7) That, the honourable chairman of the District Land and Housing Tribunal grossly erred in law and fact by finding that the first respondent's children were present while the only one who was present is a drunker (sic).

On 22nd February 2024, it was agreed by the counsels and ordered by the court that the appeal be argued by way of filling of written submissions. All parties filed them.

From the pleadings, written submissions and the records of the trial tribunal, the main issue for determination by this court is whether the appeal has merits or otherwise.

I have thoroughly read the written submissions and the trial tribunal proceedings and judgment. I now turn to consider them in response to the issue raised above.

In supporting the appeal, Mr. Joffrey argued the first, third and fifth grounds jointly. In all the three grounds of appeal, the counsel said the suit land belonged to the late Rose Elirehema Mgonja whose estate is now under administration by the appellant. Therefore, it was his view

that the trial tribunal misdirected itself to hold that the suit land belonged to the 1st respondent taking into account that the 1st respondent while testifying denied to own the disputed land. It was thus, his stand that the suit land is part of the deceased estate which is subject to administration by the administratrix and the sale of the disputed land between the 1st respondent and the 2nd respondent is illegal. The counsel supported his argument with the case of **Joseph Shumbusho vs Mary Grace Tigerwa & Others** (Civil Appeal 183 of 2016) [2020] TZCA 1803 (6 October 2020).

This being the first appeal, it is in the form of a re-hearing, therefore, the appellate court has a duty to re-evaluate the entire evidence on record by reading it together and subjecting it to a crucial scrutiny and, if warranted, to arrive at its own conclusion of fact. This was a position in the case of **Leonard Bundala Malulanya @ Rena Ngasa vs Republic** (Criminal Appeal No.313 of 2022) [2023] TZCA 17345 (19 June 2023).

In deliberating the first ground of appeal, the appellant said the first respondent had no authority to sell the land in dispute because it was under the administratrix of the deceased estates. It is clear from the evidence adduced at the trial that the appellant was appointed

administratrix of the deceased estates of the late Rose Elirehema Mgonja. This is shown in the primary court decision, exhibit P3 and the order of appointment in from No. IV which was admitted at the trial as exhibit P4. Even the second respondent, in his submissions at first said there was no evidence to that effect, but later on, he acknowledged this fact.

It is proved by evidence that the appellant was appointed to administer the deceased estates in the year 2014. Before she wound up administration duty, the first respondent disposed of the land in dispute by way of sale to the second respondent in 2021 and the final instalment of payments was in 2022.

The first respondent supported the appeal on reason that the sale was influenced by threats from the second respondent. He said this happened as he obtained loan from the second respondent and defaulted to repay it.

The tribunal chairman in determining the lawfulness or otherwise of the sale of the suit land, he said the first respondent, being a husband of the deceased Rose Elirehema Mgonja, was entitled to such properties, that the property in dispute was not mentioned in the decision of the

primary court to belong to the deceased. This is what is challenged by the appellant.

When the administratrix of the deceased estates is appointed by the court, her duty is to identify, collect the deceased estates, pay debts if any and the remaining assets are subject to distribution to the lawful heirs. In this appeal, the appellant was appointed in 2014 but the first appellant sold the land in dispute between 2021 and 2022 before the administratrix could identify the deceased estates. Therefore, to hold that the first respondent was entitled to sell the land in dispute on reason of being the husband was wrong simply because there are separate assets and joint matrimonial properties. It is of no doubt that the deceased had share in the land in dispute.

Besides that, even if the appointing primary court did not mention the suit land as among the deceased estates, it was the sole duty of the administratrix to identify the deceased estates. The trial tribunal chairman should not have relied his decision on this fact.

The available evidence in record shows that the suit land belonged to the deceased. If it was in dispute, the first respondent had to wait for the administratrix of the deceased estates to identify the deceased estates. But he sold it while there was no evidence to show that he was

the sole and only owner of the suit land. It follows thus, that the first respondent had no good title to pass to the second respondent.

In his submissions, the second respondent argued that he was misled by the first respondent that he was the sole owner of the land in dispute and that even when he inquired from the neighbours or else, he was satisfied that the land in dispute belonged to the first respondent. Indeed, the first respondent is a *bona fide* purchaser who bought the property for value and in good faith, so he needs to be protected. This was stated in the decision of the Court of Appeal of Tanzania in the case of **Philemon Vanai Saiteru Mollel vs William Titus Mollel & Another** (Civil Application No. 372/02 of 2022) [2024] TZCA 18 (8 February 2024) where it was held that it is clear that for a buyer of the disputed property to be a *bona fide* purchaser, it must be proved that he bought a property in good faith and for value believing that the vendor had good title to it.

The first respondent argued that he did not know what he was doing as he was bewitched. I concur with the second respondent's submissions that it is not true because the 1st respondent assured him that he is the legal owner of the suit land and that the 1st respondent swore an affidavit with regard to his marital status and that the suit land belonged

to him. I have also passed through the said affidavit; indeed, the 1st respondent swore an affidavit that his wife is dead and that he is the legal owner of the suit land and even payments were made in three instalments, yet the first respondent received them. This cannot be a good reason to deprive the second respondent's right. Therefore, the second respondent has a right to claim his purchase price from the first respondent.

It is therefore correct to argue that the first respondent, not being the sole owner of the suit property nor administrator of the deceased estates, had no mandate to sell the suit land and no good title passed from him to the second respondent. The trial tribunal chairman wrongly decided that the second respondent was the lawful purchaser of the land in dispute. The first, third and fifth grounds of appeal find merits and they are hereby allowed.

These grounds of appeal suffice to dispose of the entire appeal, so, there is no need of going on expounding the rest of the grounds.

Consequently, the appeal is allowed to the extent stated above with cost. The judgment of the trial tribunal is quashed and the decree thereto is set aside.

DATED at ARUSHA this 24th day of May, 2024.


F. H. KIWONDE

JUDGE

24/05/2024

Court: Judgment is delivered in the court room in the presence of the appellant, the 1st respondent and Maryciana (RMA) but in the absence of the 2nd respondent this 24th May 2024 and the right of further appeal is explained.



F. H. KIWONDE

JUDGE

24/05/2024

