

**IN THE HIGH COURT OF TANZANIA
MOROGORO SUB-REGISTRY
AT IJC MOROGORO**

CONSOLIDATED LAND APPEAL NO.37 & 25960 OF 2023
(Arising from the decision of the District Land and Housing Tribunal for Morogoro in Land
Application No.05 of 2019)

SUDI COSMAS CHINGWI..... 1ST APPELLANT

ACKSA THADEI JOHN 2ND APPELLANT

VERSUS

STAMILI ISSA BANKINEZA..... RESPONDENT

JUDGEMENT

22nd of May, 2024

MANSOOR, J,

Before me are two consolidated appeals arising from the decision of the District Land and Housing Tribunal for Morogoro at Morogoro (the DHLT) in Land Application No. 05 of 2019. In the said application, the Respondent, Stamili Issa Bankineza, jointly and severally successfully sued the appellants i.e. Sudi Cosmas Chingwi and Aksa Thadei John, and three other persons who are not parties to the instant appeal, namely Felisian Katabaro, Mgalula Ally Kapara and Ally Kapara. Before the DHLT, Stamili Issa Bankineza claimed to be declared as the lawful owner of Plot No.299 Block E, located at Kihonda Area in Morogoro Municipal (the suit property).



As gleaned from the lower Tribunal's records, the facts show that in the year 2018, one Stamili Issa Bankineza executed a Loan Agreement under which she was granted the loan facility to the tune of 11,000,000/= by the National Microfinance Bank which "NMB" was secured by a mortgage of the suit property. It appears that Ms. Stamili Issa Bankineza failed to honour her contractual obligation of repaying the loan to the Bank. In exercising its rights under the Mortgage Deed, NMB notified her about its intention to sell the suit property through the public auction. Confused with the information, Ms. Bankineza approached Mr. Sudi Cosmas Chingwi, who is doing the business of lending money, who agreed to advance to Stamili Issa Bankineza "Ms Bankineza" a loan of Tshs.11,134,000/= to pay the outstanding debt to the bank for her to rescue the suit property from being sold by public auction. In her testimony in chief Ms. Bankineza alleged that, they agreed with Sudi Cosmas Chingwi "Mr. Sudi" to prepare the loan agreement on the advanced amount and Mr. Sudi was the one to prepare it, however Mr. Sudi acting out of their agreement prepared the sale agreement of the suit property instead of preparing the Loan Agreement on the advanced amount and induced her to sign the same without even affording her a chance to go through the agreement. She also said that the sale agreement was witnessed by Ally Kapala and Ramadhani Ally Kapara without her knowledge. Afterwards

Mr. Sudi sold the suit property to Ms. Acksa Thadei John who is now emphasising for her right to own the property and for possession of the same.

It was due to such state of affairs that Ms. Bankineza instituted a suit at the DHLT which was registered as Land Application No. 05 of 2019 against the appellants herein together with Felisian Katabaro, Mgagula Ally Kapara, and Ally Kapara claiming to have jointly conspired to commit forgery and obtaining the suit property without her permission. As such, in her application, the respondent sought to be declared the lawful owner of the suit property and an order of immediate eviction of the appellants from the disputed property.

The appellants herein together with the rests of the defendants sued at the Tribunal, strongly opposed the respondent's claims. It was their defence that the Respondent, Ms Bankineza had agreed to sell the suit property to Mr. Sudi in order to rescue the house from being sold at the auction by NMB. After full trial, the decision of the trial Tribunal was in favour of the Respondent herein who was declared the lawful owner of the suit property. The Trial Tribunal ruled that since there was no transfer of title passed to the appellants herein, the suit property is still the property of the respondent herein. The Trial Tribunal declined to

adjudicate on an issue of forgery saying that it has no jurisdiction to investigate on an issue of forgery since it is a criminal matter. There was no order of eviction issued since there was no proof that the appellants are in possession of the suit property.

Save for Felisian Katabaro, Mgagula Ally Kapara and Ally Kapara, other parties (Sudi Cosmas Chingwi and Acksa Thadei John) were aggrieved by the decision of the DHLT and preferred separate appeals to this court; Land Appeal No. 37 of 2023 preferred by Mr. Sudi Cosmas Chingwi and Land Appeal No. 25960 of 2023 preferred by Acksa Thadei John. The appeals were consolidated by the order of this court on 15/02/2024.

The Appellant in the former appeal introduced the following grounds: -

1. That, the Trial Chairman erred in law and facts in declaring the Respondent as the owner of the disputed premises basing on a weak point that the transfer formalities of the premises are incomplete regardless the sell.
2. That, the Trial Chairman erred in law and facts for disregarding undisputed sale agreement entered freely and voluntarily by the Respondent making an evidence that the suit premise has shifted from the hands of the Respondent by way of sale, thus she cannot be declared as the owner.

3. That, the Trial Chairman erred in law and facts in making improper analysis to the evidence tendered as a result he came out with wrong and improper decision.
4. That, the trial Chairman erred in law and facts in deciding the matter against the weight of evidence tendered.

On his part Acksa Thadei John in the later appeal preferred the following grounds of appeal couched in layman language as reproduced hereunder;

1. That, I was the respondent in Maombi No.15 of 2019 at District Land and Housing Tribunal for Morogoro before Mmbando CP which was determined on the 19th January, 2023 in favour of the 1st Respondent. Annexure K1 is judgement from the DLHT for Morogoro to form part of this appeal.
2. That, the tribunal erred in law by determining the matter while the tribunal was improperly constituted hence ended into injustice decision.
3. That, the trial tribunal erred in law by determining a dispute relating to a registered property land in absence of the Registrar of Titles hence ended into injustice decision.

4. That, the trial tribunal erred in law and in fact by determining the matter in favour of the 1st Respondent based on irrelevant evidence adduced by the 1st Respondent.
5. That, the trial tribunal erred in law and in fact by raising and determining an issue of counter claim which was not framed during trial and without affording parties a chance to address on it.
6. That, I was late to file appeal but on August,2023 I successfully applied through Misc. Land Application No.61 of 2023 for extension of time to file this appeal out of time. The same was granted by Chaba J on the 31st October,2023. Annexure K2 is a copy of ruling on Misc. Land Application No.61 of 2023 to form part of this appeal.
7. That, as to my understanding there is Land Appeal No. 37 of 2023 in this court between the respondent on the same subject matter before Lyakinana – Extended Jurisdiction.

With the leave of the Court, the hearing of the appeal was canvassed by way of written submission by the order of this Court dated 15th day of Feb, 2024. Both parties appeared personally, unrepresented fending for their rights. According to the court's scheduled orders, the appellants were supposed to file their written submission in chief on or before 28/02/2024, whereas the respondent had to file her reply to written submission in chief

on or before 13/03/2024 and rejoinder (if any) had to be filed on or before 21/03/2024.

The records reveal that, the appellant in Land Appeal No. 25960 of 2023 Ms. Acksa Thadei drew her written submission in support of her appeal and filed the same timely on 26/02/2023 as ordered by the court. However, it is on record that, the appellant in Land Appeal No. 37 of 2023 Mr. Sudi Cosmas Chingwi didn't comply with the orders of this court and as a result, he filed the same on 11st March, 2023. On his part the respondent Ms. Stamili Issa Bankineza filed her reply submission timely on both appeals.

For the purpose of saving the precious time of this Court, I find no need of reproducing the submissions by the 1st appellant on Land Appeal No. 37 of 2023 as it is a settled stance of law that, when the court orders the matter to be disposed of by way of written submissions and a party defaults to comply with such orders, the omission is tantamount to failure to prosecute the same. This position was underlined in the case of **P3525 LT Idahya Maganga Gregory Vs. The Judge Advocate General, Court Martial**, Criminal Appeal No. 2 of 2002 (unreported) in which the Court observed: -

"It is now settled in our jurisprudence that the practice of Filling written submissions is tantamount to a hearing and;

therefore, failure to file the submission as ordered is equivalent to nonappearance at a hearing or want of prosecution. The attendant consequences of failure to file written submissions are similar to those of failure to appear and prosecute or defend as the case may be."

In view of the above authority, it suffices to hold that, the appellant on Land Appeal No. 37 of 2023 one Sudi Cosmas Chingwi who was personally present before this Court when it made its scheduling orders, intentionally disobeyed the same. This court cannot condone such an act as it was observed in the case of **Olan, Tanzania Limited Vs. Halawa Kwilabya, DC. Civil Appeal No. 17 of 1999**, which was cited with approval in the case of **Famari Investment T. Ltd Vs. Abdallah Selemani Komba**, (Misc. Civil Application 41 of 2018) [2020] TZHC 386 (11 March 2020), where this court held that: -

"Now what is the effect of a court order that carries Instructions which are to be carried out within a predetermined period? Obviously, such an order is binding. Court orders are made in order to be implemented; they must be obeyed. If orders made by courts are disregarded or if they are ignored, the system of Justice will

*grind to a halt or it will be so chaotic that everyone will decide to do only that which is convenient to them. In addition, an order for filing submission is part of hearing. **So, if a party fails to act within prescribed time, he will be guilty of in diligence in like measure as if he defaulted to appear.....** This should not be allowed to occur. Courts of law should always control proceedings, to allow such an act is to create a bad precedent and in turn invite chaos". [Emphasis is mine].*

With that being observed as such, I hold that, as the appellant's written submissions on Land Appeal No. 37 of 2023 were filed out of time and without the leave of the court, the same is tantamount to the appellant's failure to appear on the date of hearing to prosecute his appeal, it follows therefore that, I will neither reproduce nor consider his submissions filed on 11th March 2024 as the submissions in chief in support of the appeal were filed out of time without leave of the court. That said and done, I firmly hold that the appellant did not argue his appeal and thus Land Appeal No.37 of 2023 is bound to fail for want of prosecution.

I will now revert to Land Appeal No. 25960 of 2023 which has seven grounds. Seemingly, Miss Acksa lost interest on the 1st, 5th, 6th and the 7th

grounds and thus she dropped them and remained with the rest of grounds. Beginning her submission on the remaining grounds, she chose to start with the 2nd ground of appeal where she quickly referred this court to the trial tribunal's judgement condemning that the trial tribunal was improperly constituted substantiating that, it was composed with a chairperson and only one assessor. She contended that the situation is in violation of section 23 (1) and (2) of the Land Disputes Court's Act (Cap 216 R.E 2019). Clarifying the consequences for improper constitution by the trial tribunal, Miss Acksa averred that it renders the decision proclaimed by the trial tribunal null and void. To support her stance, she was fortified by the decision rendered by this court in the case of **Afra Ligazio v. Revocatus Ligazio**, Misc. Land Application No.65 of 2021 where the court nullified all the proceedings and judgement of the DLHT due to non-compliance of the aforementioned provision of law.

In relation to the third ground of appeal Ms. Acksa was of the view that the gist of the instant matter is on ownership of Plot No. 299 Block E located at Kihonda within Morogoro Municipality. Referring this court to exhibit P-6 admitted at the trial tribunal she stated that the suit property is registered and the respondent is indicated as the owner thereof. Expounding further on exhibit P-6 she referred this court to page 5 of the

impugned judgement and demonstrated that the trial tribunal explained exhibits P-6 and P-7 to be the transfer documents which were not yet completed. She added that, the presence of the Registrar of Titles during the hearing of the matter at the trial tribunal was of utmost importance arguing that if the matter could be decided against the respondent there would be an order to direct the Registrar of Titles to change the ownership of the suit property and thus the Registrar of Titles would be condemned unheard.

On the fourth ground Ms. Acksa attacked the trial tribunal for failure to consider that the respondent sold the suit property to Mr. Sudi Cosmas Chingwi which was later transferred to her. She referred this court to exhibits P-5 and P-6 tendered at the trial tribunal and submitted that they are sufficient evidence to prove that the respondent Ms Bankineza sold the house to the 1st appellant, Mr Sudi. Consequently, Ms. Acksa urged this court to allow her appeal by setting aside the impugned judgement and its decree with costs.

Responding to the appellants' submission Ms. Bankineza adopted the route chosen by the 2nd appellant in arguing her appeal and thus she started her submission with the second ground of the appeal.

Criticising Ms. Acksa's argument on the second ground of appeal, she submitted that the tribunal was properly constituted as per section 23(1) and (2) of the Land Disputes Court's Act (supra) reasoning that at the commencement of the proceedings the trial tribunal was composed with one chairman and two assessors, however, the situation changed on continuance of the hearing where one assessor was reported sick and both parties agreed to continue with the hearing in the presence of one assessor only. She maintained further that the opted route by the trial tribunal is permissible under section 23(3) of the Land Disputes Courts Act.

Regarding the third ground of appeal, it was the respondent's firm submission that the presence of the Registrar of Titles was not necessary as there was no dispute of double allocation. She contended that she would have sued the Registrar of Titles only if the transfer was already effected reasoning that since the transfer has not been effected the absence of the Registrar of Titles cannot be said to render injustice on the part of the Appellant or on the Registrar of Titles.

Regarding the fourth ground of appeal, it was Ms. Bankineza's strong opinion that the trial tribunal reached at a fair decision after receiving and

evaluating the evidence from both parties in accordance to the applicable laws. She maintained further that the appellant failed to produce strong evidence in order to prove that there was a valid sale between the appellant and the then second respondent at the trial Tribunal.

Having considered the parties' submissions and the records of the trial tribunal, I now turn to determine the grounds of appeal in Land Appeal No. 25960 of 2023. The crucial issue for consideration, determination and decision thereon is whether the instant appeal is meritorious.

Starting with the second ground of appeal, it is the appellant's lamentation that the trial tribunal was improperly constituted as it was composed by the trial chairman and one assessor only contrary to section 23(1) and (2) of the Land Court Act, (Cap 216 R. E 2019). The respondent is opposing the ground adducing the reason that the composition was justified by the trial tribunal due to the fact that in the mid of the hearing of the trial, the tribunal reported one assessor to be sick and unable to proceed with the hearing whereas parties were informed and consequently the trial tribunal proceeded under section 23(3) of the Land Courts Act(supra).

At the onset, I am in agreement with Ms. Acksa's submission that the trial tribunal is properly constituted when it is held by the chairman and two assessors; however, I am also aware as rightly argued by Ms. Bankineza that there are circumstances which the trial tribunal is considered to be properly constituted when it is constituted by the chairman and only one assessor, and this is permitted under section 23(3) of the Land Courts Act.

The trial tribunal's proceedings, which I read and considered, reveals that the trial tribunal commenced the hearing of the application with the chairman and two assessors until 19/07/2022 when the trial chairman reported the contract of one Nsenza, the assessor to be expired; he therefore informed the parties that the trial tribunal will proceed under section 23(3) of the Land Disputes Courts Act which stipulates as hereunder;

'23. -(3) Notwithstanding the provisions of subsection (2), if in the course of any proceedings before the Tribunal, either or both members of the Tribunal who were present at the commencement of proceedings is or are absent, the Chairman and the remaining member, if any, may continue and conclude the proceedings notwithstanding such absence.'

As plain as they are, the wording of the above provision implies that, when the hearing of the trial had commenced with a set of two assessors and one of them leaves the trial in between, the other assessor can proceed in the absence of the other one who left. For easy reference I find convenient at this stage to reproduce what transpired before the tribunal on 19/07/2022.

'19/07/2022

Akidi.Mwenyekiti

Wajumbe 1) Grace Sholle

2)nil

Mwombaji: Yupo

Wa/Maombi 1) } wapo
2) } wapo
3) } wapo
4) } wapo
5) } hawapo

Adv. Salma:Namwakilisha mdai

*Baraza:Mkataba wa mjumbe Nsena ulikwisha hivyo
haujaongezwa Shauri litaendelea chini ya s.23(3) CAP 216 R.E
2019'*

From the above extract it suffices to hold that the trial tribunal was permitted under the law to proceed and conclude the proceedings in absence of one assessor whose contract was reported to expire. As such, I agree hands with the respondent submissions that the trial tribunal was properly constituted as per section 23(3) of the Land Dispute Courts Act. For that reason, the 2nd ground has no merit and it fails.

On the third ground, Ms. Acksa's complaints is on non-joinder of Registrar of Titles at the trial tribunal. For smooth determination of this ground, I find it necessary to start by making a deliberation as to whether the Registrar of Titles was a necessary party in the instant suit. In an Indian case of **Benares Bank Ltd v. Bhagwandas**, AIR. (1947) All 18 the High Court of Allahabad laid down two tests for determining the question whether or not a particular party is necessary to the proceedings. The said two tests were approved by Supreme Court of India in the case of **Deputy Comr. Hardoi v. Rama Krishna**, A.IR.(1953) S.C.521. The said tests are as follows: -

'a) There has to be a right of relief against such a party in respect of the matter involved in the suit; and

b) The court must not be in the position to pass an effective decree in the absence of such a party.'

I am persuaded by the above laid down test because they emanated from the interpretation of the provisions of the Civil Procedure Code of India which is in pari materia with our Civil Procedure Code. Applying the tests accentuated in the cited decisions, the question is whether, in the circumstances of this case, the Registrar of Titles is a necessary party whose joinder in the proceedings was of imperative need. In the present case among of the relief sought by the respondent at the DHLT is *'declaration that the applicant is lawful owner of the land in dispute and house block 'E' No. 299 Nguzo Street Kihonda Area Morogoro and immediate eviction order be issued against the respondents'*.

I admit that from the reliefs, the applicant in the main suit who is the respondent herein did not seek any relief against the Registrar of Titles; the reliefs were against the respondent at the trial and as I have depicted earlier that there are no facts suggesting that the DLHT wouldn't determine the matter conclusively in absence of the Registrar of Titles, similarly there are no grounds to believe that the reliefs issued by the DLHT wouldn't be executable in the absence of the Registrar of Titles.

Basing on the above observation, I am of the settled mind that the Registrar of titles was not a necessary party to the instant matter. After all, as correctly observed by the Chairperson of the Trial Tribunal, the title to the suit property was not transferred from the respondent to either the 1st appellant herein to enable him transfer it to the 2nd appellant herein to necessitate issuance of an order to the Registrars of Titles to rectify his register. In any case, such rectification, if any, could have been effected by a simple procedure available under the Land Registration Act, without necessitating the joinder of the Registrars of Titles as a party to the proceedings.

In totality and for the reason stated I am convinced that presence of the Registrar of Titles as a party in the DHLT was not mandatory. Thus this ground fails too.

On the fourth ground, the 2nd appellant attacked the findings of the DHLT claiming that it based its decision on the irrelevant evidence. Her claims were predicated on the fact that the DHLT ignored the fact that the respondent sold the property to Mr. Sudi which was later on transferred to Ms. Acksa Thadei. As it was stated in the case of **Standard Chartered Bank Tanzania Ltd V. National Oil Tanzania Ltd and**

Another, Civil Appeal No. 98 of 2008 (unreported), I wish to reiterate here that, as a matter of general principle on first appeal the Court is entitled to subject the evidence on record to an exhaustive examination in order to determine whether the findings and conclusions reached by the trial court stand.

My scrutiny to the DHLT judgement reveals that the tribunal considered the sale agreement executed between the respondent and Mr. Sudi at pages 06 and 07 of its judgement. I wish to reproduce a bit hereunder to let the records to speak themselves;

'Ushahidi uliotolewa katika shauri hili kwa kiasi kikubwa ulijikita katika kujadili makataba /makubaliano ya uuzaji na ununuzi wa nyumba iliyopo Kitalu E Kiwanja Na. 299. Ushahidi huo hauakisi madai yaliyowasilishwa, hivyo, kukiuka kanuni ya hati madai/utetezi na/au madai kinzani (pleadings). Suala la makubaliano ya mauzo ya ardhi bishaniwa halikuainishwa katika hati ya madai, kulizungumzia suala hilo katika hatua ya ushahidi ni makosa kisheria, kwa sababu ni mbinu ya kutaka kutengeneza kesi mpya katika hatua ya ushahidi, jambo ambalo halikubaliki kisheria.'

From the above quoted passage of the impugned judgement one does not need crystal ball to see that the trial tribunal considered the sale agreement executed between the respondent and Mr. Sudi, however it accorded the same little weight reasoning that the fact was not pleaded by the parties.

At this juncture, in order to determine the truthfulness of the findings of the trial tribunal on this aspect, I find it pertinent to visit the pleadings presented by the parties on this aspect. My scrutiny on the pleadings reveals that; the only pleading that didn't address the issue of the sale agreement executed between the respondent and Mr. Sudi is the application presented by the respondent who was the applicant before the trial tribunal while the rest of pleadings presented by the respondents tirelessly addressed the issue. (See the Written Statement of Defence filed by the 1st ,2nd ,3rd ,4th and 5th Respondents at the trial tribunal).

With such being in mind, I found misdirection on the part of the trial tribunal to hold that the sale agreement executed between the respondent and Mr. Sudi was a new issue not pleaded by the parties. As such, this being the first appellate Court, I am mindful of my duty to re-evaluate and put into scrutiny the evidence taken and recorded at the trial Court

and afterwards come up with my own finding. [See: **Siza Patrice Vs. Republic**, Criminal Appeal No. 19 of 2010; **Alex Kapinga Vs. Republic, Criminal Appeal No. 252 of 2005 (CAT)**; **Napambano Michael @ Mayanga Vs. Republic**, Criminal Appeal No. 268 of 2015 (All unreported)].

In the matter under scrutiny, the respondent herein challenges the sale agreement of the disputed property executed between her and Mr. Sudi complaining the same to be obtained by undue influence. In her testimony, the respondent told the trial tribunal that she was neither aware of the sale agreement of the disputed property executed between her and Mr. Sudi nor the agreement executed between Mr. Sudi and Ms. Acksa. She stated further that she was induced by Mr. Sudi and the people who were around them to sign the agreement without reading it.

Explaining the circumstances leading to the making of Exhibit P4 (the sale agreement between Mr. Sudi and Ms. Bankineza) Mr. Sudi, said that, he advanced Ms. Bankineza more than Tsh. 18,134,000/= for her to pay her outstanding debt at NMB and as she was interested in selling the disputed house, she asked him to buy it where in addition he gave her Tshs. 6,000,000/= and they entered into a deal, thus the total amount paid for

Ms. Bankineza by Mr. Sudi as a consideration from the sale of the suit property was Tshs 25,000,000/=.

Since through the testimony of Mr. Sudi which was supported by Exhibit P4, the 1st Appellant established that the respondent (Ms. Bankineza) herein was aware of the sale agreement of the disputed property and that she consented to the sale agreement by signing the same, then the burden of proving that she was induced to sign the same shifted from the 1st appellant to her.

It is an undisputable fact that the respondent acknowledged to be provided with the loan facility by Mr. Sudi although they locked horns on the amount advanced. In my view, the respondent ought to have provided cogent evidence to substantiate her claims that she was induced to sign the sale agreement in consideration of the amount alleged to be provided by Mr. Sudi. In essence, the respondent's mere disassociation of herself from the purported agreement was not enough. My reading of the records of the DHLT reveal that no any cogent evidence was rendered by the respondent to satisfy this court that she was induced to sign the contract. In addition to that the respondent didn't even call the person alleged to be around to testify before the DHLT as to how she was induced to sign

the sale agreement, I associate myself with the holding in the case of **Mujuni Joseph Kataria v. Samwel Ntambala Luangisa & Another** [1986] T.L.R. 62 CAT where it was stated that:

'Failure to call material witness, the court may draw adverse inference to form its own independent judgment by the application of these criteria to the facts proven in evidence.'

As she failed to discharge that burden, it is the finding of this Court that the allegations that she was induced to sign the sale agreement is unfounded.

That being said and done, I find that the purported sale agreement between Mr. Sudi Cosmas Chingwi and Ms Stamili Issa Bankineza was valid as it was signed by Stamili Issa Bankineza, the respondent herein. I however, find that the issue which was to be determine by the Trial Tribunal is whether Ms Bankineza sold the suit property to Mr Sudi on 24th September 2018 by way of a sale Agreement.

There is no dispute that the land on which the disputed property is situated is a registered land known and described as Plot No.

299 Block E Kihonda in Morogoro Municipality, with the Certificate of Occupancy No. 154101 MG, Land Office No. 606797. Under the Registration of Documents Act, and Land Registration Act, both these legislations which governs the transfer of title of registered land, requires documents containing contract to transfer for consideration (agreements of sale etc.), relating to any immovable property, to be registered. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of section 9 of the Registration of Documents Act and will not confer any title nor transfer any interest in an immovable property. According to the Land Registration Act, an agreement of sale, whether with possession or without possession, is not a conveyance as sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject matter unless it is registered.

Again, under Section 36 of the Land Act, 1999, disposition of a Right of Occupancy which does not comply with the provisions of section 37,38, 39 and 40 of the Land Act is void. This section reads:

- 36.- (l) A disposition of a right of occupancy shall-
- (a) comply with the provisions of this section and sections 37, 38, 39 and 40.
 - (b) be void if the provisions of this section and sections 37, 38, 39 and 40 are not complied with.

Now, let's see whether the 1st appellant Mr Sudi had led any evidence which confirms that there was a sale of the suit property by Ms Bakineza to the 1st appellant, Mr Sudi on 24th September, 2024 as alleged, and whether the sale deed or deed of sale was registered in accordance with the requirement of the Land Registration Act and that the disposition complied with section 37, 38, 39 and 40 of the Land Act.

Ms Bankineza disputed to have ever sold the suit property to the Mr Sudi in 2018 and contends that the sale agreement was a forgery and disputed that she never entered a contract of

disposition with the 1st appellant Mr Sudi for sale of the suit property at a sale consideration of TZS 25,000,000, as alleged.

It is seen from the materials that on 24th September, 2018 there was a contract of disposition of a Right of Occupancy, which is not the in prescribed Landform No. 38, but titled MKATABA WA KUUZIANA NYUMBA" executed by the Vendor, Ms Stamili Issa Bankineza, and the Purchaser Mr. Sudi Cosmas Chingwi for a consideration of TZS 25,000,000. The agreement was witnessed by Ally Kapala Mgalula, the Vendor's husband, and Ramadhani Ally Kapala, the son of the Vendor. Parties never executed a Transfer of Right of Occupancy (Form No. 35), and they never obtained the Certificate of Approval of a disposition by the Commissioner for Lands as required under the Land Act.

It is clear from the evidence on record that the transfer was never registered as there is no proof of registration, and thus the Vendor could not have delivered possession of the property before the transfer was registered. Section 39 (8) of the Land Act provides:

Section 39 (8) A person who has received a certificate of approval shall pay all premia, taxes and dues which are required to be paid in connection with the disposition to which the certificate of approval refers and no such disposition shall be valid or effective to transfer any interest in any land or give rise to any rights in the transferee unless and until all the premia, taxes and dues have been paid accordingly.

(9) The Commissioner, an authorized officer, or any other officer to whom any premia, taxes or dues is or are required to be paid under this section shall endorse and sign a receipt for that premium, tax or due on the certificate of approval.

(10) The Registrar shall not make any entry on the register in respect of any disposition or any right of occupancy the subject of a disposition to which this section applies unless and until he is satisfied that all premia, taxes, and dues in respect of that disposition have been paid and a receipt for the same has been validly endorsed on the certificate of approval.

Thus, Registration of Transfer is done by the Registrar upon making an entry on the register, and he cannot make such entry unless and until all premia, taxes, and dues in respect of the disposition have been paid. It is therefore clear that as per the Contract of Disposition, the Vendor could not have handed over vacant possession or even delivery of property to the purchaser unless and until the Transfer was registered. To date, no transfer was registered, thus no delivery of the suit property to the purchaser could have been done when the transfer was not registered and completed.

Again, a Certificate of Approval, if at all was issued by the Commissioner for Lands, should have been sent to the Applicant Ms Bankineza, as it was Ms Bankineza (the Applicant) according to section 36 (3) of the Land Act who was to notify the Commissioner for Lands of her intention to dispose the Right of Occupancy. The Vendor was supposed to File a Landform No. 29 as a Notification to the Commissioner for Lands of the intended disposition. Section 36 (3), (4) and (5) of the Land Act provides:

Section 36 (3) Any person proposing to carry out a disposition, other than a disposition to which section 38

applies, shall send, or deliver a notification in the prescribed form to the Commissioner or an authorized officer before or at the time the disposition is carried out together with the payment of all premia, taxes and dues prescribed in connection with that disposition.

- (4) The Commissioner shall, subject to the provisions of section 37, on receipt of a notification under subsection (3) and the payment of all premia, taxes and dues which may be prescribed, with all due dispatch, endorse that notification with his signature and official seal and send or deliver a copy to the Registrar.
- (5) The Registrar shall not make any entry on the register in respect of any disposition, or any right of occupancy transferred because of a disposition to which subsection (3) applies unless and until he is in receipt of a copy of a

Again, the Vendor was also required to File a Landform No 30, applying for approval of disposition of the Right of Occupancy as

required under section 37 of the Land Act, and that a disposition of a Right of Occupancy without the approval of the Commissioner for Lands is inoperative, this is provided under Section 38 (5) of the Land Act, which reads:

Section 38 (5) A disposition which has been carried out without first obtaining the approval of the Commissioner shall be inoperative.

There was no proof from the appellants herein that the Vendor had completed Landform No. 29 for notifying the Commissioner for Lands that she intended to carry out a disposition of a Right of Occupancy, and that the Notification was received and approved by the Commissioner and that the Commissioner had endorsed it in accordance with Section 36 (4) of the Land Act. Again, there was no proof that the Vendor had applied for approval of disposition of a Right of Occupancy as required by section 37 of the Land Act. There was no Land Form No. 30 which is an application for approval for a disposition of the Right of Occupancy, and there was no proof that the Commissioner had approved the disposition.

It is also not clear why Mr Sudi did not bring the advocates who drew the sale agreement and who witnessed the execution of the sale agreement in the witness box, though it is stated that the sale was made in the presence of the advocates. Had the plaintiff not disputed the sale, I would definitely believed the testimony of Mr Sudi that he purchased the property from Ms Bankineza in 2018 as shown in the Sale Agreement, but on the other hand it is Mr sudi that is required to prove that he indeed legally and lawfully purchased the property from Ms Bankineza and that Ms Bankineza complied with all the conditions for Sale or Transfer of Right of Occupancy as required in Section 36, 37, 38, 39 and 40 of the Land Act. In those circumstances, apart from the Contract of Disposition produced in the Tribunal (which was not registered or stamped) to prove that there was sale of the property by Ms Bankineza to the Mr Sudi in 2018, the 1st appellant ought to have led evidence that the sale agreement was registered and there was stamp duty paid, and that the Vendor notified the Commissioner for Lands of the intended disposition as per section 36 (3-5) of the Land Act, and that the Vendor applied for approval of disposition, and that the Commissioner for Lands had approved the disposition.

To answer this issue therefore, since there was no valid sale of the property, and since the exhibits tendered i.e the Certificate of Title and the search report shows that the suit property is still registered in the name of Ms Bankineza and since the mandatory procedure for disposition of a Right of Occupancy provided for under the Land Act have not been complied with, the lawful owner of the suit property is Ms Stamili Issa Bankineza, and she is entitled to ownership and vacant possession of the suit property.

The 1st appellant may find proper ways of recovery his money advanced to Ms. Bankineza, subject to proof.

Therefore, for the above stated reasons, the appeal lacks merits, and it is hereby dismissed with costs.

DATED AND DELIVERED AT MOROGORO THIS 22nd DAY OF MAY, 2024



A handwritten signature in blue ink, appearing to read "L. Mansoor".

L. MANSOOR

JUDGE,

22.05.2024