

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB REGISTRY
AT TABORA
LAND CASE APPEAL NO. 4 OF 2023

(From the decision of the District Land and Housing Tribunal for Nzega in Land Case Appeal No. 49 of 2017, Original Land Case No. 20/2017 Igunga Ward Tribunal)

GODFREY ANDREA BUKO (Administrator of the estate
of the late Andrea Buko) **APPELLANT**

VERSUS

ELIZABETH STEPHANO NSASI..... **RESPONDENT**

JUDGMENT

Date of Last Order: 21/02/2024

Date of Delivery: 30/05/2024

MANGO, J.

Elizabeth Stephano Nsasi, the Respondent herein, successfully instituted Land Case No. 20 of 2017 before Igunga Ward Tribunal against the late Andrea Buko contesting ownership of land located at Hanihani B area, demarcated as Plot No. 15 Block B within Igunga Municipality.

Facts giving rise to the dispute as contained in Court record indicate that that, in the year 2011/2012, Igunga Municipal Council conducted survey of land at Hanihani area. The project involves formalization of residents of the persons who hold land in the area. The late Andrea Buko and the Respondent

herein were among the persons whose pieces of land were surveyed. The Respondent's land was demarcated as Plot No. 15 Block B located at Hanihani B, Igunga urban area. On 3rd January 2012, a residence permit was issued to her and she continued to pay land rent until 2016. In 2016, she was informed of the intended revocation of her title by land office on the reason that, she is not the lawful owner of the land in dispute. She was informed further that, the Residential permit over the land in dispute will be issued in favour of the late Andrea Buko who claimed to be the lawful owner of the land.

The Respondent contested the intended revocation of her title. She claimed that, the land in dispute is her property as she purchased it from the late Andrea Buko in the year 2009 at Tshs. 500,000/=. She paid Tshs. 450,000/= cash and gave the late Andrea Buko 1 sack of maize which was equivalent to Tshs. 50,000/=. Andrea Buko denied to have sold the land to the Respondent. The land office failed to resolve the dispute between the Respondent and the late Andrea Buko. Thus, they were advised to institute a formal suit through which their dispute over the piece of land can be determined.

The Respondent filed Land Case No. 20 of 2017 before Igunga Ward Tribunal. After a full trial, the ward tribunal declared the Respondent as the rightful owner of the disputed piece of land. The Appellant unsuccessfully appealed against the decision of Igunga Ward Tribunal via Land Appeal No. 49 of 2017 before the District Land and Housing Tribunal for Nzega. Dissatisfied by the decision of the District Land and Housing Tribunal, the

Appellant preferred the appeal at hand. His petition of appeal contains seven grounds of appeal which are hereby reproduced as follows: -

1. Since Appellant lacks locus standi as being passed away, District Land and Housing Tribunal erred in law for determining the appeal instituted the case by the Appellant in his personal capacity instead of filing the appeal as the administrator of the deceased's estate
2. The District Land and Housing Tribunal erred in law for failed to discover that the Ward Tribunal lacks the pecuniary jurisdiction to entertain the case
3. The District Land and Housing Tribunal erred in law and in fact that there is no direct evidence oral or written to prove that the Respondent had purchased the suit land from the Appellant
4. That the District Land and Housing Tribunal erred in law and in fact for failure to observe that the Respondent never disclose the evidence that she lost the documents regarding his ownership
5. The District land and Housing Tribunal erred in law and in fact by holding that the suit land is not lawfully owned by the Appellant
6. That the District land and Housing Tribunal erred in law for failure to examine the evidence that an offer of the right of occupancy of the Respondent had been unknown and cancelled by Igunga District Council
7. The District Land and Housing Tribunal erred in law and in fact that the Ward Tribunal pronouncing and composing the judgement instead of making negotiations.

On 27th February 2024 when this matter was called for hearing, both parties appeared in person and prosecuted the appeal in persona.

Submitting in support of his appeal, Godfrey Andrea Buko submitted that, the trial tribunal was not availed with any documentary evidence proving the alleged sale and transfer of land from the vendor to the purchaser. He argued that, in any sale of land documentary evidence proving sale is necessary. He argued further that, the Respondent claimed to have executed a written sale agreement but she never tendered the alleged sale agreement. He noted the Respondent's assertion that, the agreement got lost in the broken house. However, he challenged the Respondent for her failure to tender loss report as a proof that the agreement got lost. It was the Appellant's contention that, the Respondent ought to reported the alleged loss to the responsible authorities in order to be issued with a loss report to establish the alleged loss. He concluded that, failure to report the alleged loss, suggests that the agreement never existed.

The Appellant also averred that, when the Respondent trespassed into his land in 2009, the late Andrea Buko reported the matter to the land office, Igunga Municipality. The Respondent was summoned and admitted to have trespassed into the land, in the event, the land office revoked the Respondent's title over the land in dispute. Despite such facts, the lower tribunals failed to consider revocation of the Respondent's title over the suit land. He prayed for his appeal be allowed.

In her submission in reply, the Respondent explained that, she purchased the dispute land in 2008 from the Appellant's late father in presence of his

family and other witnesses including the late Mongi who was a ten cell leader. The purchase price was 500,000/= where she paid Tshs. 450,000/= and 1 sack of maize which was equivalent to Tshs. 50,000/=.

She submitted that, they executed a sale agreement and thereafter she constructed a mud house with two rooms on the disputed land. The mud house broke down due to heavy rains as a result, the sale agreement and other documents got lost in the broken house. She has now is the process of constructing a cement bricks

The Respondent argued further that, in 2009 during formalization of residences, she registered her name and her land was surveyed and she was issued with a residential permit. She stated that, the process was done in the presence of the Appellant's late father and his family including the Appellant. Later, she was summoned at the land office and was accused of giving false information to land officers who conducted the survey of plots at Hanihani area. She denied the accusations and rejected to return the title without being heard, as a result, the dispute was referred to the ward tribunal for determination and the tribunal ruled in her favour. She prayed for the appeal be dismissed with costs.

Having examined the arguments for and against this appeal and considered Court record, I will now determine the appeal by determining the grounds of appeal raised by the Appellant.

The first ground of appeal was determined by this Court in Misc. Land Appeal No. 4 of 2022 which was struck out for being filed by Godfrey Andrea Buko, the administrator of the deceased estate, in the name of the deceased.

Court record indicates that, the matter was properly instituted against Andrea Buko during his life time. The said Andrea Buko appeared before the Trial Tribunal in the entire proceedings. He later died and Godfrey Andrea, his son, was appointed to be the administrator of his estate. The Appellant, Godfrey Andrea Buko preferred an appeal against the decision of the trial tribunal in the names of the deceased however, the District Land and Housing Tribunal rectified the errors by inserting the names Godfrey Andrea Buko as the administrator of the estate of the late Andrea Buko. The Appellant preferred Misc. Land Appeal No. 4 of 2022 before this Court, in the name of the late Andrea Buko. This Court found the Appeal to have been improperly filed in the deceased's name while the Appeal before the District Land and Housing Tribunal was prosecuted by the administrator of the deceased's estate. The appeal was struck out by this Court on 28th February 2023. In such circumstances, this Court is functus officio to re-determine the issue whether the appeal before the District Tribunal was properly filed or not. However, the appeal before the District Land and Housing Tribunal was filed by the Appellant himself. It is trite law that no person should benefit from his own wrong. Thus, the first ground of appeal is dismissed.

The second ground of appeal is also unfounded for two reasons. First, the issue was not raised during hearing of this matter at the tribunal level. Second, there is no evidence that was produced by the Appellant proving the value of the land in dispute so as to enable the Court ascertain pecuniary jurisdiction of the Ward Tribunal to entertain the dispute. The law, section 15 of the Land Disputes Courts Act, [Cap. 216 of 2019] provided that, the Ward Tribunal has pecuniary jurisdiction over disputes involving land not

exceeding 3Million. Unfortunately, the Appellant has not availed the Court with any evidence establishing the value of the land in dispute. The Court cannot determine the issue whether the trial tribunal had pecuniary jurisdiction to determine the dispute in this appeal in absence of evidence regarding value of the land in dispute.

The third, fourth, fifth and sixth grounds of appeal concern the existence of sale of the disputed land to the Respondent and the alleged revocation of the Respondent's title over the disputed land. Court record establishes that, the Respondent's testimony regarding purchase of the suitland from the late Andrea Buko was supported by her witnesses who testified as SM2, Morris Chilla and SM3 Samwel Musa. Record establishes further that, when the members of the ward tribunal visited *locus in quo*, two neighbors to the suit land were interrogated; Zacharia Mkumbo and Jophley Erasto, they stated that they know the land in dispute belongs to the Respondent as she purchased the same from the Appellant's father. They stated further that, they were involved during execution of the sale transaction. I understand the necessity of having written agreement in land dispositions but circumstances in this matter are very unique. I hold so because four persons who are not related to the Respondent testified to the effect that, the late Andrea Buko sold the land to the Respondent and they were involved during execution of the sale transaction.

The late Andrea Buko relied upon a mere assertion that he did not sell the land in dispute to the Respondent and that the Respondent's title was revoked. Aside of the land officer who has no knowledge on the history of

ownership over the disputed land, the late Andrea Buko did not summon any other witness.

The land officer testified on the attempts to revoke the Respondent's title over the disputed land. It is clear from Court record that the attempt did not succeed. This is evident from the facts that, neither the Appellant's late father nor his witness tendered a revocation letter revoking the Respondent's title over the disputed land. In other words, the Respondent's title over the disputed land was not revoked. The land office can only revoke title over a land which its ownership is in question after the dispute over ownership have been finally determined by Courts of law.

From evidence on record, there is no doubt at all that, the Respondent's evidence adduced at the Ward Tribunal was heavier than that of the Appellant. It is a cardinal principle that the person whose evidence is heavier than the other must win, see the case of **Hemedi Saidi V Mohamedi Mbilu 1984 TLR 113 (HC)**. In that regard, I find no reason to interfere with the concurrent findings of the lower tribunals.

Moreover, Court record establishes that, the late Andrea Buko and his family are trying to repossess the land that Andrea Buko sold to the Respondent. Court record establishes that, after the matter was determined by the Trial Tribunal, Adam Andrea, the son of the late Andrea Buko instituted Land Application No. 14 of 2019 before the tribunal claiming ownership over the same piece of land against the Respondent. He alleged that he was given the land by his late father, Andrea Buko since the year 2015. Although the case was determined in favour of the Respondent but it suggests existence

of unfair actions by Andrea Buko's family against the Respondent. This Court cannot bless such actions. For those reasons, the third, fourth, fifth and sixth grounds of appeal are hereby dismissed.

The 7th ground of appeal is meritless as it challenges the Ward Tribunal powers to adjudicate cases before it. It should be noted that, prior to amendments effected via section 45 of the Written Laws (Miscellaneous Amendment Act) No.3 of 2021, Ward Tribunals had jurisdiction to mediate and determine land disputes. Thus, it was not wrong for the tribunal to determine a land dispute lodged before it.

For those reasons, I find no merit in all grounds of appeal. Consequently, I dismiss the appeal in its entirety. Given the fact that parties to this case are neighbors and existence of good relationship between them is necessary, I do not award costs.

Dated at Tabora this 30th day of May 2024



A handwritten signature in blue ink, appearing to read "Z. D. Mango", written over a set of horizontal dashed lines.

Z. D. MANGO
JUDGE

