

**IN THE HIGH COURT OF TANZANIA**

**IN THE SUB-REGISTRY OF GEITA**

**AT GEITA**

**LAND APPEAL NO. 8237 OF 2024**

*(Originating from the decision of Geita District Land and Housing Tribunal in Land Application No. 45 of 2020, Hon Masao-Chairman)*

**MANENO ALLY SELEMANI.....1<sup>st</sup> APPELLANT**

**YUSUPH ALLY SELEMANI.....2<sup>nd</sup> APPELLANT**

**AMANI GROUP.....3<sup>rd</sup> APPELLANT**

**VERSUS**

**ZAITUNI ALLY.....RESPONDENT**

**JUDGMENT**

*Date of last Order: 29/05/2024*

*Date of Judgment: 20/06/2024*

**K. D. MHINA, J.**

This is the first appeal. It stems from the District Land and Housing Tribunal ("the DLHT") for Geita in Land Application No. 45 of 2020, whereby Zaituni Ally, the applicant who is now the respondent [to be referred as the respondent], claimed against Maneno Ally Selemani, Yusuph Ally Selemani and Amani Group, the respondents who are now the

appellants [to be referred as the appellants], *inter alia* for the declaration that she was a rightful owner of the plot described as No. 80 Block A located at Kalangalala within Geita, the respondents be declared as trespassers, the respondents to vacate from the suit premises and special damages of TZS. 10,000,000/=.

After the full trial, the DLHT decided the matter in favour of the respondent by declaring her the rightful owner of the suit premises and that the appellants were trespassers.

Undaunted, the appellant appealed to this court and preferred the following grounds to fault the decision of the DLHT;

- i. That the Chairman of the DLHT erred in law and fact by failing to properly analyse exhibits PE1, PE2 and PE3, thus arriving at a wrong conclusion.*
- ii. That the Chairman of the DLHT erred in law and fact by deciding the matter in favour of the respondent based on the title deed (Exhibit P2), while the validity of that document was doubtful.*
- iii. That the Chairman of the DLHT erred in law and fact by failing to analyse the evidence of the appellants and that of the court witness.*
- iv. That the Chairman of the DLHT erred in law and fact by deciding the matter in favour of the respondent while she failed to prove her case in a standard required by the law.*

The appeal was argued by way of oral submissions. The appellants were represented by Mr. Liberatus John, a learned advocate, and the respondent was represented by Mr. Bartholomeo Musyangi, a learned advocate.

When taking the floor, Mr. John argued the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds together by submitting that at the trial; the DLHT Chairman failed to see the faults in exhibit PE 2, the certificate of title.

He explained that the evidence at the DLHT revealed that PE1, the respondent's birth certificate, indicated that she was born in 1994. On the other hand, the title deed (Exhibit PE) indicated that the respondent signed it on 24 February 2010.

When cross-examined, the respondent stated that she signed the title deed when she was a minor, and neither a parent nor guardian assisted her in obtaining that certificate. He said she was a minor under section 4 of the Law of the Child Act.

He further submitted that the survey and mapping for the certificate (PE 2) were done on 19 November 2013. However, the respondent signed the certificate in 2010, before the survey and mapping were conducted.

He also submitted that the evidence of Mashiri Mashiri (The Tribunal witness) and PW2, Martha Lushanga, clearly stated that Ally Suleiman

purchased the suit land in 1996 from Cecilia Mwakampya Kulwa, acting as the guardian of Zaituni Ally. However, the respondent's evidence contradicted that when she claimed she was given the suit land by a deed of gift by his parents, Ally Suleiman and Martha Lushanga. Therefore, one person cannot say he acquired ownership through two different ways. He supported his submission by citing **Mwinyihatibu Juma Khatibu vs Ridhwan Juma Khatibu**, Civil Appeal No. 70 of 2020 (Tanzlii), on page 18, where it was stated that a party could not obtain ownership by both purchase and love and affection, therefore illegal.

He concluded by submitting that as per sections 110 and 111 of the TEA, the respondent was supposed to prove her claims.

Further, the Tribunal witness testified that a minor could not acquire ownership of the land. Therefore, it was the duty of the DLHT to inspect and examine all exhibits and discover doubts about the transfer of ownership from Ally Suleiman to Zaituni Ally.

In response, Mr. Musyangi submitted that the case was proved as held by the DLHT, as the respondent tendered a title deed (PE 2). The court witness also testified that the suit plot was surveyed on 4 July 1980 as per the survey map.

In 1983, the plot was acquired by Cecilia Mwakampya Kulwa, who was paying land rent taxes. In 1996, the plot was purchased by Ally Suleiman and Martha Lushanga for TZS. 150,000/= on behalf of Zaituni Ally. On 6 June 1996, the land officer received a letter to change the name from the parents to their child, Zaituni Ally, under the guardianship of her parents. In 2004, Ally Suleiman requested another person by the name of Aziz Ally be added to the ownership, but that prayer was rejected. Thus, ownership remained with Zaituni Ally.

He further responded that the tribunal witness, in his evidence, stated that the errors on the dates during registration were normal and could be rectified.

Furthermore, he submitted that in **Naki Esther Nyange vs. Mihayo Marijani Wilmore and another**, Civil Appeal No. 207 of 2019 (Tanzlii), it was held that a certificate of title is conclusive proof of land ownership. In **Salum Mateyo vs. Mohamed Mateyo** (1987) TLT 111, it was held that proof of ownership is the one whose name is registered.

He explained that at the DLHT, the respondent tendered the title deed, stating that the land was registered in her name. Further, there was no dispute that the land rent was paid in her name.

Therefore, since the respondent proved her ownership by tendering the certificate of title, the DLHT correctly held that she owned the suit land.

In a brief rejoinder, Mr. John submitted that possession of the certificate of title indicates ownership of the land, but it is imperative to investigate how the certificate was obtained.

He insisted that a person under 18 could not sign the agreement to acquire the title deed. That was why the tribunal witness stated that it was illegal and could cause the title to be null and void. Therefore, the DLDH had a duty to evaluate and hold that the title was acquired contrary to the law.

He concluded that under normal circumstances, a title deed could not be acquired in 2010, but the survey and mapping were done in 2013. Further, the tribunal witness did not testify if there were other prior surveys.

Having objectively gone through the grounds of appeal, the submissions by both parties and the entire records of appeal, I find that both grounds of appeal revolve around the issues of validity of the title deed and evaluation of evidence; therefore, the grounds are intertwined.

Therefore, first, I will deliberate on the issue of the validity of the title deed (exhibit PE2), which will dispose of the 1st, 2nd, and 4th grounds of appeal that were argued jointly and together by the parties. The title deed was attacked based on two allegations: **one**, it was issued to the respondent while she was a minor, and **two**, it was issued before the survey and mapping of the plot were conducted.

Therefore, from above, the status of the plot that it is clear that it was surveyed and registered with a title deed.

The finding above reminded me of some laws and legal principles if the land is registered.

**One** is the law itself, section 2 of the Land Registration Act, Cap 334 [R: E 2019], which is instructive when the land in dispute is registered. The section reads;

*"Registered land means the land in respect of which an estate has been registered."*

This was cemented in the case **Salum Mateyo vs. Mohamed Mateyo** [1987] TLR 111, where it was held that:

*"Proof of ownership is by one whose name is registered".*

Further, the Court of Appeal, in the cited case of **Nacky Esther Nyange (Supra)**, held that;

*"...the Certificate of Title is conclusive proof of ownership of land".*

Furthermore, the Court of Appeal in **Leopold Mutembei vs. Principal Assistant Registrar of Titles, Ministry of Lands, Housing and Urban Development, and another**, Civil Appeal No 57 of 2017 (Tanzlii), held that;

*We find it apt to emphasise the essence of any land titles system by referring to the observation made by Dr. R.W. Tenga and Dr. S.J. Mramba in their book bearing the title **Conveyancing and Disposition of Land in Tanzania: Law and Procedure**, Law Africa, Dar es Salaam, 2017, at page 330:*

*" ... the registration under a land titles system is more than the mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transactions that confer, affect, or terminate that ownership or interest. Once the registration process is completed, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title."*

From the above provision of the law and cited case laws, it is clear that the prima facie proof of land ownership is a registration. In our

country, in most cases, registration is by Certificates of Title or Letters of Offer.

However, the above is the general principle because there is an exception to that general position. On this, again, the Court of Appeal in **Jacqueline Jonathan Mkonyi and another vs. Gausal Properties Ltd**, Civil Appeal No. 311 of 2020 (Tanzlii), held that;

*"..... we wish to observe that this is not a case of end justifying the means, so we agree that registration of land would not ipso facto prove title in the absence of evidence establishing how one got the title."*

This exception to the general rule establishes the **principle of tracing**. That means that in certain circumstances, a background check and evidence of how a person acquired the land are necessary to establish how a person acquired that land.

Flowing from above, it should be noted that this Court, being the first appellate court, is entitled to re-evaluate the evidence on record and, if warranted, can arrive at its own conclusion. See **Makubi Dogani vs. Mgodongo Maganga**, Civil Appeal No. 28 of 2019 (Tanzlii).

At the trial, the respondent tendered the title deed and testified how the plot fell into her hands. It was her parents who purchased the same from Cecilia Mwakampya Kulwa in 1996 in her name, and the parents

were guardians. Therefore, she was given that plot by her parents, and later, it was registered in her name. Her evidence was corroborated by PW2, her mother.

On the other hand, the 1<sup>st</sup> and 2<sup>nd</sup> appellants testified that the suit plot was owned by their late father, and it was not true that the land was given to the respondent as a gift. The 1<sup>st</sup> appellant did not tender any exhibit, but the 2<sup>nd</sup> appellant tendered the transfer of the right of occupancy from Mwakampya Cecilia Kulwa to Zaituni Ally as a minor.

In his evidence, the Tribunal witness, who was the Land Officer, testified that the plot in dispute was surveyed in 1980 and owned by Mwakampya Cecilia Kulwa in 1996. The ownership shifted to Zaitun Ally under the guardianship of Ally Selemani, and the witness was Martha Lushanga. Further, the plot was registered under the name of the respondent.

It should be noted that according to the evidence, the 1<sup>st</sup> and 2<sup>nd</sup> appellants are related to the respondent. They share the same father, who passed away in 2005.

Therefore, from above, the evidence adduced at the DLHT relating to the registration of land and the tracing principle indicated that;

**One**, the suit land was registered in the name of the respondent.

**Two**, by the tracing principle, the ownership of the suit land only passed from Mwakampya Cecilia Kulwa to the respondent.

**Third**, according to the land officer (Tribunal witness), the title deed was validly issued to the respondent.

**Fourth**, the suit land was never owned by Ally Selemani, as alleged by the appellants.

Therefore, the DLHT correctly held that the title deed was valid. The DLHT correctly analysed the exhibits tendered. Thus, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal are devoid of merit.

In his submission, Mr. John complained that the title deed was issued to the respondent while she was a minor and before the survey and mapping of the plot were conducted.

On this, I have the following;

**One**, the land officer who testified, stated that the survey was conducted in 1980 and later allocated to Mwakampya Cecilia Kulwa. That was contrary to Mr. John submission that the survey and mapping were done in 2013, while the certificate was issued in 2010 before the survey and mapping were conducted.

**Two**, in his evidence at the trial, the 1<sup>st</sup> appellant stated that in 2022, he visited Land offices and, when he searched, found that the suit plot was registered in the respondent's name since 2007.

On this, I wish to add for the benefit of the parties that the Land Act and Land Registration Act provide remedies if a person is aggrieved by the decisions of the Commissioner for Land in the allocation of land and the Registrar of Titles in the registration of land.

In the allocation of land, an aggrieved party shall refer his complaint to the Commissioner for Lands, and if dissatisfied with the decision of the Commissioner for Land, a person aggrieved is supposed to appeal to the Minister responsible for Lands, under Section 26 (5) of the Land Act.

On the other hand, a person who has a complaint regarding land registration shall refer it to the Registrar of Titles under Section 99 of the Land Registration Act. If a person is aggrieved may appeal to the High Court under Section 102 (1) of the same Act.

Regarding the 3<sup>rd</sup> ground of appeal, though the counsel for the appellant did not submit on it. However, having gone through the DLHT proceedings and judgment, I found that the DLTH not only analysed the evidence of the appellants but also considered it in the decision but found the same to lack merits.

On pages 15 and 16 of the DLHT judgment, it was clearly indicated that the appellants' evidence was analysed and considered, but it was accorded no weight because they failed to tender any document showing whether they owned the suit plot or were the administrators of their late father's estate.

The evidence of the Tribunal witness was analysed and considered; in fact, that witness testified that the title deed was validly issued to the respondent.

Therefore, the third ground of appeal also fails.

From the above discussion, in totality, the appeal lacks merits; both grounds of appeal fail to persuade this Court to interfere with the decision of the DLHT.

Consequently, I dismiss the appeal with costs.

It is so ordered.



**K. D. MHINA**  
**JUDGE**  
**20/06/2024**

**Court:-**

Right to appeal explained to the parties.



  
**K. D. MHINA**  
**JUDGE**  
**20/06/2024**