IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
DODOMA DISTRICT REGISTRY
AT DODOMA
LAND APPEAL NO. 11 OF 2023

(Arising from the District Land and Housing for Iramba at Kiomboi in Land Application No. 18 of 2018)

KIMWERI OMARI STAMBULI....................................APPELLANT

Versus

IGUGUNO VILLAGE COUNCIL...............................RESPONDENT

JUDGMENT

Date of Last Order: 08th February 2024.
Date of Ruling: 15th March 2024.

MASABO, J:-

The appellant was the respondent in Land Application No. 18 of 2018 before the District Land and Housing for Iramba at Kiomboi (the trial tribunal). He is aggrieved by the trial tribunal's judgment and decree which were in his disfavour. According to the record, the respondent knocked on the doors of the trial tribunal praying for a declaratory order that she is the lawful owner of the suit land located at Iguguno village, Mkalama District in Singida, an order of vacant possession against the respondents and for demolition of residential houses found in the suit land.

The gist of his claim was the breach of the land lease agreement by the appellant. It was alleged that the suit land was part of the village land. The respondent acquired it during Operation Vijiji and utilized it uninterruptedly until on 25th September 1993 when it's the village council allocated the same to the appellant and 4 other persons who had organised into a group styled as Iguguno Technical Combine (ITECO).

Save for the appellant other members of the group who are Juma Msabaha, Mohamed Mgwira, Musa Kipemba and Juma Tanga have all demised leaving the appellant as the sole surviving member. Further, it was alleged that the allocation of the suit land to the appellant and his group was on condition that it would be exclusively utilised for garage activities short of that the ownership would revert to the respondent. In transgression, the appellant sold a portion of the suit land to Hamisi Rajabu Songoro, Joseph Luther Muna, Elia Andrea, Kipemba Ibrahim Moki, Mariam Hakim and Aron Makuza.

In support of her case, the respondent paraded two witnesses and produced four documentary evidence comprising of a land ownership deed which was admitted together with minutes of the village council as ExhbitP1 collectively, some letters admitted as exhibit P2 and sale agreements which were admitted as Exhibit P3. From this evidence, the respondent sought to prove that the applicant in the company of other four members of ITECO group, now deceased, applied and were on 10/11/1993 allocated the suit land by the respondent on which to build a garage and conduct garage business. That, the land was to be exclusively used for garage business but to the contrary, the 1st respondent built a home therein and sold part of the land to other people.

On his part, the appellant who was jointly sued together with Aron Mkuza who is not a party herein admitted that together with four other persons, now deceased, they formed a group styled as Iguguno Technical Combine also known by its abbreviation ITECO and they were granted the land. And, as much as he refuted to have breached the terms of the ownership

deed, in cross examination he admitted to have sold part of the land. The other two witnesses who testified in support of his defence, told the court that indeed he was allocated the land but he breached the conditions thereof. Satisfied that the appellant was in breach of the conditions of the ownership deed, the trial tribunal held in favour of the respondent and ordered that the ownership of the suit land revert back to her.

Aggrieved by the decision, the appellant filed the present appeal armed with the following grounds:

1. That, the trial Tribunal erred in law and fact by entertaining the matter while the appellant was wrongly sued instead of Iguguno Technical Combine (ITECO).
2. That, the Trial Tribunal erred in law and fact by holding that the respondent is a lawful owner of the suit land based on weak and contradictory evidence and without considering the strong appellant's evidence.
3. That, the trial Tribunal erred in law and fact by holding that the terms and conditions of allocating the suit land to Iguguno Technical Combine (ITECO) were breached while actually, the intended purpose of allocating the suit land is still going on.
4. That, the trial Tribunal erred in law and fact by holding that the suit land was granted to Iguguno Technical Combine (ITECO) for garage purposes while there was no such evidence.
5. That, the Trial Tribunal erred in law and fact by refusing to admit documents which prove that part of a suit land was

not granted to Iguguno Technical Combine (ITECO) but belongs to another person and hence not part of land in disputes.

6. That, the trial Tribunal erred in law and fact by unlawfully refusing to admit the Minutes of Iguguno Village Council dated 27th June 2015 which approved the appellant's occupancy to the suit.
7. That, the trial Tribunal erred in law and in fact by holding that the use of the suit land was not in accordance with the terms and conditions of allocation without considering the appellant's testimony that the Iguguno Technical Combine (ITECO) allowed the appellant to live therein with his family as member and secretary of the said ITECO in order to supervise the activities therein.
8. That, the trial Tribunal erred in law and fact by unlawfully refusing to admit documents which proved that the appellant's occupancy to the suit land was in accordance with instruction of Iguguno Technical Combine (ITECO).
9. That, the trial Tribunal erred in law and in fact by failure to evaluate evidence properly in reaching its decision.

On 08th February 2024, the parties appeared before me for a *viva voce* hearing of the appeal. The appellant was represented by Mr. Moses Msami, learned Advocate whereas the respondent was represented by Ms. Agness Makuba, learned State Attorney.

Submitting in support of the appeal, Mr. Msami abandoned the 2nd, 3rd, 5th, 6th and the 8th grounds of appeal while he retained the 1st, 4th, 7th and the 9th grounds of appeal. He then submitted and argued in support of the first ground separately and consolidated the 4th, 7th and the 9th grounds of appeal and argued them together. Submitting in support of the first ground of appeal he argued that it is undisputed that in the trial tribunal, the appellant was sued in his personal capacity. However, the deed of ownership by which the respondent relinquished its ownership of the suit land (exhibit P1 collectively) shows that it did not transfer the ownership to the appellant. Rather it vested it into ITECO group, a community-based organization, to which the appellant is the sole surviving member. It was argued further that, this evidence was ably corroborated by the minutes of the village council which similarly shows that the suit land was given to ITECO to which the appellant is just a member, not the owner. He concluded that, as per this evidence, it is crystal clear that the appellant was wrongly sued in his personal capacity. Hence the suit was incompetent and the proceedings and judgment thereto were a nullity.

On the 4th, 7th and 9th grounds of appeal, it was submitted that the provision of section 3(2) (b) of the Law of Evidence Act, Cap 6 RE 2022, was offended as the respondent did not prove her case to the standards required by the law. In clarification, it was argued that the epicenter of the respondent's claim was that the appellant breached the condition of the ownership deed which directed that the land be exclusively used for garage activities. However, such a term was missing from the ownership deed which was admitted as part of Exhibit P1 collectively. Thus, the

respondent had no basis in claiming that the suit land was intended for garage activities and that by building a residential house the appellant acted in breach of such term. Conclusively, Mr. Masami submitted that since the respondent sued the wrong party and miserably failed to prove his claim, this appeal has merit and should be allowed with costs.

Replying to the first ground of appeal, Ms. Makuba, learned State Counsel, opposed the appeal and submitted that the trial tribunal was correct in its findings as the minutes which were part of Exhibit P1 collectively show that the land was leased to the members of ITECO and not to ITECO which was not registered under the law. Thus, there was no anomaly in suing the appellant in his own name because, first ITECO group being unregistered could not be sued in its name. Second, the appellant is the sole surviving member of ITECO group as the rest of the members have demised. And, lastly, apart from being the sole surviving member of ITECO, the appellant unlawfully sold part of the land and built his residential home in the remaining part of the suit land contrary to the terms of the deed.. Clarifying further, the learned State Attorney argued that as it can be seen on pages 44, 45 and 46 of the trial tribunal's record, the appellant admitted that the land was intended for garage use and that, he has built a residential house and resides there with his family. He also admitted to have sold part of the land contrary to the land use terms. In the circumstances, and since no group can be run by a single individual, the appellant was the proper party to be sued and his complaint in the first ground is with no merit.

On the consolidated 4th, 7th, and 9th grounds of appeal, she submitted that the appellant's defence was seriously lacking in merit. The trial tribunal was, therefore, justified in deciding the case against the appellant because, being the sole surviving member of the ITECO group had no right to sell the land. Since he sold it and he so admitted, the trial tribunal cannot be faulted for holding that the appellant was in breach of the terms and conditions of the deed of ownership and for reverting back the ownership of the suit land to the respondent. She added that since the appellant who is the sole surviving member of ITECO breached the lease condition, the suit land had to revert to the respondent. In conclusion, she submitted that the appeal has no merit and should be dismissed with costs.

In rejoinder to the first ground, Mr. Msami reiterated his submission in chief and submitted that the argument that ITECO is not registered is alien to the proceedings. Hence, it should be ignored as it is a mere submission from the bar and legally devoid of any weight. On the consolidated ground, he rejoined that the learned State Attorney's reply submission is with no merit because, although she was insistent that the appellant acted in breach of the conditions of the land lease deed, she did not show the said term(s) or condition(s) to the court's viewing and in his scrutiny of Exhibit P1 collectively, he did not come across such term. Thus, the State Attorney's submission is without merit and should not be accorded any weight.

I have carefully considered the grounds of appeal in the light of the records of the trial tribunal which I have thoroughly read alongside the

submissions by the parties. Following the abandonment of the 2nd, 3rd, 5th, 6th, and the 8th grounds of appeal, I am left with four grounds for determination, to wit the 1st, 4th, 7th, and the 9th ground. The pertinent issue for determination arising from the first of these four grounds concerns the competence of the trial tribunal's proceedings, judgment, and decree. Mr. Msami's main argument in support of this ground is that, the appellant was wrongly sued. Based on this, he has invited this court to enter a declaratory order that the suit was incompetent for want of a proper party and to consequently nullify the proceedings, judgment, and decree for being predicated in incompetent proceedings. The remaining grounds which were consolidated revolve around the merit of the suit and the sole question for determination arising from them is whether the respondent proved its case to the required standards.

As I embark on determining these two issues, it is apposite, I think, to state at this outset that the present appeal being a first appeal is akin to a rehearing. As stated by the Court of Appeal in **Menroof January Haule vs Republic** (Criminal Appeal No. 121 of 2022) [2024] TZCA 69, TanZLII

> "...this being a first appeal it is in the form of a re-hearing, therefore the Court, has a duty to re-evaluate the entire evidence on record by reading it together and subjecting it to a critical scrutiny and, if warranted, to arrive at its own conclusion of fact. See the cases of **D.R. Pandya v. Republic** [1957] EA 336 and **Reuben Mhangwa and Another v. Republic,** Criminal Appeal No. 99 of 2007 [2019] TZCA 341: [30 September 2019: TanzLII]

This court is, therefore, obligated to critically reevaluate the evidence and come up with a finding. In view of this principle, I have critically analsyed the evidence on record as abbreviated in the prelude and I am now ready

to determine the appeal starting with the first ground of appeal. Since the allocation of the suit land was documented into a deed and the deed was presented in court and admitted as part of Exhibit P1 Collectively, I have found it apposite to start with it. Going through it, I have observed that it is titled "HATI YA KUMILIKI WA KIWANJA" informally translated as "OWNERSHIP DEED FOR A PLOT." The substantive part of the deed which I reproduce below for clarity and ease of reference states as follows:

> HATI YA KUMILIKI KIWANJA
> **HATI HII IMETOLEWA KWA KIKUNDI (ITECO)**
> **IGUGUNO TECHNICAL COMBINE** BOX 40 IGUGUNO-IRAMBA
> **KIKUNDI KIMEPEWA** KIWANJA CHA ENEO LA FUTI MRABA 17787 SAWA NA MITA MRABA 7700.
> HATI HII IMETOLEWA KWA MAKUSUDI YA KUMILIKI KIWANJA HIKI KWA KAZI ILIYOKUSUDIWA TU. VINGINEVYO HATI HII INAWWEZA KUBATILISHWA WAKATI WOWOTE ENDAPO MAKUSUDI YA MAOMBI YATAKWENDA KINYUME NA MAANDISHI YA UOMBAJI.
> **KIKUNDI HIKI KILICHOTAJWA** HAPA JUU NDICHO PEKE YAKE CHENYE HATI HII KUMILIKI KIWANJA .HATI HII IMETOLEWA NA SERIKALI YA KIJIJI CHA IGUGUNO LEO TAREHE 10-11-1993. [Emphasis added].

Literally translated it means:

> DEED OF OWNERSHIP OF A PLOT
> THIS DEED HAS BEEN ISSUED TO A GROUP (ITECO)
> IGUGUNO TECHNICAL COMBINE BOX 40 IGUGUNO-IRAMBA
> THE GROUP HAS BEEN GRANTED AN AREA MEASURING 17787 SQURE FEET EQUAL TO 7700 SQUARE METERS.
> THE DEED HAS BEEN ISSUED FOR PURPOSES OF OWNING THE AREA FOR THE INTENDED LAND USE. SHOULD THE LAND BE USED FOR ACTIVITIES OTHER THAN ITS

INTENDED USE AS STATED IN THE APPLICATION IT WILL BE NULLIFIED.
THE ABOVE MENTIONED GROUP HAS EXCLUSIVE RIGHT OVER OWNERSHIP OF THIS PLOT.
THIS DEED HAS BEEN ISSUED BY IGUGUNO VILLAGE COUNCIL THIS 10-11-1993.

From this deed, it is crystal clear that ownership of the suit land was vested in ITECO and not its respective members. Accordingly, the immediate question for determination is whether or not the appellant herein being just a member of ITECO could sue or be sued for breach of a term of the ownership deed. It is a trite law in our jurisdiction and in other common law jurisdictions that, the right to sue under a contract is exclusively available to a person who is a party to the contract. The doctrine, popularly understood as the doctrine of privity of contract, excludes third parties and strangers from enforcing a term of a contract to which they are not privy. The landmarks cases of **Price vs. Easton** (1833) 4 B AD 433, **Tweddle vs. Atkinson** (1861 EWHC J57 (QB) and **Berswick vs. Berswick** (1966) Ch 538, which espoused this doctrine, are still a good law and well cherished in our jurisdiction. It has been applied in a plethora of cases, among them, the decision of the Court of Appeal in **Mashado Game Fishing Lodge Ltd and Another vs. Board of Trustees of Tanganyika National Parks (t/a TANAPA)** [2002] TLR 319 and its recent decision in **Austack Alphonce Mushi vs Bank of Africa Tanzania Ltd & Another** (Civil Appeal 373 of 2020) [2021] TZCA 521 TanzLII where, while reckoning other decisions, the Court stated that:

> .. by way of emphasis, we would add that contract, as a juristic concept, is the intimate if not the exclusive

relationship between the parties who made it – see Furmston, M.P., Cheshire, Fifoot and Furmston's Law of Contract (15th edn), Oxford University Press, Oxford, 2013 - Online Edition, at page 698. A contract, being principally a matter between the contracting parties, will normally state the rights and duties of the parties but having nothing to do with other parties. In **Tarlok Singh Nayar & Another v. Sterling General nsurance Company Limited** [1966] 1 EA 144 and **Kayanja v. New India Assurance Company Limited** [1968] EA 295, the Court of Appeal for East Africa recognised the application of the common law doctrine of privity of contract as it held that a stranger to a contract cannot sue upon it unless he is given a statutory right to do so. See also the decision of the High Court (Massati, J as he then was) in **Tanzania Union of Industrial and Commercial Workers (TUICO) at Mbeya Cement Company Ltd. v. Mbeya Cement Company Ltd. and National Insurance (Tanzania) Ltd.** [2005] T.L.R 41 stating and applying the said doctrine.

The deed of ownership herein is akin to a contract. It set out not only the right of ITECO to own the suit land but stipulated the conditions to be complied with if the grant was to remain valid. In the foregoing and guided by this principle above, I entirely agree with Mr. Msami that, the first appellant being a mere member of ITECO and could neither sue nor be sued for breach of the conditions of the deed irrespective of whether he is the sole surviving member of ITECO. By suing the appellant herein the respondent materially erred and rendered his application incompetent for want of a proper party.

That said, I do not agree with Ms. Makuba's argument that ITECO could not be sued in its own name as it was unregistered hence devoid of legal

standing. As correctly argued by Ms. Msami this fact is alien to the proceedings. Nothing in the trial tribunal's proceeding or the judgment thereto shows that ITECO had no legal personally. Her argument is, therefore, a mere statement from the bar with no legal value.

In the foregoing, the first ground of appeal is found with merit. Further, since this ground suffices to dispose this appeal, I see no need to determine the remaining grounds. Accordingly, the trial tribunal's judgment and decree are quashed and set aside for being predicated on incompetent proceedings. Costs shall be paid by the respondent.

DATED and **DELIVERED** at **DODOMA** this 15th day of March 2023.

J.L. MASABO

JUDGE