

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

AT MTWARA

LAND APPEAL NO. 14 OF 2009

*(From the Decision of the District Land and Housing tribunal
of Mtwara District at Mtwara in land Case No. 30 of 2007)*

OLAM TANZANIA LIMITED

PROPERTY INTERNATIONAL.....APPELLANTS

VERSUS

BARAKA MKONDOLA.....RESPONDENT

JUDGMENT

Chinguwile, J.

This is an appeal against the decision of the Land and Hosing Tribunal in Application No 30 of 2007. In the said decision the appellants and another company which did not appeal, were respondents while the respondent was the applicant. The respondent obtained exparte judgment on 19/11/2007. The appellants sought to set aside the exparte judgment but their application was dismissed hence this appeal.

They have raised four grounds of appeal to wit;

- a) *The tribunal's decisions dated 19/11/2007 and 12/12/2007 respectively are bad in law for being tainted with fraud and misrepresentation.*
- b) *The tribunal erred at law in proceeding ex parte in the absence of proper service to all the respondents.*
- c) *The tribunal erred at law for rejecting the application to set aside the ex parte order.*
- d) *That the tribunal generally in denying the appellants their right to be heard.*

It was submitted that, the proceedings and judgment of the tribunal was tainted with fraud for the reason that the same tribunal accepted two conflicting statements from the respondent. According to the learned counsel, before the same tribunal there was an affidavit by the respondent admitting that he had given his certificate of title to the third respondent as security. It was further argued that in the main application the respondent changed his story by stating that he had never given his certificate of title to the third respondent. It was thus contended by the learned counsel, that this shows that there was fraud and misrepresentation on the part of the respondent.

It was also contended that, the trial tribunal erred in proceeding in the absence of the appellants and that by doing so they were denied their right to be heard. The learned counsel further contended that, the appellants were not

served as according to the proclamation of sale, their given addresses were in Dar es Salaam. After hearing the submissions made by both parties, I am of the opinion that the court should make a finding on the competency of the trial tribunal.

The origin of the dispute was a proclamation of sale of the respondent's property. The said property is situated at Ligula Area Mtwara on Plot No 232 Block "A" with Certificate of Title No 798 as such it is a registered property under the **Land Act Cap 113 RE 2002** and the **Land Registration Act Cap 334 RE 2002**.

The appellants are also challenging the dismissal of an application to set aside an exparte judgment. It was argued that the trial tribunal did not consider the fact that there was no proper service on the part of the appellants. It was further argued that taking into account the allegations of fraud, the trial tribunal ought to have allowed their application so that the application could be heard on merit.

The respondent disputed the appellants' submissions. According to him the proceedings were not tainted with fraud. He also denied that he gave two contradictory statements. It was his submission that he did not deny that he had given his certificate of title to Ghuba holding as security but rather it was submitted that there was no agreement. On the issue of service, it was argued that as the

first appellant has big cashew nuts processing factory in Mtwara it cannot be said that they have no office in Mtwara. It was further submitted that, on 19/9/2009 one Mr. Hagila who identified himself as the Industrial Relations officer of the first appellant company, entered appearance on its behalf. It was his submission that this proves that there was proper service. With respect to the second appellant, it was argued that since he was appointed by the first appellant then it was also proper to serve them through Mr. Hagila. He also submitted that on the same date one Millanzi who was an officer of Straight-line Auction Mart informed the trial tribunal that an officer of the second respondent had refused service. It was his contention that all these facts proves that both appellants were properly served and that what was occurred was sheer indifference.

The respondent disputed the appellants' allegations that they were not accorded the right to be heard. It was his contention that they chose not to pursue their rights. He therefore invited this court to dismiss the appeal with costs.

In rejoinder it was submitted that the title of Mr. Hagila was not established hence it cannot be said that there was service. It was also argued that since the respondent is admitting that he had given his certificate of title as security, and then there was no reason at all to invalidate the arrangement. He prayed that the decision of the main

application be quashed because it was tainted with fraud. Alternatively he invited the court to set aside an order to precede exparte, so that the application could be heard on merit.

Before considering the merits of this appeal, I think I should look at the competence of the trial tribunal to determine disputes over registered lands. It is obvious from the records of this case that the dispute originated from a proclamation of sale of a house situated on Plot No 232 Block A Ligula Area Mtwara with Certificate of Title No 798. As such it a dispute which falls squarely under the ambit of **section 37(1) (c) and (e) of the Land Disputes Courts Act, Cap 216 RE 2002**.The provision reads;

Subject to the provisions of this Act, the High Court (Land Division) established shall have and exercise original jurisdiction –

(e) In all such other matters relating to land under any written law in respect of which jurisdiction is not limited to any court or Tribunal.

This land is registered under the **Land Registration Ordinance Cap 334** and in my view it is subject to the requirements of this provision. Although the pecuniary jurisdiction reads five million shillings, tribunals do not have

jurisdiction over such land as they are regulated by **section 37 of the Land Disputes Courts Act, Cap 216.**

This being the case I do find that by entertaining the application which was before it, the District Tribunal acted without jurisdiction. In the premises the decision which emanated from application is incompetent since it was issued by an incompetent tribunal. The same is liable to be quashed.

Having found that the decision was given by a tribunal which had no jurisdiction, I don't think that there is a need of determining the grounds of appeal. That said the proceedings as well as the decisions of the District Tribunal are hereby quashed. All orders made pursuant to these decisions are set aside.

Considering the facts of this case I will make no order as to costs. Any party intending to pursue this matter is at liberty to institute a fresh suit before an appropriate court.

A.F.Chinguwile

JUDGE

25/9/2009