IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

MISC. LAND CASE APPEAL NO. 81 OF 2008

(From the Decision of the District Land and Housing Tribunal of Kinondoni District at Kinondoni in Land Case Appeal No. 100 of 2005)

FREDOLINE NGOTI..... .. .. APPELLANT

VERSUS

SHAKILA RASHID..... .. .. RESPONDENT

J U D G M E N T

BEFORE: HON. NGWALA, J:

This is a second appeal from Appeal no 100 of 2005 in the District Land and Housing Tribunal for Kinondoni District in which the respondent Shakila Rashid (Mariam) successfully challenged the decision by the Ward Tribunal of Bunju in Civil Case No 80 of 2004. That tribunal of Bunju ordered the respondent to be compensated a sum of Shs 3,000,000 for a plot of Land trespassed by the appellant. The compensation order had been given in favour of the appellant against the respondent. The District Land and Housing Tribunal reversed the compensation order of Shs. 3,000,000/= giving rise to the said appeal No 100 of 2005. The Chairman of District Land and Housing Tribunal allowed the appeal with costs, and declared the respondent, SHAKILA RASHID MARIAM, the lawful owner of the land which is now plots No. 847 and 849,

Block D, Boko. It further declared the offers issued to other people on the said plots were illegal, null and void. A demolition order of all the structures erected on the suit land too was issued. Mr. Lugaila, learned advocate for the appellant filed five grounds of appeal, namely that:-

"The honourable Tribunal erred in law and in fact when it entertained a matter that was heard by Bunju Ward Tribunal without jurisdiction.

2. ***That the honourable tribunal erred in law and in fact when it entertained a matter which was filed by the Respondent without locus standi, to wit; without letters of Administration of the estate of the deceased, one Hazina Kigumi, the alleged original owner of the suit property.***
3. ***That the Honourable Tribunal erred in law and infact when it failed to take into consideration the fact that, there was miscarriage of justice at the trial level for non-joinder of other necessary parties:- Gasper Ngoti, Rose Kundecha, to whom the suit property is alleged to have been sold. One Joseph Anthony Moshi and the Municipal Council."***
4. ***That the Honourable Tribunal erred in law and infact when it heard the appeal before it exparte and without proper notice to the appellant herein who was being represented by an advocate who has a proper address and is known to the***

Tribunal, and the Respondent herein, yet the matter was heard on a date, contrary to the one indicated by the Tribunal's causelist as known to the Appellants advocate.

5. ***<u>alternatively;</u>***
   - ***(a) that the honourable tribunal erred in law and fact when it held that the Respondent is a lawful owner of the suit land.***
   - ***(b) that the Honourable tribunal erred in law and in fact when it failed to order compensation to the Respondent, who was/is an innocent purchaser of the suit property."***

At the hearing of the appeal this court sat with two honourable assessors. It was agreed by the parties that the appeal be argued by way of written submissions. The parties filed their respective written submissions which are contained in the file. Upon an in-depth analysis of the arguments in support of the grounds of appeal, it is the finding of this court that the arguments by Mr. Lugaila for the appellant sound vital, but they are not valid as far as the proceedings in the Bunju Ward Tribunal record are concerned. In regard to the jurisdiction of the Ward Tribunal, It is provided for under Section 15 of the Land Disputes Courts Act No. 2 of 2002 as follows:-

"Notwithstanding the provisions of section 10 of the Ward Tribunal's Act, 1985, the Jurisdiction of the Tribunal shall in all

Proceedings of a civil Nature relating to
Land be limited to the disputed land or
Property valued at three million shillings."

Mr. Lugaila is basing his arguments on lack of jurisdiction on the statement in the judgment of the District Tribunal which says:-

"A plot of a surveyed land in Boko , should
Now fetch 3,000,000/= plus, not less.
What about two plots".

This statement alone, without perusing the record and the nature of claims filed at the institution of the suit plus all the proceedings cannot be the basis for objecting the jurisdiction of the tribunal.

On one fold of his arguments in support of the 1st ground of appeal, he submitted that ***"At page 2 of the judgment of the District Tribunal it was stated that on the day of the visit, the tribunal saw the land which had two portions, one portion was fenced, but nothing built, and the other had a house built to its forth line, and it had a strong foundation (with concrete)",***
According to him these facts entitled the District Tribunal to quash the proceedings at the trial tribunal for lack of jurisdiction and order a retrial at the proper court of competent jurisdiction.

On the other fold he contended there was another jurisdictional issue of the Ward Tribunal based on the nature of the suit which is a claim of compensation for a land that

had been declared a planned area. It had been declared by the President under the Town and Country Planning Act Cap 355 as per the Dar es Salaam Master Planning (Dar es Salaam Master Plan Area) Order GN No 405 of 1985 read together with the Town and Country Planning (Areas Ripe for Development) Order, GN. No 383 of 1992. Boko area, where the suit properties are located was declared to be a planned area. Thus acquired by President under S. 45 of the Town Planning Act, for the purposes of developing in accordance with the use declared in by the Ministry responsible for Town Planning since 1983, as such, all the claims concerning compensation were supposed to be brought against the government, local and central within six months from the date of declaration and acquisition under section 59(2) of the Town and Country Planning Act, CAP 335.

Mr. Lugaila submitted in case of any dispute concerning the acquired land the matter is within the jurisdiction of the High Court Land Division, to determine it under section 60 of the Town and Country Planning Act, CAP 355

With respect, in the circumstances of this case what matters in reality is the substantial justice rather than purely legal formalities which are purported to be relied by the appellant at this stage. This is in terms of ***Sections 180 and 3(g) of the Land Act No. 4 of 1999*** read together with the ambits of Section 45 of ***the Courts Land Disputes Settlement Act, No.2/2002, 216 CAP 33. R.E. 2002*** which reads as follows:-

"45 No decision or order of a Ward Tribunal Or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order on account of improper admission or rejection of any evidence unless such error, omission or irregularity or improper admission or rejection of evidence loss in fact occasioned a failure of justice."

In this regard, an account of analysis of the evidence on record, the reasoning of the appellate tribunal was quite proper because, it was clearly established that the appellant had trespassed into the land the property of the husband of the respondent, now the legal administratrix of the estate of her deceased husband, the late Hazina Kigumi. I do not see any miscarriage of justice at the trial level, and also the irregularity on the ex-parte hearing of the Appeal when the proceedings show clearly that the Respondent was aware of the appeal, as they were duly served with the summons of the tribunal but failed to attend, hence they denied themselves of their rights to be heard.

As regards the value of disputed land the same is estimated at Shs 400,000/= and Shs 300,000/= as approximated by the Bunju Ward Tribunal. The statement by the chairmen of the District Land and Housing Tribunal cannot be said to be the real value of the disputed land, as the original claims on the disputed land was ***"Madai ya***

kiwanja" which was not disputed by the Appellant. The appellant did not raise any objection to the value of the land or the Plot at the Bunju ward tribunal nor did he do so before the appellate tribunal at kinondoni District Land and housing tribunal. Worse, to date the value of the disputed plot has not been valued by a Valuer, specifically an approved Government Valuer.

I have also perused the copy of the offer purported to have been issued to Fredoline Ngoty on 17th July, 1996 with the attached registered plan, by the Ag. City Land Surveyor drawn by Rugaiza on 15th May, 1998 and approved by Kifanga on 25th May, 1999; these alone without the Exchequer receipts containing amount payable or acceptance of a right of occupancy for the offer of a certificate of occupancy, registration fees, surveyor fees, fees for Deed Plans, Stamp duty on certificate and Duplicate, land rent for the period of 1st July, 1996 – 30th June, 1997 and thereafter for 30th June, 1997 to the 27th September 2005, could not entitle one Fredoline s/o Ngoty ownership over the disputed plot because he never produced them at the Ward Tribunal. In fact the argument by Mr.Lugaila that the contention by the Respondent that he had no knowledge of the acquisition of the Land by the President that the acquisition was gazetted precludes the general public from alleging ignorance of the facts, cannot be taken without a pinch of salt in the course of determining disputed ownership over a grant of a right of occupancy granted to a person who was not a former owner of the acquired land when the original owners of the land under

the deemed right of occupancy, are not compensated and are claiming ownership over the land through the Village Authority, and the right to occupy their land under customary laws. I hold so because the record show clearly that the respondent is a lay person who has been acting with due diligence, claiming over their right to the "Shamba", now plots no 847 and 849, Block D, Boko, before the coming into effect and operation of the new Land laws and Land Dispute Settlement Courts which have resulted into this long protracted land disputed.

The fact that the Appellant had been allocated the suit land vide a letter of offer over the suit land which has a dispute between the original occupants under Customary Rights, who have not received any payment of compensation under the Town and Country Planning Act, Cap 355, could not and cannot entitle the appellant to have a superior title over the land than the respondent. The appellants offer cannot be effective without compensation being paid upon the respondent on behalf of her husband who has been in a recognized long-standing occupation of this suit land. This is provided for under Section **3(g) of the Act No. 4/99.Land Act No. 4/1999.**

In view of the decision of the District Land and Housing Tribunal of Kinondoni, which, I think, the chairman came to the conclusion that the intention of the legislature was to curb by illegal maladministration on land matters, issuance of illegal offers, title deeds and taking peoples land without adequate compensation as the one under consideration.

Reference too has been made to section 45 of the Land Disputes Courts Act No. 2/2002 quoted in this judgment as aforesaid above in this regard.

It is for the foregoing reasons that I do not agree with the grounds of appeal and the submission in support of them and I think it would be wrong to set aside the judgment and decree of the District Land and Housing Tribunal for Kinondoni. The appeal fails and is dismissed with costs.

A. F. NGWALA

J U D G E

27/04/2009

27th April, 2009

Coram: Hon. A.F. Ngwala, J.

For Appellant: Present

For Respondent: Absent

c.c.: Haulath Miss.

Court: Judgment read in chambers in the presence of the Appellant and in the absence of the respondent, Mr. Lugaila, Advocate for the appellant to be notified.

A. F. NGWALA

J U D G E

27/04/2009