

IN THE HIGH COURT OF TANZANIA

[LAND DIVISION]

AT IRINGA

LAND CASE APPEAL NO. 6 OF 2010

(From the decision of the District Land and Housing Tribunal of  
Iringa District at Iringa in Land Case No.16 of 2009

FARAJI SWEDI MSANGI ..... APPELLANT

VERSUS

1. IBRAHIM NZIKU }  
2. NAOMI KAGALI } ..... RESPONDENTS

(Date of last Order 15.11.2011  
Date of Judgement 15.2.2012)

**JUDGEMENT**

KIHIO, J.,

The appellant, Faraji Swedi Msangi had sued the respondents, Ibrahim Nziku (1<sup>st</sup> respondent) and Naomi Kagali (2<sup>nd</sup> respondent) in the District Land and Housing Tribunal for Iringa claiming for:-

- (a) a declaration that the respondents had breached the contract of sale.
- (b) Leave of the tribunal to attach and sell the pledged

house and if the debt was not liquidated from the proceeds of the sale, the balance to be made good by attachment and sale of respondent's other properties.

(c) general damages

(d) costs

(e) Any other relief the tribunal would deem fit.

The respondents raised a preliminary objection on a point of law that the said tribunal had no jurisdiction to entertain the dispute as it was based on contract and not on a house or land and on 9<sup>th</sup> February, 2010 the application was dismissed with costs.

The appellant was dissatisfied with the District Land and Housing Tribunal's decision dated 9<sup>th</sup> February, 2010 and hence this appeal.

The appellant raised two grounds of appeal in his Memorandum of Appeal. The two grounds of appeal are:-

1. That the Hon. Chairman erred to dismiss the application on the ground that the dispute was based on breach of contract to supply timber hence the law of contract applied and only the ordinary court was competent to adjudicate the matter notwithstanding that a house was mortgaged to

secure the contract which was sought to be sold following the breach of that contract.

2. That the Hon. Chairman ignored the contrary binding decision of the high Court on this issue in (PC) Civil Appeal No. 5 of 2008 – **James Msigala V. Isaya Mtega** which was cited to him.

The appellant is represented by Mr. Onesmo Francis, learned counsel while the respondents are represented by Mr. Malangalila, learned counsel in this appeal.

The hearing of the appeal proceeded by way of written submissions.

In support of the first ground of appeal Mr. Onesmo Francis, learned counsel for the appellant submitted that since there was a contract of equitable mortgage between the appellant and the respondents then on the strength of the provisions of Sections 3 and 4 of the Land Disputes Courts Act No. 2 of 2002 (Cap. 216 R.E. 2002) the District Land and Housing Tribunal had jurisdiction to entertain this matter as the same is the court under Section 3 (2) (c) of Cap. 216 - R.E. 2002.

In support of the second ground of appeal he submitted that the Hon. Chairman erred in law for ignoring the rule in **James Msigala V. Isaya Mtega**, (PC) Civil Appeal No. 5 of 2008, Iringa Registry (unreported) where this court, Mkuye, J. held:-

*"It means, therefore, that the cited case is not in four corners with the instant case because in this case the claim involves taking possession of the house, a landed matter which, I think, the Primary Court did not have jurisdiction to entertain".*

He argued that had the Hon. Chairman paid attention to the binding decision of James **Msigala V. Isaya Mtega** he could not have dismissed the suit before him on the grounds of lack of jurisdiction as he did.

In opposing the first ground of appeal, Mr. Malangalila submitted that in the instant case the respondents dispute that there is a breach of the said contract, thus the matter is the contract for supply of timber and not on a specific performance of contract as alleged by the appellant's learned Counsel. He further submitted that in the instant case the matter involves a contract of sale of timber and not for specific performance of contract so a matter that is yet to be established is whether there is a breach of contract or not hence the matter is of contract and not of equitable mortgage as claimed by the Counsel for the appellant. He argued that the respondents contend that the court, before ordering specific performance, has to establish whether there is a breach of contract or not, a fact that will enable the order for specific performance to be made.

In opposing the second ground of appeal he submitted that the respondents have a right to be heard on the matter whether they have breached the contract or not. He further submitted

that the Chairman of the Tribunal was right in dismissing the application for want of jurisdiction.

The issue for determination in this appeal is whether the District Land and Housing Tribunal had jurisdiction to entertain the matter.

Section 3 (1) of the Land Disputes Courts Act says that:-

*"every dispute or complaint concerning land shall be instituted in the court having jurisdiction to determine land disputes in the given area".*

Under subsection 2 of section 3 the courts of jurisdiction under Subsection 1 include:-

- (a) The village Land council;
- (b) The ward Tribunal;
- (c) The District Land and Housing Tribunal;
- (d) The High Court (Land Division); and
- (e) The Court of Appeal of Tanzania.

Section 4 (1) of the said Act says that:-

*"Unless otherwise provided by the Land Act, no magistrates' courts established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act".*

The Sale Agreement dated 26<sup>th</sup> November, 2008 between the parties reads, and I quote:-

*"Mkataba wa Makubaliano ya kuuziwa mbao aina ya Pine baina ya ndugu Ibrahim Nziku na Faraji Swedi Msangi S.L.P. 305 Arusha mjini tarehe 26/11/2008*

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1. *Mimi Ibrahim Nziku na mke wangu Naomi Kagali tumekubaliana kumuuzia mbao za Pine zenye urefu wa futi kumi na nne na kuendelea.*
2. *Kwamba tumefanya makubaliano na Faraji Swedi kuuziwa mbao za Pine kwa bei ya TShs.180,000/= m 3 zikiwa eneo la Kidabaga Wilaya ya Kilolo.*
3. *Kwamba alishamkabidhi kiasi cha Shs.5,250,000/= kama malipo ya awali ya kazi. Kiasi kilichobakia ni Shs.4,000,000/= ili kupata KB 51 za mbao na nitampatia Shs.3,000,000/= atakuwa ananidai kiasi cha Shs.1,000,000/= na ninaahidi baada ya tarehe 17.12.2008.*
4. *Tumekubaliana amalizie kazi hii baada ya mwezi mmoja tu na kunikabidhi mbao hizo zikiwa eneo la Kidabaga.*

*Tarehe tuliyokubaliana ni tarehe  
31/1/2/2008 hii ni tarehe ya mwisho kumaliza  
deni hilo, kinyume cha hapo niko radhi nyumba  
yangu iuzwe ili niweze kumaliza kulipa deni  
ninalodaiwa illipo mtaa wa Upendo Kinyanambo  
B.*

*Sahini ya muuzaji ..... Ibrahim Nziku  
Sahihi ya Shahidi wa muuzaji ... Naomi Kigali  
Sahihi ya mnunuzi ..... Faraji Swedi Msangi  
Sahihi ya Shahidi wa mnunuzi ..... Jacksoni Lusafi  
Sahihi ya Mwenyekiti Kijiji Kinyanambo ... Melikio*

*Mkataba huu umethibitishwa na Z.D. Laizer leo  
tarehe 26 mwezi Nov. 2008".*

It is quite plain that the dispute between the appellant and the respondents is in respect of breach of Timber Supply Agreement/Contract. From the language of agreement between the appellant and respondents there was no contract of equitable mortgage of a house between the appellant and the respondents. Therefore, there was no land dispute between the appellant and the respondents.

As the dispute between the appellant and the respondents was in respect of a breach of contract for supply of timber and not a land matter the appellant was supposed to file a suit under contract in ordinary court of law having jurisdiction on the matter and not in the District Land and Housing Tribunal. With due

respect, I am not in agreement with Mr. Onesmo Francis's argument that since there was a contract of equitable mortgage between the appellant and the respondents then on the strength of the provisions of Sections 3 and 4 of the Courts (Land Disputes Act – Cap. 216 R.E. 2002 the District Land and Housing Tribunal had jurisdiction.

The case of James **Msigala V. Isaya Mtega** (above cited) is distinguishable here. In that case the claim involved taking possession of the mortgaged house in respect of loan agreement, a land matter, while in the present case the dispute between the parties is on breach of contract for supply of Pine timber. I am, therefore, in disagreement with Mr. Onesmo Francis's submission that the Hon. District Land and Housing Tribunal's Chairman erred in ignoring the ruling in **James Msigala V. Isaya Mtega** (above cited). Mr. Malangalila submitted, and I think correctly so, that the Chairman of the tribunal was right in dismissing the application for want of jurisdiction.

For the reasons already given, I am satisfied that the appeal has no merit and I dismiss it with costs.

  
S.S.S. KIHIO

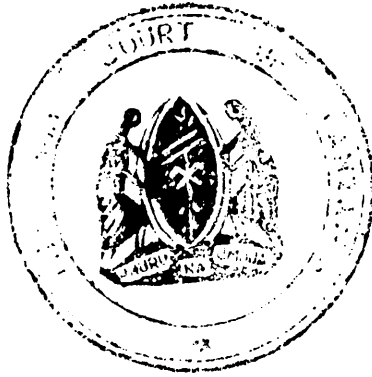
JUDGE

15.2.2012

Court:- Judgement delivered in the presence of Mr. Onesmo Francis, learned counsel for the appellant and in the



absence of Mr. Malangalila, learned counsel for the respondents. .



*S.S.S. Kihio*  
S.S.S. KIHIO

JUDGE

15.2.2012