

IN THE HIGH COURT OF TANZANIA
[LAND DIVISION]
AT IRINGA

LAND CASE APPEAL NO. 14 OF 2010

(From the decision of the District Land and Housing Tribunal of
Njombe District at Njombe in Application No.57 of 2006

SAIDA GADAU APPELLANT

VERSUS

FESTO NZIKU RESPONDENT

(Date of last Order 26.7.2012
Date of Judgement 2.8.2012)

JUDGMENT

KIHIO, J.

The respondent, Festo Nziku had filed an application against the appellant, Saida Gadau seeking for vacant possession of the house on Plot No. 138 Makambako, Njombe district in the District Land and Housing Tribunal for Njombe and he won in the application.

The trial Chairperson found that the suit premise was the property of the respondent. The appellant was ordered to vacate the suit premise within one month from the date of the delivery of judgement in the tribunal.

The appellant was dissatisfied with the District Land and

Housing Tribunal's decision hence this appeal.

The appellant is represented by Mr. Mwamgiga, learned counsel while the respondent is represented by Mr. Kingwe learned counsel.

The appellant filed a Memorandum of appeal containing three grounds, namely:-

1. That the trial Chairperson erred in law and fact by admitting and proceeding to hear and determine the respondent's application which consisted the appellant as a party to the suit knowingly that the appellant was neither an administrator of the Estate of the Late Amani Sigila Gadau nor that she was the owner of the suit premises but only one of the beneficiaries of the suit premises and thereby disregarding to make the administrator one Hamis Aman Gadau to be a party to the suit despite the concerted efforts of the appellant to bring him before the trial tribunal.
2. That the judgement of the Tribunal was not a judgement at all.
3. That the learned Chairperson erred in law and fact by admitting the evidence of the respondent which consisted conflicts of which makes the admitted

exhibit P.1 by the trial tribunal to be a manufactured (forged) one hence the respondent's case was not proved on the balance of probabilities.

The respondent told the District Land and Housing Tribunal that his brother was the one who purchased the disputed house for him (respondent). He further told the tribunal that the sale agreement (Exhibit P.1) was made on 22/4/2003 but he was not present during the sale agreement. He said that he signed the sale agreement (Exhibit P.1). In cross-examination he stated that he was not present during the sale agreement but he was just told to sign in that agreement.

Benet Ngole (PW.2) told the District Land and Housing Tribunal that he (PW.2), one Sagila Gadau, one Mr. Richard Mbilinyi and Herode Nziku went to the Primary Court where the said Sagila Gadau and Herode Nziku, on behalf of the respondent, made agreement to the effect that the respondent should build a new house to Sagila Gadau in exchange for the suit premises. He said that they signed the agreement document prepared by the Primary Court Magistrate, Mr. Hemela.

On the other hand, the appellant told the District Land and Housing Tribunal that her mother was the one who built the disputed house through selling local brew. The evidence of Ramadhani Nganilevanu (DW.2) and Benard Makafu (DW.3) supported the evidence of the appellant to the effect that the disputed house was built by the appellant's mother.

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

In support of the first ground of appeal, Mr. Mwamgiga submitted that after the death of Aman Gadau his son one Hamis Aman Gadau was appointed by the Makambako Primary Court to be an administrator of the estate of the late Aman Gadau. He further submitted that despite of the concerted efforts of the appellant to bring to the tribunal an administrator of the estate of the late Aman Gadau but the trial Chairman adamantly refused to substitute the appellant with the appointed administrator who was the right party to be sued. He contended that the learned trial Chairman manifestly erred in law and fact by admitting and proceeding to hear and determine the respondent's application knowing that the appellant was not a party to the suit and for that reason the judgement of the tribunal was not a judgement at all.

In support of the third ground of appeal, he submitted that the evidence of the respondent is not consistent because the respondent states that the suit premises was given to him by his brother and at the same time he avers that there is a sale agreement showing that there was an exchange between his brother and Mr. Aman Gadau which enabled the respondent to have ownership of the house. He further submitted that the evidence of PW.2 as it is evidenced by the Tribunal's proceedings at page 20 – 21 is very contradictory and confusing. He contended that going through the sale agreement (Exhibit P.1),

the document shows that there was a direct sale transaction between the respondent and the late Aman Gadau and not an exchange of houses between the respondent's brother and one Aman Gadau and the document is not signed by Aman Sigula Gadau instead it is signed by somebody A. Gagila. He pointed out that it is a settled principle of law that where the evidence of a party consists conflicts as the case of the respondent's evidence such evidence is subject to be rejected and he referred this court to the case of **Emmanuel Abrahm Nanyaro V. Peniel Ole Saitabau** (1987) T.L.R. 47.

On the other hand, Mr. Kingwe contended that it was the argument of the appellant in the tribunal that she was not the admistrix of the estate of the late Aman Gadau and being so, the administrator had nothing to do with the suit property which was not under his administration. He further contended that the appellant insisted that the administrator should be sued instead of her, the issue of which was not the matter in the tribunal. He argued that assuming that there was an administrator when the case was filed on 4/10/2006 but the document of the letters of administration annexed in the memorandum of appeal was issued on 11/11/2008. He further argued that at the commencement of this case there was no administrator of the suit premises and since they sued the appellant for vacant possession she should vacate the suit premises and the administrator should complain if the respondent have an illegal contract on the same and whether he is entitled to possess both house and "*pagale*".

I cannot go into the merits of the appeal because I have noticed that the District Land and Housing Tribunal's proceedings were fatally irregular and a nullity. First of all, in perusing the District Land and Housing Tribunal's record of the case I noticed that the respondent's application was filed in the District Land and Housing Tribunal for Iringa on 4.10.2006 vide Exchequer receipt No. 25842992 dated 4.10.2006 but the same was heard in the District Land and Housing Tribunal for Njombe. It is abundantly clear in the District Land and Housing Tribunal's record of the case that the hearing of the application started before J. Kaare, Chairman and two assessors, Mr. A. Mgulunde and Mrs. Magoha on 7.2.2008. On that date the evidence of the respondent, Festo Nziku was recorded and hearing was adjourned until 28.2.2008 for further cross-examination. According to the District Land and Housing Tribunal's record on 5.6.2008, Mr. Rugarabamu, Chairman made the following remarks; Tribunal:

"The Chairman who was presiding this matter has shifted the tribunal and because the respondent denied me for trying this matter, let it be transferred to Njombe District Land and Housing Tribunal".

Again, on 8.7.2008 Mr. Rugarabamu made an order that the case file be dispatched to Njombe District Land and Housing Tribunal. The District Land and Housing Tribunal's record of the case further shows that on 24.9.2009 the respondent's witness, Benet Ngole (PW.2) testified before G. Kagaruki, Chairperson in Njombe District Land and Housing Tribunal. On 11.3.2010 the respondent

and her witnesses, Ramadhani Nganilevanu (DW.2) and Benard Makafu (DW.3) gave defence evidence before the same Chairperson. The assessors, Miss Mlele and Mr. Simalenga sat with G. Kagaruki, Chairperson. Thereafter, G. Kagaruki, Chairperson wrote the District Land and Housing Tribunal's judgement and delivered it on 7.10.2010.

To my understanding, there is no provisions of the law which empowered the Iringa District Land and Housing Tribunal, Mr. Rugarabamu to transfer the application from Iringa District Land and Housing Tribunal to Njombe District Land and Housing Tribunal. Indeed, Mr. Rugarabamu did not indicate the law or where he derived the powers to transfer the application from the District Land and Housing Tribunal for Iringa to District Land and Housing Tribunal for Njombe. This was, in my view, a fatal irregularity which rendered the whole proceedings a nullity.

There is another fatal flaw in the District Land and Housing Tribunal's proceedings.

As I have already indicated, when the evidence of the respondent, Festo Nziku was heard in Iringa District Land and Housing Tribunal, Mr. Kaare, Chairman sat with Mr. A. Mgulunde and Mrs. Magoha, assessors. In Njombe District Land and Housing Tribunal, G. Kagaruki, chairperson proceeded to hear the evidence of Benet Ngole (PW.2) and the defence evidence on the appellant's side when she sat with other assessors, that is, Miss Mlele and Mr. Simalenga.

The change of assessors in the hearing of the application, no doubt, is an incurable irregularity.

Having found that the District Land and Housing Tribunal's proceedings were irregular and a nullity, the whole proceedings, decision and orders therein are quashed.

The parties are at liberty to file an application in the tribunal having jurisdiction to entertain the matter.

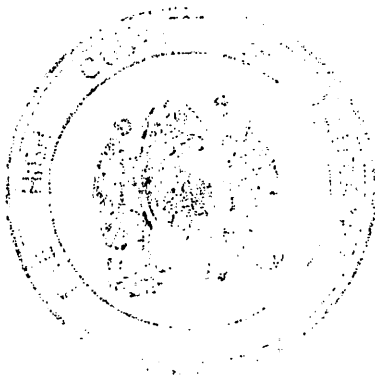
The parties should bear their respective costs.


S.S.S. KIHIO

JUDGE

2.8.2012

Judgement delivered in the presence of the appellant and Mr. Kingwe, learned Counsel for respondent.




S.S.S. KIHIO

JUDGE

2.8.2012