

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA

LAND CASE APPEAL NO. 5 OF 2006

*(From the Decision of the District Land and Housing
Tribunal of Tanga District at Tanga in Land Case no. 51
of 2005)*

JUMA BAKARI APPELLANT
VERSUS
BAKARI HAMADI RESPONDENT

J U D G M E N T

FIKIRINI, J:

Juma Bakari aggrieved by the decision of the District Land and Housing Tribunal in Application No. 51 of 2005, the appellant now appeals to this court. The appellant raised four grounds of appeal which will in this appeal reviewed in relation to the decision and evidence adduced before the tribunal.

I have carefully gone through the record and in my opinion the chairman correctly arrived at the decision. The reasons as to my position are: AW2- Musa Iddi Titu who testified to have sold the late Bakari a house way back in 1985, failed to convince me that he actually sold the late Bakari Juma a house. Sale of a house is not a small thing then and now. There must have been witnesses to that effect. None was mentioned or summoned. If the witness was 46 years old when he testified, he must then have been very young to probably own a house or plot for that matter, but that is really not an issue. In addition, the said house was alleged to have been bought for Tzs. 90,000. Selling a mud house for Tzs. 90,000 in 1985 and in an area which had not been surveyed was a bit fancy in my view, though the chairman did not pick up on that. This was the appellant's star witness with all these gaps in his testimony. In my view the appellant's first ground of appeal fails.

As for this case being before the Urban Primary Court and the Tanga District Court, regardless of who won in

those two courts, the matter was actually filed in a wrong court, the court which had no jurisdiction to entertain matter of the land nature. The proceedings and judgments from the two courts in respect of this matter were therefore null and void. This is a proper forum pursuant to section 33(1)(b) (2(a) of the Land Disputes Courts Act, No.2. The second ground of appeal again fails.

The appellant had equally failed to prove tenancy status of the respondent. None of the mentioned officials in the area were summoned to prove that as well as the fact that the appellant asked them to stop the respondent from renovating the suit premises but did not heed to their call. It was the appellant's duty not only to state but to prove as well. This ground also fails.

The respondent's case was equally not completely good but compared to that of the appellant, much better. It was the evidence of the respondent that he was a tenant of one Ayubu Mdhihiri, this person was never summoned and the tribunal was not even told if he

Titu who was 16 years old when the alleged transaction took place. More so, there was no document in support of the alleged sale of the house from him to the late Bakari Juma.

I had no opportunity of seeing and hearing the parties therefore lacked that advantage the chairman had. Referring to the case of *Ibrahim Hamadi vs halima Guledi (1968) HCD 76* and *Godfrey Machange vs R [1977] TLR 37*, I do not think I have any good reasons to disturb the tribunal's decision.

In light of the above, I therefore proceed to dismiss this appeal for lack of merits. The appeal is dismissed with costs. It is so ordered.


Judgment Delivered this 2nd day of November, 2012 in
the presence of parties.

P.S. FIKIRINI

J U D G E

2nd November, 2012

Right of Appeal Explained.



P.S. FIKIRINI
J U D G E
2ND NOVEMBER, 2012