

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

MISC. LAND CASE APPEAL NO. 14 OF 2013  
(From the decision of the District Land and Housing  
Tribunal of Njombe District at Njombe in Land Case Appeal  
No. 73 of 2013 and Original Ward Tribunal of Utengule  
Land Case No.4/2012)

IBRAHIM S/O MLOGE. .... APPELLANT

VERSUS

VERONICA KIULAMAGULU ..... RESPONDENT

17/02/2015 & 27/03/2015

**JUDGEMENT**

MADAM SHANGALI, J.

The appellant, Ibrahim Mloge has filed the instant appeal challenging the decision in Land Appeal No. 73 of 2013 of the District Land and Housing Tribunal for Njombe, to be referred in this decision as the first appellate Tribunal. The first appellate Tribunal gave decision in favour of the respondent which in a way

has confirmed the decision of the Utengule Ward Tribunal in Land Case No. 4 of 2012.

Before this court the parties appeared in their personal capacities. The instant appeal has been preferred on the two grounds namely;

- 1) That the Honourable chairman of the District Land and Housing Tribunal for Njombe erred in law for failure to hold that the decision of the Ward Tribunal was fatal for failure to contain the opinion of its present assessors before delivering its judgment.
- 2) That the District land Housing Tribunal erred in law in believing respondent's evidence without having before it any sale document, to prove the same.

Briefly the facts constituting the instant appeal are quite narrow as follows. The respondent sued the appellant before the Utengule Ward Tribunal for trespassing into her land (the suit land). The suit land which originally belonged to Enitha Mkungilwa (PW2) was in 2007 sold by herself to the late husband of the respondent. The very same suit land, as a result of visiting the

locus in quo done by the trial Ward Tribunal, was proved to be the same land that was later on sold to the appellant in January 2012 by Onolina Mdagachule. The said Onolina Mdagachule is the daughter of the owner of the suit land one, Enitha Mkungilwa (PW2). Helsoni Kihwani (PW3) also proved the suit land to be the property of Enitha Mkungilwa. In essence the appellant, all the way from the trial Ward Tribunals to the first appellate District Tribunal and before this court, is not in dispute with this fact. Save that the appellant kept on insisting that the suit land was sold to him by the said Onolina Mdagachule in 2012 and by that fact he claimed to have title over the suit land.

The appellant at the hearing of this appeal gave out a brief submission in his attempt to challenge the lower tribunals' findings. He contends that it was fatal for the proceedings to be conducted without the aid of assessors. He complained that the opinion of assessors was not recorded. Although they were present during trial they never asked him a question and they were absent on the date of judgment. This is as far as the first ground of his appeal is concerned.

On the second ground of appeal the appellant contends that the acceptance of the respondent's evidence without the sale agreement to prove the respondent's case constitutes an error on the lower tribunal's decisions. On top of that he went on

contending that he was not given a chance to call his witness although this complaint was not raised before the first appellate District Tribunal.

The reply by the respondent was to the effect that the assessors were present in both lower tribunals and it is not necessary that assessor should ask question in case they have none. He contended that they were both given chances to call witnesses but the appellant failed to call his own witnesses. The evidence proved that the suit land was lawfully sold to her husband the deceased.

In determining this appeal this court is confronted with two concurrent decisions of the lower tribunals. This court is well aware that where, there are concurrent findings of facts by two courts or tribunals, the appellate court should as a rule of practice follow the long established rule repeatedly laid down by the Court of Appeal for East Africa, that an appellate court in such circumstances should not disturb concurrent finding of facts unless it is clearly shown that there has been a misdirection or misapprehension of the evidence, a miscarriage of justice or violation of some principle of law or procedure. See the cases of **Amiratial Damodar's Maltase and Another t/a as Zanzibar Silk Stores v A.H. Jariwalla T/a Zanzibar Hotel** [1980] TLR.

**31 and Bushangila Ng'onga vManyandamage** [2002] TLR 335 (HC).

The records of the lower tribunals reveal that the assessors were present during trial and the first appeal. The evidence adduced before the Ward trial tribunal proved that the suit land was once belonged to one Enitha Mkungilwa who sold it to the respondent's husband in 2007. The appellant's land bordered the respondent's land which is the suit land as per the ward trial tribunal's records of proceedings which come to light as a result of a visit of a locus in quo. On the issue of failure of the ward trial tribunal to allow him to call his witnesses the record is clear that both parties were given ample time to call their witnesses. This complaint is a mere afterthought because it was not even raised before the first appellate District Tribunal.

The evidence on the record of proceedings is clear that the suit land was the property of Enitha Mlungilwa (PW2) who lawfully sold the same to the late husband of the respondent in 2007. Therefore Onolina Mdagachule, the daughter of Enitha Mkungilwa had no colour of right to resale the same suit land to the appellant. The sale transaction between Onolina and the appellant was simply illegal and fraudulent. The appellant have a right to sue Onolina Mdagachule to recover back his money. The respondent have all rights to be protected by the law because her

late husband lawfully purchased the suit land from the very owner Enitha Mkungilwa (PW2).

Thus, this court sees no reason whatever for interfering with The correct concurrent finding of the lower land tribunals. The appeal is hereby dismissed with costs.

M. S. SHANGALI

**JUDGE**

27/3/2015

Judgement delivered in the presence of both parties in person. Right of Appeal explained.

M. S. SHANGALI

**JUDGE**

27/3/2015