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

MISC LAND APPEAL NO. 136 OF 2017

(From the Decision of the District Land and Housing Tribunal of KINONDONI in Land Appeal No. 57 of 2016 and original Ward Tribunal of MABWEPANDE in application no. 95 of 2015)

KHADIJA SELEMAN MOHAMED .....APPELLANT

Versus

EMMANUEL HENRY MREMA ..... RESPONDENT

JUDGMENT

Date of Last Order: 22.3.2018
Date of Judgment: 4.5.2018

S.A.N. WAMBURA, J:

Aggrieved by the decision of the District Land and Housing Tribunal for Kinondoni the appellant **Khadija Seleman Mohamed** has filed this appeal on the following grounds:

1. *That the District Land and Housing Tribunal for Kinondoni erred in law and fact in deciding the case in favour of the respondent without considering the fact that the trial Ward tribunal did not give appellant's right to be heard (Audi Alteram Partem) basing on the facts that the appellant made requests more often to bring his witness and other evidences unsuccessfully.*

2. *That the trial tribunal conducted the proceedings unjustly by entering decision relying on the respondent's non-existing sale agreement and absence of enough evidence.*

She therefore prayed that this Court quashes the decision of the District Land and Housing Tribunal and order that the trial be conducted de novo.

The respondent **Emmanuel Henry Mrema** did not file a reply thereto.

The appellant was represented by Mr. Omar Abubakar while the respondent was represented by Mr. Mawi Advocate.

In support of the first ground of appeal Mr. Abubakar submitted that the trial Ward Tribunal denied the appellant the right to call her witnesses to prove her allegations. That the seller one Khadija was not called to state whom between the two actually bought the suit land.

As for the second ground of appeal Mr. Abubakar submitted that the respondent did not produce the sale agreement and the receipt at the trial Ward tribunal so as to prove that he purchased

the said disputed land. He therefore prayed to this court to allow the appeal and set aside the decision of the lower tribunals.

In reply to the first ground of appeal, Mr. Mawi submitted that the appeal is devoid of merit as it is on the record that the respondent was the first person to purchase the disputed land. He further averred that the appellant was given an opportunity to be heard and summoned one witness.

He stated that it is not the duty of the tribunal to summon the witnesses, as the parties themselves had a duty to call their witnesses to support their cases.

On the second ground of appeal Mr. Mawi contended that both the appellant and the respondent produced the sale agreement which were admitted as Exhibits. He therefore prayed for the dismissal of the appeal with costs.

In reply Mr. Abubakar reiterated his earlier submission in chief.

Having considered the rival submissions of both parties, I will now determine the ground of appeal in seriatim.

On the 1st ground of appeal, the appellant alleged that he was not given a right to be heard at the trial Ward Tribunal. Upon carefully perusal of the court record, this court finds that the appellant was given a right to be heard. The court record shows that he was the one who instituted the complaint at the trial Ward tribunal, and called one witness namely Hafidhi Thabithi Selemani so as to prove her case. Thus it was her duty to prove her case on balance of probability and not the tribunal.

As correctly reasoned by the learned Chairman at the first appellate court, the duty of the appellant was to prove her case. That if she needed any Local Government witness, she had a duty to move the Ward Tribunal to issue such summons to the contended Local Government witness.

It appears that the appellant is trying to shift the burden of proof to the tribunal forgetting that she is the one who filed the suit before the trial tribunal. If she felt that there was a need to call Local Government Leader she could have done or said so.

Sections **110 (1) and 111 of the Law of Evidence Act, Cap 6 RE 2002** provides that the burden of proof lies on the one who alleges;

"Section 110 (1) *Whoever desires any court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*

Section 111 *The burden of proof in a suit proceeding lies on that person who would fail if no evidence at all were given on either side*".

Thus from the above evidence, this ground of appeal fails for lack of merit.

With regard to the 2nd ground of appeal, the evidence on record is that the appellant purchased the suit land from one Khadija Nkini in September, 2014 for Tshs 3,000,000/=. According to her testimony, the said sale agreement was witnessed by the local Government leader of Mabwepande. That after she purchased the disputed land, she did not visit the suit land for one year. She stated that one day when she went to visit her suit land she found out that the respondent trespassed into her suit land and made a structure therein (house).

The respondent's evidence on the other hand was that in the same year 2014 on 25th day of June he purchased a suit land

from the same vendor one Khadija Nkini for Tshs 3,000,000/-. The respondent's testimony was corroborated by DW2 and Dw3 who witnessed the sale agreement between the Respondent and his vendor.

According to the evidence adduced at the trial Ward tribunal, there is no dispute that both the appellant and the respondent purchased the suit land from one Khadija T. Nkini for the sum of Tshs.3,000,000/=.

What is in dispute is who the lawful owner of the suit land is.

From the evidence tendered as well as the sale agreements at trial Ward tribunal there is no doubt that the lawful owner of the disputed land is the Respondent. This is because he was the first person to buy the suit land from the seller one Khadija T. Nkini on 25/06/2014.

The second sale between the appellant and the said Khadija Nkini was unlawful as the seller had no good title to pass, it follows that, the appellant cannot claim ownership of the land in dispute as no good title has ever passed onto him.

It is a settled principle of law that, a person without a good title to goods cannot pass a good title to the transferee than his own. This is supported by the ancient maxim

> **"Nemodat Quod non-habet"** which means that *"No one can transfer a better title than he himself has.*

The position was also maintained in ***Bishopgate Motor Finance Corporations Ltd Vs. Transport Brakes Ltd*** *(1949) IKB 322 and in the case of* ***Farah Mohamed Vs Fatuma Abdailah*** *(1983) TLR 205.*

The law clearly provides that in order for the buyer to acquire better title there must be an authorization from the real owner. In the instant case as I here stated earlier that the real owner of the disputed plot is the respondent, as the seller had already passed her title to the respondent. It follows that the subsequent transfer to the appellant by one Khadija Nkini was null and void.

Thus having said that, this court finds no reasons to disturb the finding of the lower court. The decision of the District Land and Housing Tribunal of Kinondoni in Land Appeal No. 57 of 2016 is upheld.

The appeal is accordingly dismissed with costs.

S.A.N. WAMBURA
JUDGE
4.5.2018