

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND APPEAL NO. 72 OF 2017**

***(From the Decision of the District Land and Housing Tribunal of  
MOROGORO District at MOROGORO in Land Case No. 115 of 2015)***

**ALICE PAUL RIWA BARONGO .....APPELLANT**

**VERSUS**

**GASTON NGAO .....RESPONDENT**

**J U D G M E N T**

**P.M.Kente, J**

The appellant Alice Paul Riwa Barongo is aggrieved by the decision of the Morogoro District Land and Housing Tribunal upholding the claim by the respondent Gaston Ngao that he is the lawful owner of a piece of land described as Plot No. 199(Low Density) Kilimbo Mlimani Area Morogoro Municipality. She (the appellant) is now appealing against that decision.

As I shall presently show, the facts of this case taken as a whole, are fairly brief. They can be summarized as hereunder. The plot in dispute was allocated to the respondent by the Authorized Authority way back on 4<sup>th</sup> July, 1985 (vide a letter of offer) which was admitted

in evidence as exhibit A1. To date there has never been any cancellation, withdrawal or revocation of the above said letter. Having been issued with a letter of offer in December, 1999 the respondent left for South Africa where he stayed until January, 2015 when he came back. While the respondent was away, his father who is now deceased, is said to have invited the appellant's husband one Paul Riwa Barongo (a security guard) who is also deceased to occupy the disputed land as a means of safeguarding and protecting it against trespassers. It is however contended by the appellant and strongly opposed by the respondent that, in 1989 the respondent's father gave the said plot to the appellant's husband. That was allegedly in consideration of love and affection.

In arriving at the impugned decision, the District Land and Housing Tribunal was satisfied that the records relating to ownership of the disputed plot which included the letter of offer (exh. A1) are in the respondent's (then applicant) name and that the appellant (then respondent) had failed to give evidence showing that indeed the respondent's father had given the disputed piece of land to her deceased husband. Moreover, applying the principle thus **“Nemo**

**dat protest quood non habet”** the District Land and Housing Tribunal was satisfied and it consequently held that, the respondent's father had no good title over the disputed land which he could pass on to the appellant's husband.

Aggrieved by the decision of the District Land and Housing Tribunal, the appellant has appealed to this court and fronted two grounds of appeal, complaining that:-

1. The trial tribunal erred in law and in fact by delivering judgment in favour of the Respondent without taking into consideration that the Appellant is the lawful owner of the disputed land and that she has been in possession of the disputed land since 1989.
2. That, the trial Tribunal erred in law and fact by entering judgment in favour of the Respondent without considering the strong evidence adduced by the Appellant and her witnesses concerning the disputed land.

In this appeal, the appellant appeared in person but she had a helping hand here and there from the Legal and Human Rights Centre. The respondent was advocated for by Professor Binamungu

learned advocate. Both parties filed written legal arguments in support of their respective cases.

The main issue before this court, as it was before the trial District Land and Housing Tribunal is, principally, who between the appellant and the respondent is the lawful owner of Plot No. 199 (low Density) Kihimbo Mlimani – Morogoro Municipality.

In order to determine the above posed issue, it is imperative to revisit the Land Act and then gauge the evidence on record to the law applicable.

Under the provisions of section 2 of the **Land Act chapter 113**, disposition of land includes among other transactions a gift or grant as is alleged in this case. Specifically the **Land Act** defines disposition as:-

**“ any sale, mortgage, transfer, grant, partition, exchange lease, assignment surrender or disclaimer and includes the creation of an easement, usufructuary right or other servitude or any other act by an occupier by a right of occupancy or under a lease whereby his rights over that**

**are affected and an agreement to undertake any of the dispositions so defined"**

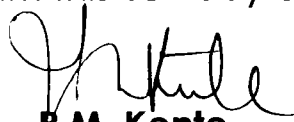
Section 54(1) of the **Land Act** specifically requires every disposition of land to be in writing. According to Charles Watkins, **Principles of Conveyancing. Rayner and Hodges, London**, at page 306, "a gift is a voluntary conveyance not founded on the consideration of money or blood. The operative word in it is given. It is, ....., a suspicious species of conveyance, as being without what the law denominates either a good or valuable consideration. In order for it to be valid it has to be effected by deed."

It follows in this case that, since the plot in dispute belonged to the respondent and there being allegations by the appellant that it was given by the respondent's father as a gift to her husband, the said giving by way of a gift, even if it were proved, was unlawful for having contravened the express provisions of the law requiring all dispositions of land to be effected in writing. Moreover, the alleged grant was null and void for want of good title on the part of the alleged giver.

For the foregoing reasons, I entirely agree with Prof. Binamungu who submitted that the respondent's father could not give the appellant's husband what in the first place, he (deceased father) did not own, and that since the letter of offer is still in the respondent's name and remains in force, the respondent is the lawful owner of the disputed plot.

In the final analysis therefore, I hold that the respondent is the rightful owner of Plot No. 199 (Low Density) Kihimbo Mlimani – Morogoro Municipality. To that end, the judgment and decree of the District Land and Housing Tribunal is sustained as this appeal is hereby dismissed in its entirety, with costs.

Dated at Dar es salaam this **13<sup>th</sup>** day of **July, 2018.**

  
**P.M. Kente,**  
**JUDGE.**