

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

**AT DAR ES SALAAM**

**LAND APPEAL NO. 118 OF 2016**

***(From the Decision of the District Land and Housing Tribunal for  
Kinondoni at Kinondoni in Application No.179 of 2014)***

**YAZIDI RAJABU AKA BYAMUNGU.....1<sup>ST</sup> APPELLANT**  
**SELEMANI MELENGAI.....2<sup>ND</sup> APPELLANT**  
**FATUMA ALLY MWIRU.....3<sup>RD</sup> APPELLANT**  
**VERSUS**  
**NAKUROI INVESTMENT CO. LTD.....RESPONDENT**

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

**P.M. KENTE, J:**

This appeal emanates from the decision of Kinondoni District Land and Housing Tribunal in Application No. 179 of 2014. Before the said District Land and Housing Tribunal (herein after referred to as the trial Tribunal), the Respondent successfully sued the appellants for a declaratory order that the appellants' invasion, to the suit land and construction thereon was unlawful and illegal. The respondent also prayed for demolition of the structures erected by the appellants and for a permanent injunction restraining the appellants from invading the suit land. The trial Tribunal entered judgment in favour of the respondent. Being aggrieved by the said decision the

appellants have now preferred this appeal to this court on the following grounds:-

1. *That the honourable Chairman erred in law and fact by declaring that the respondent is the lawful owner of the disputed land.*
2. *That the honourable Chairman erred in law and fact by his failure to consider the evidence adduced by the appellants.*
3. *That the appellants were denied by the Hon. Chairperson to bring their witnesses and hence he was biased on the part of the appellants.*
4. *That the honourable Chairman erred in law and fact by failure to consider the fact that the appellants were living on the demised land since 1970's and they were not paid compensation.*
5. *That the honourable Chairman erred in law and fact by failure to comment on the issue of tw different area referred in the disputed Kunduchi Salasala and Kunduchi RTD are two different areas.*
6. *That the decision of the Honourable District Land and Housing Tribunal is otherwise faulty and wrong in law*

At the hearing the appellants were represented by Ms. Nambuo learned counsel while the respondent was represented by Mr. Mrindoko learned counsel.

To support the grounds of appeal, Ms. Nambuo submitted that the trial tribunal was wrong to declare the respondent the owner of Plot No. 2124 Block "E" which was numbered as 2144 within the same Block at Kunduchi Salasala while the respondent actually owns Plot no. 2206 Block "E" Kunduchi RTD area. She added that the area which the appellants are owning is a different place from the one at Kunduchi RTD. It is submitted that the said area is different geographically and position-wise from the one which the respondent owned and produced ownership documents to that effect. She contended that the trial Tribunal was wrong to declare the respondent the lawful owner of the land owned by the appellants.

The appellants' counsel contended that the trial tribunal went wrong when it failed to consider the evidence given by the appellants particularly the evidence pertaining to their areas at Kunduchi Salasala while the area owned by the respondent was at Kunduchi RTD area.

The appellants contended further that the trial Tribunal denied them the right to present witnesses apart from themselves.

As to the forth ground of appeal, the appellants' counsel submitted that the trial tribunal failed to consider the fact that the

appellants were living on the suit premises since 1970's and some of them had inherited from their parents so they have a right to be compensated for the development they had effected therein if at all the land was reallocated to the respondents.

In conclusion counsel for the appellants prayed for the court to allow the appeal, quash and set aside the decision of the District Land and Housing Tribunal and declare the appellants the lawful owners of the suit premises.

In reply, Mr. Mrindoko, learned counsel for the respondent strongly opposed the appellants' submissions in support of the grounds of appeal and argued that the appellants counsel is trying to bring new evidence at the appellate stage. He submitted that the question of Plot No. 2124 Block "E" Salasala area being renumbered as Plot No.2144 Block "E" Kunduchi Salasala had never been raised. The dispute before the trial tribunal according to Mr. Mrindoko was on the lawful owner of the Plot No. 2144 Block "E" Kunduchi RTD. He also opposed the appellants' submission that the land owned by the appellants is geographically different from the one owned by the respondent. He maintained that this is also new evidence because

there was no any dispute before the trial Tribunal on the location of the land in dispute.

Opposing the third ground of appeal, Counsel for the respondent submitted that the appellants before the trial Tribunal testified by themselves and brought one witness to support them. And in the course of their evidence, DW1 and DW3 raised a claim that the respondent's title had been cancelled in the sense that Plot No. 2144 Block E Kunduchi with CT No. 93282 was no longer in the Land Register. Following that evidence which was not corroborated, the Trial Tribunal called its own witness to verify what the appellants had said and that witness was recorded as DW5. It is added that the trial Tribunal refused to allow the appellants to call a witness from the Directorate of Mapping and Survey to give evidence because the survey was not at issue.

As to the fourth ground of appeal, the respondent's counsel submitted that this ground is based on new evidence sought to be introduced at this stage. He added that the appellants have never claimed to own and occupy that land since 1970s. They have not given any testimony on the contention that they had effected any

development and therefore the issue of compensation is new. In conclusion, Mr. Mrindoko prayed for the court to dismiss this appeal and confirm the decision of the trial Tribunal.

After considering the submission of both parties as well as the record pertaining to this appeal, I will consider the 1, 2, and 4 grounds of appeal altogether as they all touch on some new evidence which was not raised and canvassed during the trial. After carefully reviewing the evidence on record and the submissions made by counsel, I am inclined to agree with the argument by the counsel for the respondent that the 1<sup>st</sup> 2<sup>nd</sup> and 4<sup>th</sup> ground of appeal are in respect of new matters which were not supposed to be raised at the appellate stage. Indeed the trial tribunal decided the matter basing on the issues that were on record. For the purposes of clarity and in the interests of justice, I will commence by looking at the issues framed by the trial Tribunal on 10<sup>th</sup> December, 2014. Essentially, the said issues were as follows:-

- (1) *Who is the lawful owner of the suit property*
- (2) *To what reliefs are the parties entitled to.*

Now the central issue for consideration is whether it was proper for the trial tribunal to decide the matter basing only on the issues raised and agreed upon by the parties.

Generally, a trial court is bound to decide a case basing on the issues which are framed by the court and agreed upon by the parties and, if there are any other questions to be considered, they ought to be raised and placed on record so as to give an opportunity to the parties to address the court on those questions and failure to do so results in a miscarriage of justice. (See **Mulla** in his book, **Code of Civil Procedure Vol. II 15<sup>th</sup> Edition** at page 1432). In the instant case, the central issue which the trial tribunal decided was raised and agreed upon by both parties. In this appeal the appellants allege that the trial tribunal was wrong to give ownership to the respondent of Plot No. 2124 Block "E" instead of Plot No. 2206 Block "E" Kunduchi RTD area. They also allege that the area that the appellants own is different geographically and location wise, and therefore the trial Tribunal was wrong to declare the respondent the lawful owner of the land owned by the appellants. The appellants also complained for being denied compensation for the

developments which they had allegedly effected on the disputed land. Upon perusal of the record, I am settled in my mind that these are new issues which the appellants are inviting this appellate court to determine so belatedly. It is clear from the record that these issues were not raised during the trial. The Court of Appeal of Tanzania refused to deal with issues raised so belatedly in the case of ***Farida and Another V.Domina Kagaruki***, Civil Appeal no. 136 of 2006 (unreported) holding that:

**“It is the general principle that the appellate court cannot consider or deal with issues that were not canvassed, pleaded and or raised at the lower court”.**

In the light of the above, position of the law, it is my considered opinion that what the trial tribunal did was right as both parties were given opportunity to address, produce and lead evidence on the issues raised and the trial chairman after analyzing the evidence on record, he came out with what he considered to be a just and fair decision. Consequently, I find it unnecessary, at this stage, to deal with the complaint that was not raised during the trial. I accordingly dismiss the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds of appeal as they have no merit.



As to the 3<sup>rd</sup> ground of appeal, I am of the view that the trial Tribunal was right in its decision. I am saying so because, during the trial, both parties were given opportunity to be heard and adduce evidence. According to the record, the appellants brought four witnesses and in the course of adducing evidence, DW3 alleged that the respondent's title over the disputed land was revoked. That being the case, the trial tribunal called a witness from the Ministry of Land in the office of the Registrar of Titles so as to verify from the record and determine properly the question of ownership. According to the court witness DW5, as per the record of the Trial Tribunal, their current record shows that the ownership of the disputed land was in the name of the respondent. Therefore, the trial tribunal was satisfied and it resolved the issue of ownership by declaring the respondent the lawfull owner of the disputed land. The trial Tribunal found it unnecessary to call another witness from the Directorate of Mapping and Survey to prove ownership.

For my part, I am of the same view as the counsel for the respondent that, there was no need to call another witness from the Survey and Mapping Directorate to come and testify on the

ownership since, the Land Register in the Ministry shows clearly that the disputed land was registered in the name of the respondent. I also agree with the trial tribunal for its refusal to call a witness from the said Directorate because the issue as to whether the disputed land was surveyed or not was not in controversy. The owner of the land or a person with interest to land is defined in **section 2 of the Land Registration Act [Cap 334 R.E. 2002]**, as follows:-

***“Owner means in relation to any estate or interest, the person for the time being in whose name that estate or interest is registered”***

In the light of the above definition, I find the 3rd ground of appeal to have no substance. The law is very clear that an appellate court can interfere with the findings of the trial Tribunal in rare circumstances. The appellate court may do so in instances where the trial court had omitted to consider or had misconstrued some material evidence, or had acted on a wrong principle or had erred in its approach to evaluating evidence. (See **Edwin Ezidori Elias Vs. Serikali ya Mapinduzi ya Zanzibar** [2004] )

In the light of the above authority, it is my settled view that, there being no fault committed by the Tribunal, in the instant case, I

cannot interfere with its findings. For the foregoing reasons, this appeal is found to have no merit and is hereby dismissed with costs. The decision of the District Land and Housing Tribunal of Kinondoni is sustained.

Dated at Dar es Salaam this **30<sup>th</sup>** day of **July, 2018**.



**P.M. KENTE,  
JUDGE**