

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

LAND APPEAL NO.154 OF 2017

*(Originating from Appeal Judgment of District Land and Housing
Tribunal for Temeke District, Land Appeal No. 7 of 2017 and the
decision of Kijichi Ward Tribunal of Land Case No. 3 of 2017)*

REHEMA MAULID.....APPELLANT

VERSUS

FATUMA MLAWA.....RESPONDENT

JUDGMENT

OPIYO J.

This appeal originates from an Appeal Judgment of the District land and Housing Tribunal for Temeke District, (Land Appeal No. 7 of 2017), dated 11/7/2017, by Hon. Chairman, A.R Kirumbi, originating from the decision of Kijichi Ward Tribunal of 30/1/2014 in application.

Briefly, the background to the case is as follows, the appellant and the respondent are neighbours, with their houses adjacent to each another. On 03.07. 2015, the appellant, Rehema Maulid bought a house, adjacent to the respondent's house (Fatuma Mlawwa), from one Zuberi Seleman Mlawwa, who was an administrator of the estate of the late Zaina Mfaume Mlawwa in the Probate Case No. 59/2010, appointed by Magomeni Primary Court and a relative of a respondent in this appeal. The two neighbours are now in dispute over the land between their two houses. The dispute was caused by the respondent's act of constructing a toilet building and a wall connecting

to the appellant's house. The appellant dissatisfied with the respondent's actions over the disputed land, approached the Kijichi Ward Tribunal over the same matter, the decision was not in her favour, and she appealed to the District land and Housing Tribunal for Temeke District which upheld the decision of the Ward Tribunal. Aggrieved, she lodged a 2nd appeal in this court with the following grounds in her memorandum of appeal:-

1. That, the District Land and Housing Tribunal erred in law and facts to determine and entertain the matter by considering the wait of the respondent's evidence adduced at the Ward tribunal which did not touch the disputed land.
2. That, the District Land and Housing Tribunal erred in law and facts by giving its decision without reasons for the same while following the reasons of the Ward tribunal which had material irregularities.
3. That, the District Land and Housing Tribunal erred in law and facts to determine and entertain the matter by considering the weak elements of dispute and left the strong elements to the dispute as the judgement involved different facts and point of law.
4. That, the District Land and Housing Tribunal erred in law and facts to determine and entertain the matter without adding a necessary party, the administrator of the deceased estate of the late Zaina Mfaume Mlawa to the matter, who was the seller of the appellant's house situated in the disputed land.
5. That, the District Land and Housing Tribunal erred in law and facts to uphold the decision of the Ward which was based on material

irregularities and the judgement itself was not signed, the Ward Tribunal had no pecuniary jurisdiction to entertain the matter and the Coram was not properly construed.

6. That, the District Land and Housing Tribunal erred in law and facts to decide in favour of the respondent while the respondent changed the location of boundaries after the sale agreement had already been concluded.
7. That, generally the evidence on record differs from the findings and conclusion made by District Land and Housing Tribunal, hence lacks merit.

Both parties had lodged written submissions either in support or in opposition to the appeal which they were respectively, fully adopted.

In brief, the appellant invited this court to allow the appeal. Rehema Maulid, the appellant, submitting in support of the appeal, on the 1st ground of appeal, she submitted that, the decision of the Chairman should be nullified owing to lack of evidence, legal issues and material points of law from the Tribunal Chairperson. She insisted that as an appellant, she tendered documentary evidence, but the evidence was disregarded by the District Land and Housing Tribunal of Temeke, contrary to what the law requires. It is a trite law, that, a party with heavier evidence must win the case as decided in **HEMED SAID MOHAMED vs MOHAMED MBILI (1984) TLR).**

On the second ground of appeal, she submitted that, the District Land and Housing Tribunal of Temeke failed to state reasons for its decision and therefore the same should be quashed by this court. Her arguments on this point was based on the decision of court in **AMIRALI ISMAIL vs REGINA, 1 TLR 370** where it was stated that every judgement should state the facts of case and should give sufficiently and plainly the reasons which justify the findings.

She submitted further on the 3rd ground of appeal that, the reasons and findings of District Land and Housing Tribunal of Temeke are based on less substance of the case while leaving the strong substances intact. The appellant insisted that, it was wrong for the District Land and Housing Tribunal of Temeke to maintain that, the appellant bought a house without a piece of land or compound around it. basing her argument from the case of LUTHER SYMPHORIAN NELSON vs THE HON. ATTORNEY GENERAL AND IBRAHIM MSABAHA, Civil Appeal No. 24 of 1999 in which the court stated that '*a judgement must convey some indication that the judge or magistrate has applied his mind to the evidence on record.*'

The appellant continued to submit on the 4th ground that, the District Land and Housing Tribunal of Temeke, made a mistake in hearing the appeal without joining the seller who was an administrator of the estate of the late Zainab Mfaume Mlawa as a necessary party, therefore the decision of the 1st appellate court had faults for failing to join the said party, her arguments on this ground was supported with sections 15(3) and 16 (1) & (2) of the Ward Tribunal Act, Cap 206, R.E 2002.

She submitted further on the 5th ground of appeal that, when adjudicating the matter, the Chairman of District Land and Housing Tribunal of Temeke was not properly moved as there were a lot of material irregularities occurred at the trial tribunal of Kijichi Ward which were left untouched by the appellate tribunal on appeal. she submitted that, the Ward Tribunal was not properly composed and the disputed land was above its pecuniary jurisdiction, above three millions contrary to section 11 and 15 of the Land Disputes Court Act Cap 216 of 2002.

On the 6th ground of the appellant maintained that, the respondent was a beneficiary of the estate of the late Zainab Mfaume Mlawa and she participated in the whole process of the sale of the land in dispute, but immediately after the payment was made by the appellant, she changed her mind and claimed that she owns the whole land, the fact that was supposed to be observed by the 1st appellate tribunal as the agreement itself was tendered as exhibit during hearing of the appeal at the District Land and Housing Tribunal of Temeke.

On the 7th and last ground of appeal, the appellant contended in general what was observed during the hearing of the appeal is different to what the District Land and Housing Tribunal of Temeke, that is to say, the proceedings of the tribunal, differ with the conclusion made by the said appellate tribunal.

When replying the submissions by the appellant, the respondent consolidated the 1st and 6th grounds of appeal and argued together. She pointed out that, the two grounds above mentioned have no merit. The respondent had resided on the said land for almost 20 years since 1997. The

law requires that, a claim on land be within 12 years. The claim by the appellant was out of that time and therefore time bared (**SHABAN NASSORO vs KEYA JUMANNE RAMDHANI, Civil Appeal No. 19 OF 1992, CAT, Dodoma (Unreported)**)).

The 2nd, 3rd and 7th grounds of appeal were also consolidated and submitted together by the respondent. She maintained that, the appellant was herself the one to blame for purchasing the suit house without verifying the boundaries of what she purchased. The structures complained to have been built by the respondent, were constructed since 1998. She further argued that, the evidence adduced by the respondent on the same issue was heavier than that of the appellant, thus making the 1st appellate tribunal to decide the matter not only basing on the substance of the evidence, but also basing on the credibility of the said evidence. She cited the cases of **IBRAHIM AHMED vs HALIMA GULETI (1968), H.C.D. 76** and **SYLIVESTER MASATU vs JOSEPH MASONO, PC. Civil Appeal No. 175 of 2001, HC (Unreported)** to substantiate her argument.

Finally on the 5th ground, the respondent submitted that, the tribunal was properly composed as given under s. 14 (1) of the Land Disputes Courts Act, Cap 216 R.E 2002. As for the pecuniary jurisdiction of the Ward Tribunal, the respondent argued that, the appellant was the one who instituted the case on the Ward tribunal, therefore she cannot be heard on this issue as decided in the case of **GEORGE DAVID GARDON vs RELIENCE INSURANCE COMPANY (T) LIMITED, Commercial Case No. 102 of 2005, CAT** and also according to **SAKAR CODE OF CIVIL PROCEDURE, 10TH Edition, Volume 1 at page 975**. At

the end, the respondent prayed for the dismissal of this appeal for lack of merits.

I have subjected the arguments of both parties to a serious scrutiny they deserve. However upon going through the records of the trial ward tribunal where this appeal has its roots, I noted that, the Kijichi Ward Tribunal visited the Locus in Quo, heard the parties with their respective witnesses and came out with a finding at page II that,

"Baraza baada ya kupitia mwenendo mzima wa shauri hili, limegundua kuwa Rehema Maulid alinunua nyumba ambayo inapakana na nyumba ya Fatma Malawa bila ya kuonyeshwa mipaka ya nyumba hiyo kwa maana kwamba alinunua nyumba bila kujua mipaka yake, na mauziano yalifanyika Mahakamani, halafu baada ya kupita muda ndipo mlalamikaji akaenda kuonyeshwa mipaka ya nyumba aliyoinunua, bila kumshirikisha jirani yake, bila kumshirikisha mjumbe wa shina bila kushirikisha serekali ya mtaa husika kitu ambacho kimepelekea mgogoro huu kutokea"

I'm tempted to agree without hesitation with their findings above as quoted. The appellant herself is the one to blame for buying a landed property without conducting due diligence prior to the said sale. My observation is based on the testimony of Ramadhani Rashid (complainants' witness), now appellant who witnessed the sale and testified that,

"Mimi niliitwa tu Mahakama ya Magomeni, Wilaya ya Kinondoni. Nilipofika huko nikapewa milioni 3,000,000, kwa ajili ya mirathi ya

nyumba iliyouzwa ya marehemu mke wangu Zainab Mfaume Mlawa. Lakini kuhusu mauzo ya hiyo nyumba mimi sikuhusishwa chochote. Hata mipaka ya nyumba hiyo iliyouzwa kwa Rehema Maulidi mimi sikuonyesha mipaka yake ingawa ninaifahamu."

Also one Zuberi Selemani Mlawa, another complainants' witness and a seller of the disputed property (a house) to the appellant is recorded to have testified at the ward tribunal that that boundary of the land he sold ended at the end of the house he sold. In his own recorded words, he said:-

" Nilikuwa msimamizi wa Mirathi ya marehemu shangazi yangu bi Zainabu Mfaume Mlawa. Pia nafahamu kwamba Rehema Maulidi alinunua nyumba ya marehemu Zainabu Mfaume Mlawa. Na mpaka wa nyumba hiyo ni pale ilipoishia nyumba hiyo kujengwa."

Based on the testimony of the two witnesses above, it clear that, the sale of the house between the appellant and the administrator of the estate of the late Zainabu Mfaume Mlawa (Mr. Zuberi Selemani Mlawa) was done without following the required procedures. Either the seller or buyer or both of them chose to dispense with the required procedures. Because of that, the appellant is now in dispute with her neighbor who is the respondent in this appeal, over ownership of the land between their houses. The mistakes that she (the appellant) is trying to correct today, could have been avoided if the sale of the said house between Rehema Maulid (appellant) and the seller, Zuberi Seleman Mlawa (administrator of the late Zainab Mfaume Mlawa) was done properly. As of now, the appellant is barred by law as far as conveyance rules are concerned. This is what the trial tribunal (Kijichi Ward Tribunal)

insisted in its decision on the matter. Under section 67 (b) (i) of the Land Act, Cap 113, R.E 2002, the law provides;-

(b) "a person obtaining a right of occupancy or lease by means of a disposition not prejudicially affected by notice of any instrument, fact or thing, unless...

(i) it is within that persons knowledge, or would have come to that person's knowledge if any inquires or inspection had been made which ought reasonably to have been made by that person..."

This provision is clear that, if a person fails to honor his obligation to conduct an inquiry over the land he is about buy and proceeds to buy with defects which could have been avoided by inspections over the property prior to disposition, he will be estopped by the choice he made.

In the case at hand the buyer herself (the appellant) is responsible for the choice she made on 03/07/2015 when she bought the said house blindly. Therefore the doctrine of *Caveat Emptor*, attempts to make the buyer more conscious of his choices will come into play as provided in the above cited provision. It is the duty of the buyer to check the quality and the usefulness of the product he is purchasing. If the product turns out to be defective or does not live up to its potential, the seller will not be responsible for this. In general, there is a fairly high onus on the purchaser to inspect and discover patent defects which could have been discoverable upon a reasonable inspection by him, lack of space surrounding the house she purchased.

The defect attached to the appellants' house in this case as observed by the Ward Tribunal of Kijichi and the 1st appellate court (District Land and Housing

Tribunal of Temeke) is a patent defect which could have been discovered by a reasonable search over the property before buying. Since the appellant neglected to do the same, she cannot blame anyone but herself, neither her neighbour (the respondent) nor Zuberi Seleman Mlawwa (administrator of the late Zainab Mfaume Mlawwa) who sold the same to her. In consideration of the above observations, I am inclined to disagree with the appellant's grounds of appeal, grounds 1, 2,3,4,6 and 7 as contained in her memorandum of appeal and are rejected accordingly.

On the 5th ground, the appellant argues that, it was wrong for the 1st appellate tribunal to uphold the decision of the trial tribunal. The reasons provided by the appellant on this ground is that, the trial tribunal's decision had material irregularities like the judgment itself was not signed by the chairperson of the tribunal, the Coram was not properly constituted and the tribunal had no pecuniary jurisdiction to entertain the matter based on the value of the disputed land.

I have perused the records of the trial tribunal and found this argument to be baseless. Section 11 of the Land Disputes Courts Act, Cap. 216 R.E, was complied with, the Ward Tribunal of Kijichi had four members which is a minimum number required and the chairperson signed the judgment, contrary to what has been asserted by the appellant.

As for the pecuniary jurisdiction of the Ward Trial Tribunal over the suit land, relying on the decision of this court in LWESHABULA MZINJA vs JULIETA JACOB, Misc. Applic. No 7 of 2005, where Rugaziya J noted that,

"In absence of valuation report, any attempt by us to attach value to the property is nothing but conjectural...because I cannot dare, let alone pretend to possess any expertise on the field of evaluation and that we cannot estimate the value of the subject matter on speculations."

It was for the appellant to provide proof to the 1st appellate tribunal on the issue and not rely merely on words. After all she is the one who took the matter to the trial tribunal stating the amount that was within the tribunals jurisdiction. Any claim trying to challenge her own decision is in my view a mere after thought trying to salvage the situation in her favour, in unacceptable manner. This ground too is lacks merits. It is equally dismissed.

Consequently, this appeal is therefore dismissed in its entirety without costs.

Ordered accordingly.



M. P. OPIYO
JUDGE
20/9/2019