

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

**AT DAR ES SALAAM**

**LAND APPEAL NO. 175 OF 2019**

*(From the Decision of the District Land and Housing Tribunal of KINONDONI District at  
MWANANYAMALA In Application No. 421 of 2011)*

**ELIAS EDWARD MAYUNGA ..... APPELLANT**

**VERSUS**

**ERNEST MASSAE ..... 1<sup>ST</sup> RESPONDENT**

**MWANTUMU ALLY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT ON APPEAL**

**S.M. MAGHIMBI, J:**

In the original Land Application No. 421/2011 ("the Application") before the Kinondoni District Land and Housing Tribunal at Mwananyamala ("The Tribunal"), the appellant herein was an unsuccessful applicant, having sued the respondents herein jointly and severally for trespass and planting of beacons on the suit property located at Goba in Ubungo Municipality. Aggrieved by the decision of the tribunal, he has lodged this appeal on the following grounds:

- (i) That, contrary to the evidence on record, the Honourable trial Tribunal erred in law and in fact in finding that the suit land belonged to the 2<sup>nd</sup> Respondent's husband.
- (ii) That, contrary to the evidence on record, the Honourable trial Tribunal erred in law and in fact in finding that the Appellant did not contest evidence suggesting that the suit land was

earlier owned by Mzee Makusanya who, in 1981, sold it to the late husband of the 2<sup>nd</sup> Respondent.

- (iii) That, the Honourable trial Tribunal erred in law and in fact in finding that there was no clear evidence that the suit land was abandoned and it was a bush.
- (iv) That, the Honourable trial Tribunal erred in law and in fact in failing to analyse and evaluate the evidence on record.
- (v) That, the Honourable trial Tribunal erred in law and in fact by failing to address the conspicuous contradiction between evidence of the Respondents and their respective pleadings.
- (vi) That, the Judgment of the Honourable tribunal is otherwise faulty and wrong in law.

The appellant's prayer was that the Judgment and Decree of the Tribunal be reversed or set aside and that he is declared the true owner of the suitland. He also prayed for the costs of this appeal. On the 16/07/2019, the appeal was ordered to be disposed by way of written submissions and all parties filed their submissions accordingly. The appellant's submissions were drawn and filed by Mr. Daniel Welwel, learned advocate while the respondents' submissions were drawn and filed by Mr. Lusažo Willy, learned advocate. Much appreciations to the Counsels' well elaborative and researched submissions which have contributed much in construction of this judgment.

I have considered the submissions of the parties since this is a first appeal, I have also gone through the records of this appeal and have thoroughly reanalyzed the evidence adduced during trial. Having done so, the following my finding are elaborated below.

While it is undisputed that the appellant was granted the disputed land by the Goba Village Council following an order of the District Commissioner executing the order of the Regional Commissioner (EXP1), there is also undisputed evidence of the 2<sup>nd</sup> respondent that the said grant to the appellant was revoked and she was restored her land through the collective EXD5. The 2<sup>nd</sup> respondent traces her ownership of the suit property through her late husband. Her late husband purchased the suit as evidenced by EXD2. Therefore the real question in controversy for my determination here is whether it was right for the Goba Ward to grant the land, which allegedly belonged to the 2<sup>nd</sup> respondent, to the appellant. This is more of an issue of both law and procedure as I shall elaborate.

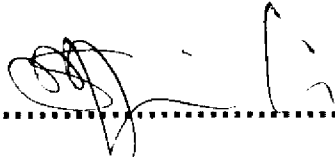
Starting with the law, in order for a village to be presumed abandoned, a period of five years of such abandonment has to be proved (see **Section 45 of the Village Land Act, No. 05/1999** as amended). Therefore I would expect the evidence adduced during trial to establish the said abandonment to have justified the reallocation to the appellant. In her evidence, the 2<sup>nd</sup> respondent established that she and her late husband owned the suitland from 1981 and they were using the same by cultivating different crops. In 1999-2000 they stopped the activities in the land as she was nursing her sick husband and it was in the year 2000 that the appellant got the land by EXP1. The question is, if the 2<sup>nd</sup> respondent managed to establish the fact that she abandoned the land only in 1999-2000, was it proper for the Goba Ward to relocate her land? The answer is definitely no, even if we were to consider the land was abandoned, but an abandonment of one year does not suffice in any way, to justify re-allocation of the land given that the 2<sup>nd</sup> respondent's ownership was not a conditional government grant but a purchase from an individual, therefore

the general rule of abandonment of village land for at least five years would have applied. The predicament begun at this point when the land was granted to the appellant while there was no proof that the same had been abandoned.

Going to the procedural part, the appellant claims to have gotten the land from Goba Ward Council following an order of the Regional Commissioner through the District Commissioner. I don't know of any law that gives power to the Regional Commissioner to grant land. That notwithstanding, even if we were to assume that the Commissioner had the power, better yet, the 2<sup>nd</sup> respondent adduced evidence vide EXD5 that the said land was given back to her following her complaint. Therefore much as the re-allocation of the land to the appellant was wrong, there is additional evidence of rectification of the wrongful grant through EXD5 where the 2<sup>nd</sup> respondent was restored her land.

All the above evidence conclude that the grant of the land to the appellant was unlawful hence a nullity and the land was restored to the 2<sup>nd</sup> respondent. Therefore the 2<sup>nd</sup> respondent remained the lawful owner of the suit property and since the 1<sup>st</sup> respondent claims ownership from the 2<sup>nd</sup> respondent vides EXD1, he remains the bonafide purchaser and the lawful owner of the suit property. Consequently, this appeal is dismissed with costs.

Dated at Dar es Salaam this 12<sup>th</sup> day of December, 2020

  
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**S.M. MAGHIMBI**  
**JUDGE**