

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

**LAND APPEAL NO. 44 OF 2018**

*(Arising from the decision of District Land and Housing Tribunal for Kinondoni in Land  
Application No. 411 of 2012)*

**MBARAKA PAULO ..... APPELLANT**

**VERSUS**

**MGAYA PAULO ..... 1<sup>ST</sup> RESPONDENT**

**MERRY P. KADODA ..... 2<sup>ND</sup> RESPONDENT**

**MICHAEL JACKSON ..... 3<sup>RD</sup> RESPONDENT**

**ZACHARIA ISAYA ..... 4<sup>TH</sup> RESPONDENT**

**JUDGMENT ON APPEAL**

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

The roots of this appeal are traced from Land Application No. 411 of 2012 ("The Application") at the District Land and Housing Tribunal of Kinondoni ("The Tribunal") in which the appellant in this appeal was the applicant. At the tribunal, the Appellant herein sued all the respondents for trespass and sought for a declaratory order that he is a lawful owner of the suit land located at Kunduchi within Kinondoni Municipality. The Application was dismissed for lacking merits and the 2<sup>nd</sup> respondent was declared a lawful owner of the suit property.

Aggrieved by the decision of Tribunal, the appellant has appealed to this Court on the following grounds:

1. That, the trial Tribunal erred in law and fact by failing to analyse critically Exhibit D1 and Exhibit D2 tendered by the 2<sup>nd</sup> Respondent, as the two refer to acquisition of different lands.
2. That the trial Chairperson of the tribunal erred in law and Fact by misdirecting himself with the maxim quo prius est verius; et quod prius est tempore potius est jure in relation to the exhibits tendered and forthwith entered decision in favour of the 2<sup>nd</sup> respondent, while the appellant was first person to acquire the disputed land.

Since all parties were unrepresented, the appeal was argued by way of written submission. The Appellant and 2<sup>nd</sup> respondent filed their submissions while the 1<sup>st</sup> and 4<sup>th</sup> respondents did not file their submission therefore the matter proceeds *ex parte* against them. At the tribunal, the dispute was amicably settled between the appellant and the 3<sup>rd</sup> respondent.

On his first ground of appeal the appellant is challenging the evidence of Exhibits D1 and D2 that the two documents do not relate to the Land in dispute. He argued that exhibit D1 which is the Letter from Village Council dated 02/09/2001 does not show location or size of the Land. Further that Exhibit D2, which is a letter of 2008 from Elias Paul Mgaya to 2<sup>nd</sup> Respondent, does not state whether the 2<sup>nd</sup> respondent has received any consideration in relation to the suit property.

On the 2<sup>nd</sup> Ground of appeal, the appellant submitted, he is the 1<sup>st</sup> owner of the suit land which was given to him by Mtongani Village Chairman on 06/03/2001 and the One Elias Paulo Mgaya Claimed to obtain was granted

to him on 02/09/2008. He argued that based on the 1<sup>st</sup> rule principle, he is the lawful owner.

In response, the 2<sup>nd</sup> respondent submitted that all two exhibits relate to the same property. She argued that as soon as Elias Paul Mgaya gave the suit land to her before the Village Counsel in 2001, he left for Morogoro.

On the 2<sup>nd</sup> ground of appeal, she submitted that from evidence on record, it is clear that the 2<sup>nd</sup> respondent is the 1<sup>st</sup> owner as she acquired it on 02/01/2001 while the Appellant claimed to acquired it on 06/03/2001 therefore the maxim *quod prius est veritus; et quod prius tempore potius est jure* is in favour of the 2<sup>nd</sup> respondent.

In determining this appeal, I will discuss both grounds of appeal together as they are mainly on the analysis of the evidence adduced. The first contention is on the land in dispute whereby the appellant argued that the EXD1 and EXD2 are talking of two different lands. The second contention is on who acquired the disputed land first.

From the evidence gathered on records, the strength of this appeal is mainly on which document was the first in allocating the disputed land between **exhibit P1** and exhibit D1. While the former is a letter dated **06/03/2001** to one Mbaraka P Wandwi from mwenyekiti wa serikali ya kijiji cha kitongoji cha mtongani, titled "*Tamko la kuruhusiwa kujenga katika eneo lako*", the latter is a letter dated **02/01/2001** titled "*Tamko la kuruhusiwa kujenga katika eneo lako*" from mwenyekiti selikali ya kijiji cha Mtongani. There is also EXD2 titled "*makabidhiano ya eneo la kuchimba mawe leo tarehe 02/09/2008*" and dated **02/09/2008**. From these documents, there is no dispute that

both the applicant and the 2<sup>nd</sup> respondent claim to be given the land in dispute by the Village Chairman of Mtongani Village.

The issue on who is allocated the land is answered by EXP1 and EXD1, whereby the 2<sup>nd</sup> respondent was firstly allocated the land in the month of January, 2001. Hence the EXP1 which shows that the appellant was allocated the land later in March of the same year, makes no better title to the appellant's allocation. It is trite law that whenever there is a double allocation of land, consideration has to be given to the person who was first allocated the land in dispute unless there is sufficiently cogent and qualitatively good version of evidence to the contrary. This is not the case in the records of the current and that is why I do not find any reason to interfere with the decision of the tribunal. The appeal is consequently dismissed with costs.

***Appeal Dismissed***

Dated at Dar es Salaam this 27<sup>th</sup> day of February, 2020

A handwritten signature in black ink, appearing to read 'S.M. Maghimbi', is written over a horizontal dotted line.

**S.M. MAGHIMBI**

**JUDGE**