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

LAND APPEAL NO. 185 OF 2020
(Arising from the decision of Ilala District Land and Housing Tribunal in Land Application No.21 of 2014)

THOMAS GILBERT OBILA.....APPELLANT

VERSUS

PERPETUA BONIFASI CHILAI.....1ST RESPONDENT
ROBERT JOSEPH CHITI.....2ND RESPONDENT
PRISCA ISAYA KILWAI.....3RD RESPONDENT

Date of Last Order: 23.06.2021
Date of Judgment: 16.08.2021

JUDGEMENT

V.L. MAKANI, J.

The appellant THOMAS GILBERT OBILLA is appealing against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Land Application No.21 of 2014 (Hon. Bigambo, Chairman)

At the Tribunal the appellant was seeking among other things, a declaration that he is the lawful owner of the Plots named C, D and E located at Kifuru Msigwa at Kinyerezi, Ilala District of Dar es Salaam Region (the **suit land**). The application was partly allowed against the 2nd and 3rd respondents and dismissed against the appellant and

the 1st respondent. The appellant being dissatisfied with the decision of the Tribunal has appealed to this court with six grounds of appeal which are reproduced hereinbelow as follows:

1. *That the honourable tribunal erred in law and facts by failing to evaluate and verify the cogent evidence adduced by the appellant.*

2. *That, the honourable tribunal erred in law and facts by admitting evidence of counter affidavit and testimony of the respondents before it.*

3. *That, the Honourable Tribunal erred in law and facts by denied (sic!) the applicants* ***Exhibit P1*** *dated 6/4/ 2008 Mtaa Government on ground that the document has not been endorsed by the word* ***"AMEPEWA".***

4. *That the Honourable Tribunal erred in law and facts by failing to consider the decision and finding of the Trial Ward Tribunal of Kinyerezi at Kinyerezi in KUMB.NA.BZK/KINY/MZ/23/2012 dated 12/11/2013.*

5. *That the Honourable Tribunal erred in law and facts by admitting hearsay evidence of which in discrepancy to the principle of the law of evidence.*

6. *That the Honourable Tribunal erred in law for want of jurisdiction over the matter.*

The appellant prayed for the appeal to be allowed with costs and the order of the Tribunal be set aside.

The hearing of this appeal proceeded by way of written submissions, the appellant personally drew and filed his main submissions while

Mr. Douglas Mmari, Advocate, drew and filed submission on behalf of the respondents.

The appellant consolidated the 1st, 3rd and 5th grounds of appeal and argued them together. He said the Tribunal failed to evaluate and verify documentary evidence marked Exhibit P1 dated 31/03/2007 adduced by the applicant of which reciprocating over area C and D and another **Exhibit P1** dated 06/04/2008 reciprocating over area E making the total disputed area to be (20x3=1200sqm). That although earlier rejected but it came to be realized that it is the applicant's area and left to him (Area E). That the Tribunal admitted the applicant's evidence as proof of ownership over the disputed areas C, D and E but failed to observe their validity during decision instead contradicted itself by relying on their own view and decided to allocate area C and D to the 2nd respondent in his absence and without any documentary evidence. He said the Tribunal acted on hearsay evidence linking imaginary transfer of area A as if it was for the 2nd respondent while the real area reallocated are C and D of the applicant. He said that the respondents linked area A which was earlier sold to Ramadhan Chambega on 05/09/2010 by the 1st respondent with intent to make confusion with area C and got unfair benefit of another right. That

area A was not in dispute and already had been transferred to several peoples even before start of the dispute on 16/07/2012. He said the misconceived of facts led to improper purpose of reallocation of admitted areas C and D of the applicant to the 2nd respondent. That the onus of proving that area A was part of area C and D was on respondents who alleged but the Tribunal shifted the onus to the applicant. He relied in the case of **Hemed Said vs. Mohamed Mbillu, TLR [1984] 113.**

Arguing for the 2nd ground of appeal the appellant said that it was wrong for the Tribunal to admit counter affidavit and testimony of the respondent. That in the counter affidavit the respondents argued that disputed area C D and E (1200sqm) were under ownership of Mr. Ramadhani Athumani Chambenge while during the testimony respondents stated that the disputed area was not covering the whole disputed area, but its size is (600sqm) under ownership of 2nd respondent simply without further proof as to when was it acquired and the purchasing agent was not disclosed. He said the counter affidavit was defective by failure to state the source of knowledge by them and knowledge through information from a specific person. He said the counter affidavit of the respondents could not move the court

of competent jurisdiction to hear and determine matter on merit. Mr. Obila relied on the case of **Benedict Kimwaga vs. Principal Secretary, Ministry of Health, Civil Application No. 31 of 2000 (CAT-DSM)** (unreported). He said that the respondents raised new pleas that the disputed area are owned by the 2nd respondent who purchased from Ramadhan Chambenga. That the plea had neither leave of the court nor supported by counter affidavit. He insisted that parties are bound by their own pleadings. He supported his arguments by the case of **Paulina Amos Ndawavya vs. Theresia Thomas Madaha, Civil Application No. 452 of 2017 (CAT-Mwanza)** (unreported).

On the 4th and 6 grounds of appeal he said that the decision of the Ward Tribunal was still valid and had not been appealed anywhere hence it was wrong for the Tribunal to nullify the decision between the parties without genuine reasons.

Replying to the 1st and 5th grounds of appeal Mr. Douglas Mmari for the respondents submitted that the onus of proof was on the appellant who alleges that he owns the disputed land. However, he had no evidence of the same as he only brought a receipt written

AMEPEWA but it does not state the location of the land given to him. He said according to PERPETUA BONIFACE CHALAI the 1st respondent herein who sold the suit land to Ramadhan Chambenga who later sold to the 2nd respondent, the village was only showing them bushes and setting boundaries. That it was their duty to clear the land themselves. Mr. Mmari insisted that the onus of proof was with the applicant and since he failed to prove his ownership then the Tribunal was right in dismissing the application for the 1st respondent as the original occupier sold to 3rd party who later sold to the 2nd and 3rd respondents (husband and wife).

On the second ground they said that there was no counter affidavit filed by the respondents at the Tribunal.

On the third ground they said that the Tribunal was right in refusing to admit the receipt of Tshs. 150,000/= as **Exhibit P1** since it did not state the purpose of the payment, but it was only written **AMEPEWA** which did not prove the ownership of the suit land. He said the appellant failed to even call the local leader who allocated the land to him and he did not tender the application form with which he was allocated the land.

On the fourth ground they said that the rationale of the Tribunal not considering the decision of the Ward Tribunal was that the 2nd and 3rd respondents who are in occupation of the suit land were not parties in the application at the Ward Tribunal. That the execution of the Ward Tribunal was impossible as the applicant sued only the 1st respondent. That the Ward Tribunal was correct to dismiss the execution application to allow fresh application to include the 2nd and 3rd respondents so that all the parties could be heard.

On the sixth ground the respondents said that the Trial Tribunal had jurisdiction to entertain the matter. That the appellant had not submitted which jurisdiction he complained of. Since it was the appellant who instituted the matter at the Tribunal then the issue of jurisdiction is an afterthought. They thus prayed for the appeal to be dismissed with costs.

In rejoinder the appellant reiterated his main submissions and added that he legally bought a piece of land from Kifaru Hali ya Hewa village on 31/03/2007 and was given a kind of contract form which is now termed as a receipt.

Having gone through submission by the parties, the main issue for determination is whether this appeal has merit.

The first, third and fifth grounds of appeal are on admissibility and weight of evidence. Since the appellant has consolidated them in his argument, they shall in the same way be dealt together. The appellant's contention is that the Tribunal failed to evaluate his presented evidence and denied his documentary **Exhibit P1** of which he alleged to have a proof of ownership over the suit land. Further, he complained of the Tribunal's admission of hearsay evidence that the Tribunal linked imaginary transfer of area A as if of the 2nd respondent while the real area reallocated are C and D of the applicant.

It is trite law that the one who alleges must prove, this is in accordance with section 110 (1) and 111 of the Law of Evidence Act, CAP 6 RE 2019. Therefore, the appellant had that duty of proof that the suit land belongs to him. To furnish that duty, he had to bring material evidence including but not limited to documents of ownership (exhibits) and material witnesses who could testify that the suit land

belongs to him. At the Tribunal the appellant tendered **Exhibit P1** which he relied as proof of ownership over the suit land. **Exhibit P1** as seen on the records of the Tribunal is a mere Exchequer Receipt witnessing the payment of Tshs. 500/=, accompanied with Police Loss Report and certified copy of a letter from *Serikali ya Mtaa Kifaru-Msigwa*. The letter merely states that Mr. and Mrs Thomas Obila (appellant) "*wamepewa eneo*". The letter then acknowledge that they have received Tsh 400,000/=. It does not state location and specification of the area. Basing on **Exhibit P1** collectively (exchequer receipt, Police Loss Report and the letter from *Serikali ya Mtaa),* I am of the settled view and as correctly stated by the learned Chairman of the Tribunal that, the said **Exhibit P1** does not prove ownership of the suit land by the appellant.

On the issue of counter affidavit that it was wrongly admitted by the Tribunal, the main purpose of the counter affidavit is to contradict the facts sworn in the affidavit by the adverse party. Further the records shows that only the 1st respondent filed a counter affidavit. Just in case and in situation like the one at hand where we have three respondents, it is improper to condemn the rest of the respondents basing on the affidavit by the 1st respondent unless she was swearing

on behalf of other respondents. Therefore, this ground too has no merit.

On the issue of the Ward Tribunal's decision. As correctly submitted by the respondent. Parties in *BARAZA LA KATA KINYEREZI* were Thomas Gilbert Obila (appellant herein) and Perpetua Boniphace (respondent herein). The 2nd and 3rd respondents were not parties in the case at the Ward Tribunal. It was therefore proper for the District Tribunal to disregard the decision of the Ward Tribunal and conduct the matter afresh with inclusion of the 2nd and 3rd respondents since their rights over the suit land was not determined at the Ward Tribunal. This ground also lacks merit.

Regarding the issue raised by the appellant that the District Tribunal lacked jurisdiction to entertain the matter. It is on the record that the appellant was the one who instituted the matter at the Tribunal. The issue of jurisdiction was unsuccessfully raised by the respondents and the matter proceeded on merit. The appellant was satisfied with the ruling until when the matter was decided in favour of the respondents that's when he considered the issue of jurisdiction as one of the

grounds of appeal. Correctly as submitted by the respondents, this is an afterthought. In the circumstances this ground has no merit.

Basing on the above analysis, I find no fault in the decision of the Tribunal and it is hereby upheld. This appeal is accordingly dismissed with costs. It is so ordered.

V.L. MAKANI
JUDGE
16/08/2021