

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

LAND APPEAL NO. 23 OF 2019

(From the decision of the District Land and Housing Tribunal for Ilala in Application No.
157 of 2016)

MAGDALENA BUKOS.....APPELLANT

VERSUS

JOSEPH EMMANUEL PALLANGYO..... RESPONDENT

Last Order: 23/04/2021
Judgement: 11/06/2021

J U D G M E N T

MANGO, J.

The appellant preferred this appeal against the decision of the District Land and Housing Tribunal for Ilala in Land Application No. 157 of 2016 on the following grounds;

- 1. That, the learned trial Chairman erred in law and in fact by holding that the respondent is the lawful owner of the suit premises where he erected his building only without considering as to how he acquired the disputed land;**
- 2. That, the learned trial chairman erred in law and in fact by ignoring evidence on record and making a finding that the piece**

of land in disputed was bought by the Appellant from Omary Mbagala;

- 3. That, the learned trial chairman erred in law and fact in arriving at a judgement based on pleadings alone, his own beliefs and conjectures not supported by evidence on record;**
- 4. That, the learned trial chairman erred in law and fact by holding that the Appellant was the one who took responsibility of surveying the disputed land;and**
- 5. That, the learned trial Chairman erred in law and in fact for failure to consider evidence given by the Appellant and her witnesses in supporting that the disputed land belong to the Appellant.**

The Appellant was represented by Mr. Mathew Bernard Kabunga, learned advocate while the respondent was represented by Ms. Pendo Ulomi, learned advocate. On 10th November 2020, the Court ordered the Appeal be disposed by way of written submissions.

In his submission, the Appellant's counsel consolidated his arguments regarding all grounds of appeal because they all concern ownership of the disputed land. He argued that, the suit land belongs to the Appellant as he acquired ownership of the suit land by purchasing the same from one Omary Mbagala in 1986. The Appellant invited the respondent to stay in the disputed land due to a brotherly and sisterly relationship that existed between them.

He commented on the evidence tendered by the Respondent during trial and argued that, the same does not prove the respondent's ownership over the suit land. He argued that, the allegations by the Respondent that he acquired the suit land jointly with the Appellant and they have agreed to divide the same

into two pieces of land is not supported by any evidence. He pointed out that, even the person who was allegedly sent by the Respondent to handle a half of the purchase price to the Appellant, was not summoned as a witness. Citing section 110(1) of the Evidence Act, [Cap. 6 R.E 2019] he is of the view that the Respondent failed to prove his ownership over the suit land. Thus, the learned chairman erred in law and in fact by holding that the respondent is the lawful owner of the suit premises

In his reply submission, the Respondent counsel submitted that the suit land was acquired jointly by the Respondent and the Appellant in the year 1986 and not 2006 as it appears in the Appellant's submission. The Respondent has been in occupation of the suit land from 1986 to 2014 when the dispute arose. He is also residing in the house he constructed in the suit land up to now.

He submitted further that, at the time of purchase the Appellant and the Respondent agreed that the suit land will be divided equally between the Respondent and the Appellant. The Respondent has been paying property taxes in his own name. The learned counsel is of the view that having receipt of property tax payment issued in the name of the Respondent is a Prima facie evidence of the Respondent's ownership over the suit land. He argued that, trial tribunal findings that the suit land is owned jointly by the appellant and the respondent is correct and it should not be faulted. He added that the Respondent is the owner of the suit land on which he built his house while the Appellant owns the remaining part of the suit land.

The Appellant had no rejoinder.

I have considered submissions by both parties and Court record. Court record suggests that the suit land is jointly owned by the Appellant and the Respondent. According to the Respondents testimony before the trial tribunal,

where he testified as PW1, the land was purchased jointly by him and the Appellant. He testified further that it was the appellant who paid the purchase price and he only refunded a half of the purchase price a year later, that is in 1987. He mentioned one Julius Mafie as the person who handled the money, Tshs 3500/-, which he paid as a half of the purchase price to the Appellant. He added that, they agreed to divide the suit land equally between themselves. The Respondent tendered property tax receipts as evidence of his ownership over the suit land. Aside from the testimony of PW1 there is no any other reliable evidence that establishes ownership over the suit land whether joint or individual ownership. I hold so because, the testimony of PW2, SHABANI MAJALIWA@ SIMON PAUL MAJALIWA is not centered on actual ownership of the respondent's land but occupation of the suit land and who was seen constructing of the house in the suit land physically. There is nowhere in the testimony of PW2 that the manner the Respondent acquired ownership over the suit property is expressed.

The Appellant testimony was to the effect that she purchased the suit land by herself and that she was the one who constructed the structure in the suit land. She alleged that she was sending building materials to the Respondent and the Respondent used to supervise the constructions.

As correctly noted by the Honourable trial chairman, neither the appellant nor the respondent has managed to prove ownership of the suit land within the required Standard. I hold so because, the Respondent who was the applicant before the trial tribunal did not tender any evidence regarding the alleged joint purchase of the suit land from OMARY MAGANGA. He also failed to tender any document that he produced during Registration of the suit premises before Ilala Municipal Council as proof of his ownership over the suit land. The law, section 112 of the Evidence Act, [Cap.6 R. E. 2019], vests the burden of proof in the

Applicant. In the appeal at hand, the Respondent had the duty to prove the alleged joint ownership over the suit land.

The Respondent tendered property tax receipts as evidence of ownership of the suit land. Property tax receipts alone, in absence of the proof as to how the person whose name appear in property tax receipt acquired ownership of the plot in which the building has been constructed, cannot be considered to be a proof of ownership. Unfortunately, the Local Government leaders who were involved in acquisition of the plot and during survey of the same, were not summoned to testify on the ownership of the suit land. Even Julius Mafie allegedly the person through whom the Respondent paid a half of the purchase price to the Appellant, was not called as a witness. Failure to summon principle witnesses may move the court to draw adverse inference. In the case at hand, failure to call witnesses to the sale transaction, the sale agreement itself in which the Respondent's name allegedly appears as the vendor, and Julius Mafie made the Respondent to fail to establish his claim within the balance of probability.

The Appellant also had a duty to prove her ownership over the suit land as she raised a counter claim to the Respondents case. Her attempt to tender her sale agreement before the trial tribunal was unsuccessfully. Aside from the sale agreement, the Appellant did not adduce any evidence that establishes her ownership over the suit land.

In its decision, the trial tribunal determined the issue of ownership of the suit land by determining who constructed the building in the suit plot and, the length of the period in which the Respondent has been occupying the suit land. This is reflected at page 9 of the judgement which reads: -

"The evidence adduced by the applicant side proved that he has been in occupation of the suit premises in which he erected his house in 1992 and he started residing there from 1993 until when the dispute arose between him and the respondent in 2014. If that area could belong to the respondent, why didn't she claim that area before 2014?"

Secondly...Third, if the respondent is the one who erected the premises and allowed the applicant to stay in it to take care of it why the respondent has not come with witnesses to prove that fact."

The appellant argued that she was the one who constructed the house through the respondent. The respondent argued that he was the one who constructed the building. The testimony of PW2, who is the Respondent's neighbor is that the house in the suit land was built by Respondent. The Appellant did not adduce any evidence that contradicts testimony of PW2. She actually conceded that the house was constructed under respondent's supervision. She only alleged that, she was supplying building materials to the respondent and that the house was constructed under her instructions. The appellant did not have any proof that she supplied building materials to the respondent. In absence of such evidence the trial tribunal was correct to hold that the respondent is the person who constructed the building in the disputed plot as evidence adduced before it suggests so.

However, construction of a house on a plot does not make the person who constructed the house the owner of the suit plot. It should be noted also that the issues who constructed the house in the suit premises and who resides in the suit premises were not raised during trial. During trial two issues were raised:-

1. Who is the lawful owner of the suit premise?
2. To what reliefs are parties entitled to?

The Court is bound to determine issues raised before it only. As highlighted above neither the appellant nor the respondent has established ownership over the suit premises. In such circumstances, this court finds neither party has established ownership over the suit land on the required standard.

For that reason, this court do hereby order trial denovo of dispute after parties have collected enough evidence to prove their alleged ownership over the suit land, if any. Appeal is here by partly allowed. The dispute be tried afresh at the liberty of the parties.




Z. D. MANGO

JUDGE

11/06/2021