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

LAND APPEAL NO. 263 OF 2020

(From the Decision of the District Land and Housing Tribunal of Kinondoni District at Mwananyamala in Land Case Application No. 329 of 2017)

GOODLUCK MOLLEL.....1ST APPELLANT
MOSHI BILALI.....2ND APPELLANT
SAID IMBA.....3RD APPELLANT
JAPHET BASIL SHIRIMA.....4TH APPELLANT

VERSUS

ELIZABETH KIBANGWA.....RESPONDENT

JUDGMENT

Date of Last Order: 16.11.2021

Date of Judgment: 24.11.2021

OPIYO, J.

The appeal lies on two grounds:-

1. That, the Honourable Chairperson erred in law and fact by ignoring the evidence adduced by appellants that they have good tittle on the suit land.

2. That, the Honourable Chairperson erred in law and fact by relying on inconsistent and insufficient evidence adduced by respondent on proving ownership of the suit land.

In a nutshell, the appeal centers on a piece of land, measuring 40 by 40 paces, located at Mbezi Msumi Area within Ubungo District and Dar Es Salaam Region. The facts on record allege that the respondent bought the suit land in 2015 and later the 1st appellant here in above invaded part of it say 40 by 20 paces and started erecting a building over it, hence this dispute. At first the case was heard and determined by the District Land and Housing Tribunal of Kinondoni in favour of the respondent, hence the present appeal.

The parties through their learned Advocates, Hissan Mtolela for the appellants and Ndibalema for the respondent presented their arguments by way of written submissions. Mr. Ndibalema in his submissions in favor of the appeal relied on section 110 of the Evidence Act, Cap 6 R.E 2019 and maintained that the respondent did not prove her case on balance of probability therefore, it was wrong for the trial tribunal to decide the case in favour of the respondent. That there was no site visitation by the tribunal before reaching its decision. He argued that, had the trial tribunal managed to visit the locus in quo it could have ascertained the existence of the suit land and its status because the suit land was claimed by different owners, and each stated a different size. He went on to argue on the 2nd ground that, the trial tribunal failed to properly analyse the evidence on record and contradicted itself in its analysis. At paragraph 6 the trial tribunal acknowledged that Said Imba, the 3rd appellant sold the suit land to the 4th respondent, Japhet Shirima who subsequently sold it to the 1st appellant. While at page six of the said judgment, the tribunal contradicted itself by stating that the 3rd respondent got the tittle over the suit land in 2006, from the 1st respondent. That, also the trial tribunal

declined the evidence of passage of the tittle from the 2nd to the 3rd respondents.

In reply, Advocate Ndibalema was of the view generally that, it is clear that the 1st respondent, Goodluck Justine Mollel purchased the suit land being the 3rd person. He bought the same from a person, Said Imba who had no tittle to pass it to another person as he never owned such land. Hence, his sale to Japhet Basil Shirima was null and void so is the transfer from Mr. Shirima to the 1st respondent. It was stated in **Farah Mohamed versus Fatuma Abdallah (1992) TLR 205** that he who does not have a legal tittle to land cannot pass good tittle over the same to another.

Therefore, the case at the trial tribunal was proved well that is why the tribunal decided in favour of the respondent by complying to sections 110 (1) & (2) of the Evidence Act, Cap 6 R.E 2019. He cited the case of **Simon Francis versus Alfred Mtakosa, Misc. Land Appeal No. 6 of 2015, High Court of Tanzania, Land Division at Dar Es Salaam (unreported)** to fortify her his argument. In that case it was held that:-

> *"In my view in order for the Court to find in favour of the appellant there should have been strong evidence both documentary and oral to back up that he is the lawful owner of the suit land otherwise the Court cannot rely on assumption and mere words."*

Mr. Ndibalema further argued that the contention by the appellant's counsel on site visitation is baseless as parties were not disputing over boundaries but for the whole plot and the legality of the sale agreements

executed by the appellants. Therefore, this court should not interfere with the decision of the lower tribunal as its findings are correct as rightly observed in **Amratlal D.M t/a Zanzibar Silk Stores versus A.H. Jariwara t/a Zanzibar Hotel (1980) T.L.R 21.**

> *"The Court cannot interfere an appeal unless it is shown that there has been misapprehension of evidence, a miscarriage of justice or a violation of a principle of law or practice."*

I have gone through the submissions of both parts and the records at hand, the question that need to be answered here is on the merit or otherwise of this appeal. Starting with the 1st ground that the trial tribunal ignored the evidence of the appellant as proving that he has a good tittle. While arguing this ground, the appellants further contended that, basing on the circumstances surrounding the suit land and the case in general, it was important for the trial tribunal to visit the *locus in quo*. The respondent through her counsel insisted that the 1st appellant had no good tittle owing to the fact that he purchased the suit land from the person who had no good tittle to pass the same.

In my settled view, agreeing with Mr. Mtolela, based on the circumstances of the case, it was necessary for the trial tribunal to visit the *locus in quo* before making its decision. In this case, the central figure to the dispute is the 3rd respondent, one Said Imba. The facts show that the said person was a witness in the transaction involving the suit land between the respondent and Moshi Bilali, the 2nd appellant. Mr. Imba also had a piece of land near the land owned by Moshi Bilali. That when Moshi Bilali left to

Songea, she left her land which she sold to the respondent under the care of Said Imba. On the other hand, in his testimony, Said Imba insisted that what he sold to the 4th appellant is his land, the one belonging to the respondent was left intact. This evidence surely attracts the court visiting *locus in quo*. It was observed in **Kimono Dimitri Mantheakis versus Ally Azim Dewj and 7 others, Civil Appeal No. 4 of 2018, Court of Appeal of Tanzania at Dar Es Salaam**, where it was observed that

> *"The essence of the court attending the locus in quo with the parties was emphasis in the case of* ***William Mukasa v Uganda (1964) E.A 696 at page 700, Sir Udo Udoma G*** *(as he then was) held as follows;*
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> *A view of locus a locus in quo ought to be, I think to check on the evidence already given and where necessary and possible, to have such evidence ocularly demonstrated in the same way a court examines a plan or map or some fixed object already exhibited or spoken in the proceedings. It is essential that after a view of a judge or magistrate should exercise great care not to constitute himself a witness in the case. Neither a view nor personal observation should be a substitute for evidence."*

The Court in the same case further quoted the case of **Avit Thadeus Massawe versus Isdory Assenga** where determination of the propriety or otherwise of the *locus in quo* was made having relied on the Nigerian case of **Akosile versus Adeye (2011) 17 NNWLR (pt1276) p. 263** where it was held that:-

"The essence of a visit in locus in quo in land matters includes location of the disputed land, the extent, boundaries and boundary neighbor, and physical features on the land. The purpose is to enable the Court see objects and places reffered to in evidence physically and to clear doubts arising from conflict evidence if any about physical objects"

In view of the above authorities, as stated here in above, I find it was necessary for the tribunal to visit the locus in quo before composing its judgment. Since the same was not done, and for the interest of justice, it should be done right after this judgment. Having so observed, I will not discuss the 2nd ground of appeal. The findings in the 1st ground above are capable of disposing the entire appeal to its end.

In the event, this appeal is allowed. The judgement and decree of the trial tribunal are nullified. The case file is remitted back to Kinondoni District Land and Housing tribunal for the same to visit *locus in quo* and recompose a judgment reflecting what was observed during the visit in relation to the case before it.

No order as to costs.

M. P. OPIYO,

JUDGE

24/11/2021