

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

LAND APPEAL NO. 161 OF 2021

(Being an appeal from the Judgment and Decree of the Kinondoni District Land and
Housing Tribunal at Mwananyamala (Hon. S.H. Wambili – Chairman) in Land
Application No. 535 of 2018 dated 30th June, 2021)

RENALTUS MPONZI APPELLANT

VERSUS

ASHA HEMED IDD (Administratrix of the estate of the late

HEMED IDD BOMBA RESPONDENT

JUDGMENT

Date of Last Order: 16/11/2021

Date of Judgment: 14/12/2021

A. MSAFIRI, J

The appellant Renaltus Mponzi, aggrieved with the judgment and decree of District Land and Housing Tribunal of Kinondoni at Mwananyamala (herein as trial Tribunal) in Land Application No. 355 of 2018, has filed an appeal in which he has advanced six grounds of appeal before this Court as herein below;

- 1. That the Honourable trial Tribunal grossly erred in law and fact by entertaining the said matter which was based on contract while the matter was time barred as per law of limitation.*

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2. *That the Honourable trial Tribunal grossly erred in law and fact by deciding that there was no valid contract of sale of the property between the parties basing on the signatures of the deceased person.*
3. *That the Honourable trial Tribunal erred in law and in fact in admitting and entertaining the application of the landed property while the same was barred by limitation of time.*
4. *That the Honourable Trial Tribunal erred in law and in fact by not considering the documentary evidence of additional documents filed in the tribunal.*
5. *That the Honourable Trial Tribunal erred in law and in fact by raising the issue of consent in the sale agreement which was in applicable.*
6. *The Appellant therefore pray for Judgment and decree in appeal as follows;-*
 - a) *That this Honourable court be pleased to allow the appeal and grant the prayers as set forth in the trial Tribunal.*
 - b) *That the proceedings, judgment and decree of the Trial Land Tribunal of Kinondoni at Mwananyamala be quashed and its orders set aside.*
 - c) *That this Honourable Court be pleased to declare that the sale agreement of the house between the parties is valid and that the appellant is the rightful owner.*
 - d) *Costs of the appeal be borne by the respondent.*
 - e) *Any other orders this Honourable court may deem fit and just to grant.*

He prayed for the court to allow the appeal, quash and set aside the proceedings. The hearing of the appeal was conducted by way of written

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submission. The submission by the appellant was drawn and filed by Mr. John E. Mponela learned advocate while the reply submission by the respondent was drawn and filed by Mr. Mbogoro, learned advocate.

The brief facts of this matter is that the appellant is claiming that one Hemed Idd Bomba, the deceased sold him the house in dispute through a sale agreement which was concluded in 31/12/2002. The house in dispute is located at Kawe Mzimuni, Dar es Salaam. However, the respondent who is the daughter of the deceased and the administrator of the estate of the deceased is vehemently refuting the claim, and contends that the alleged sale of the house in dispute was void ab initio.

The respondent successfully sued the appellant whereby the trial Tribunal decided that the sale agreement was tainted with forgery and it was void ab initio. The appellant was aggrieved hence this appeal.

In submission, Mr. Mponela started with the 3rd ground whereby the appellant is raising the issue of limitation of time. That is the trial Tribunal was wrong to entertain the application based on the land property while it was time barred. Mr. Mponela argued that section 3 of the Law of Limitation Act, Cap 89 R.E 2019 provides for the period of limitation for institution of suit for the recovery of land to be twelve years (12 years) from the date when the right of action for such proceedings accrued. That in this matter, the right of action accrued on 31/12/2002 when the suit property was sold to the appellant. He stated that, the cause of action arose on 31/12/2002 but the respondent who was then the applicant instituted the matter at the trial Tribunal on 26/10/2018 which is 16 years. He argued that the

Application No. 535 of 2018 at the District Tribunal was filed out of time and entertaining it was a miscarriage of justice.

In reply of 3rd ground of appeal, Mr. Mbogoro submitted that, this ground of appeal ought to be raised as a preliminary objection on a point of law at the trial Tribunal. That, beside that, in her pleadings the respondent has stated that, her father died in 2009. Four years later i.e. in 2013, her father's neighbour, who is PW2, Mshamu Abdallah Kingochi informed the respondent that the appellant has started effecting structural changes on the house in dispute. To his opinion, that is when the time started to run against the respondent.

Mr. Mbogoro submitted further that, under the provisions of Section 9 of the Law of Limitation Act, the right of action to recover the land of the deceased which was in his possession until his death accrues on the date of the death. He added that Section 15 of the same Act provides that in computing period of limitation, the period under which a person is under legal disability to sue is excluded. In the matter, the respondent became aware of the purported sale in 2013, but was under legal disability to sue until 23/11/2016 when she was appointed an administratrix of the estate of the deceased.

Mr. Mbogoro maintained that, the claims that the suit was time barred is not maintainable. He prayed to adopt his submissions for ground number 3 to ground No. 1 of appeal as they are both based on the issue of limitation of time.

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I will determine the 1st and 3rd grounds of appeal jointly as they are both on the issue of limitation of time as correctly observed by Mr. Mbogoro. The issue here is whether the dispute i.e. Application No. 535 of 2018 was time barred.

Section 5 of the Law of Limitation Act provides for when the right of action accrues. It reads as follows;

"Subject to the provisions of this Act, the right of action in respect of any proceeding, shall accrue on the date on which the cause of action arises"

When did the right of action in the current matter accrues? The answer is crystal clear from the evidence from trial Tribunal proceedings that it was after the death of the respondent's father when she came to know that the appellant is claiming to be the owner of the house in dispute which to her knowledge, it was lawfully owned by her deceased father until his death in 2009. The respondent testifying as PW1, said that it came to her knowledge after the death of her father that the appellant who was a caretaker of the house in dispute, is claiming that her late father sold the house in dispute to him way back in 2002.

Therefore, to my opinion, the cause of action in this matter accrued when it came to the knowledge of the respondent that there are claims that the house in dispute which she believes was lawfully owned by her father, was in fact, allegedly to be sold to the appellant. And that knowledge as per evidence and pleadings came after 2009 the year the respondent's father died. That, the respondent was informed by the neighbours that the

appellant was effecting structural changes, that was when she confronted him and he claimed to purchase the house in dispute in 2002.

Furthermore, I agree with Mr. Mbogoro's submissions that as per Section 5 of the Law of Limitation Act, the time for which the respondent was incapable of suing by her own name have to be excluded. In the current matter, the respondent was appointed as administratrix of the estate of her late father on 23/11/2016 by Kawe Primary Court as per exhibit P1 which is the letter for appointment as an administratrix.

Therefore, the time from 2009 to 2016 should be excluded from computation which is exclusion of seven (7) years. Counting from 2009 which is the year of the death of the deceased to 2019 which is the year the main application was instituted it is a total of 10 years which is within the time limit. If seven years are excluded, then the time is three (3) years. From the above analysis, I find that ground No. 1 and No. 3 which are based on the issue of time limitation has no merit and I hereby dismiss them.

On the 2nd ground of appeal, Mr. Mponela submitted that the trial Chairman erred by deciding that there was no valid contract on sale of property between the parties basing on the signatures of the deceased person. That, the trial Chairman stated that the two signatures, one appearing on sale agreement concluded on 08/4/1992 and the other appearing on the sale agreement on 31/12/2002 are not signatures of the one and same person i.e. Hemed Iddi Bomba.



He submitted further that surprisingly, the trial Chairman does not reveal how he examined the two signatures and what method he applied which led him to conclude that those two signatures are different and one of them is not the signature of the late Hemed Idd Bomba. There was no evidence which was adduced to prove that the two signatures were not one and the same person. That the late Hemed Idd Bomba whom it is claimed affixed his signatures on both of the sale agreements could not be available in Court to prove or disprove the allegations.

On reply, Mr. Mbogoro stated that the trial Tribunal did not base its decision on the discrepancies on the signatures of the deceased between the said two sale agreements only. That there were more serious irregularities which cumulatively led the District Tribunal to invalidate the sale agreement of 31/12/2002.

He submitted further that, one of the irregularities was that; PW2 who is one of the purported witnesses of the sale agreement of 31/12/2002, vehemently disowned his signature appearing in the said sale agreement and stated that he had never witnessed the alleged sale. That the evidence of PW2 was corroborated by DW2 who confirmed that PW2 was not among the witnesses in the sale agreement.

Mr. Mbogoro, argued that another irregularity in the purported sale is the lack of spousal consent. That, there was also the need of approval of the Village Council as the house in dispute was situated on an unsurveyed and unregistered land hence the provisions of section 31 (3) of the Village Land Act, 1999 has to be complied with. That, in the current matter, the appellant

did not comply with that mandatory provisions. Mr. Mbogoro states that in these cumulative irregularities, the trial Tribunal was correct in vitiating the alleged sale.

In determination of this ground of appeal, I had to go through the evidence on the proceedings which was adduced during the trial basing on the purported sale agreements of 08/4/1992 and the one of 31/12/2002.

In her evidence as PW1, the respondent stated that her late father bought the house in dispute from one Fatuma Chande in 1992. She produced the original sales agreement dated 08/4/1992 between Fatuma Chambi and Hemedi Iddi Bomba as exhibit P2. This sale agreement was not disputed by any party.

At the same time, the appellant testifying as DW1 stated that he knew the late Hemedi Iddi Bomba, as he was his fellow JWTZ Soldier and they were neighbours. He stated further that Hemedi Iddi Bomba sold him his house on 31/12/2002. He tendered the certified true copy of sale agreement between him and the late Hemedi Iddi Bomba which was admitted as exhibit D1. He stated that the sale was witnessed by Hamadi Ngonje, Mshamu Abdallah Kingochi, John Simba and Beatrice Mlangwa.

In his judgment, the trial Chairman analyzing his findings that the late respondent's father has never sold the house in dispute, he stated the reasons for his findings. One of the reason was that, he has examined the signatures of Exhibits P2 and D1 and had satisfied himself that the signature on Exhibit D1 is not similar to the one of Exhibit P2.

Indeed, the trial Tribunal did not reveal the method he used to examine the purported signatures but he did not err in his findings that the sale agreement on 31/12/2002 had discrepancies and its authenticity was not to be trusted.

This is for the reason that, beside the issue of signatures, the trial Chairman raised other issues which also raised doubt as to the authenticity of the purported sale agreement. The trial Chairman stated that the sale agreement was doubtful because Mshamu Abdallah Kingochi, whom the appellant said he was among the witnesses who witnessed the disputed sale, refused to have witnessed or signed on the disputed sale agreement.

I have read the evidence of both DW1, the appellant and PW2. DW1 stated that among the witnesses of the sale, was Mshamu Abdallah Kingochi (PW2). The name of Mshamu Abdallah Kingochi also appears on the sale agreement Exhibit D1 along with his signature. Meanwhile Mshamu Abdallah Kingochi denied to have witnessed the purported sale or signed the document. The evidence of PW2 was corroborated by DW2 Hamadi Ngenje who admitted that PW2 was never a witness of the purported sale.

However, looking at Exhibit D1 there is a name of PW2 and his purported signature. I am of the view that, the fact that on the purported sale agreement there is name and signature of a witness who denied to have witnessed and sign it, the fact which is corroborated, is strong proof that the contents and signatures on the sale agreement creates doubts as to the genuity of them. Basing on that fact among others which were raised by

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the trial Chairman, I find that the trial Tribunal was right on its findings on serious irregularities on the sale agreement of 31/12/2002 and its decision to invalidate the sale. I therefore dismiss the 2nd ground of appeal.

On the 4th ground of appeal, the appellant counsel, Mr. Mponela stated that the trial Tribunal erred by not considering the documentary evidence of additional document filed in the Tribunal. He submitted further that the additional documents included "Leseni ya Makazi" No. KNDO/1/255 dated 10th May 2006, and the House Rent Receipt dated 20th June, 2017. That these documents were neither considered nor reflected in the judgment though they were presented during the hearing. He submitted that "leseni ya makazi" which is a certificate of ownership of land was issued to the appellant on 09/5/2006 by the Kinondoni Municipal and it was issued when the respondent's father was alive however, the same did not challenge it. He stated further that the said "leseni ya makazi" was never challenged in Court during the trial. Mr. Mponela concluded that the respondent did not prove her case to the required standard by the law. He also prayed to abandon the 5th ground of appeal.

Replying on the 4th ground, Mr. Mbogoro submitted that the said documents were rejected by the trial Tribunal pursuant to an objection on their admission by the counsel for the respondent. That the documents were not annexed to the appellant's written statement of defence and no notice was given by the appellant on their intended production. Therefore, the trial Tribunal was correct in denying their production.

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In determining the merit of this ground of appeal, I read the proceedings of the trial Tribunal which reveals thus; while adducing his evidence as DW1, the appellant being led by his counsel, prayed before the trial Tribunal to produce a Residential Licence from Kinondoni Municipal as exhibit.

Mr. Mbogoro, appearing for the applicant objected the production of the document for the reasons that the said document was not served to the applicant earlier before the commencement of the hearing. Also, Mr. Mbogoro stated that the document was not annexed to the pleadings as required. That although there is a Regulation which allows the tendering of a document not annexed to the application, a party had to give a good reason by which the respondent has not given a good reason of not annexing the document with his written statement of defence.

In reply to the objection raised, the then counsel for the respondent (who is now for the appellant), admitted to have not annexed the document with the Written Statement of Defence but he argued that the Tribunal Regulations allows addition of documents without specifying the time to do so. He added that the document was filed in Court and they had difficulty in serving the applicant's counsel as he hails from Songea.

In his ruling after hearing arguments from rival parties, the trial Chairman held that Regulation 10 of GN. 174/2003 allows production of documents at any stage of the case before hearing is concluded. However, it is necessary condition that the other side must be served with the relevant documents sought to be produced. In absence of the proof of service then the

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document was not admitted until the then respondent follows procedures of service.

By this order, the Residential License was refused and not tendered in Court. I have noted that in his order, the trial Chairman gave the appellant a chance under Regulation 10(3) of GN No. 174 of 2003 to follow the procedure of serving the applicant if he so wish. But the records does not reveal whether the appellant complied with the said order and serve the applicant as per the procedure.

Regulations 10(3) of the Land Disputes Courts, (The District Land and Housing Tribunal) Regulations, 2003 provides that;

"The Tribunal shall before admitting any document under sub regulation (2);

a) Ensure that a copy of the document is served to the other party.

b) Have regard to the authenticity of the document"
(Emphasis added).

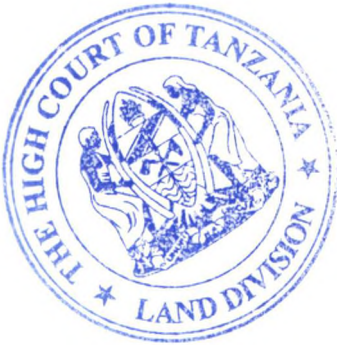
In the current matter, as observed earlier, the trial Chairman gave order/direction for the appellant to serve the applicant but the appellant did not comply.

I find that the trial Tribunal was correct to follow the procedures as per the Tribunal Regulations. The appellant, at this stage, cannot shoulder his responsibility to any party as he has failed to comply with the procedures set

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in the regulations. I also find this ground of appeal to have no merit and I dismiss it.

Basing on the analysis of the evidence, I find no merit on this appeal hence no reason to reverse the judgment, decree and orders of the trial Tribunal. I hereby dismiss the appeal in its entirety, with costs.



A. MSAFIRI,

JUDGE

14/12/2021