

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

MISC.LAND APPEAL No. 274 OF 2020

(Appeal from the decision of the District Land and Housing Tribunal for Ilala in Land
Application No.76 of 2017)

SAID KASSIM KILUKE (As personal legal
Representative of the late **OMARY KASSIM KILUKE**)**APPELLANT**

VERSUS

AGATHA ZAKARIA HAMISI.....**1ST RESPONDENT**
FARB ASSOCIATES LTD.....**2ND RESPONDENT**
SALUM CHAMKOKA.....**3RDRESPONDENT**
SALUM MNEKA.....**4THRESPONDENT**

JUDGMENT

T. N. MWENEGOHA, J.

The appellant being aggrieved by the decision of the District Land and Housing Tribunal for Ilala in Application No. 76 of 2017 appeals to this court on the following grounds;

1. That the trial chairperson erred in law to hold that the first respondent proved ownership of the disputed land basing her decision on the sale Agreement (Exhibit DI) without considering its admissibility.
2. That the trial chairperson erred in law to hold as she did March 2017 when the second respondent issued notice.
3. That the trial chairperson erred in law having found as a fact that 1st respondent bought the disputed land on the 21st December 2000

it was over 12 years when the first respondent obtained a decree in the Ward Tribunal.

4. That the trial chairperson erred in law in that she did not properly evaluate the evidence.

Wherefore, it is the appellant prayers that the court be pleased to quash the decision of the trial Tribunal.

During the hearing of this appeal the appellant and the 1st respondent appeared in person and unrepresented, the 2nd, 3rd and 4th respondent did not enter appearance.

Hearing of the matter proceeded orally where both the appellant and the 1st respondent appeared in person and unrepresented. Both parties did not adhere much to their pleadings but rather conceded to facts regarding sale agreement and what is disputed.

Submitting in support of his appeal the appellant claimed that the land in dispute measures 1.1/4 acres and informed the Court that he did not dispute the fact the 1st respondent purchased the suit land from the Late Omary Kassim Kiluke's wife but submitted that the 1.1/4 acres purchased by the respondent is not measured from the front side of the farm land but from the other side of the farm (that is *from bondeni*). Therefore what was presented to Court by respondent was a valid sale agreement to the wrong part of the property. It was his claim that the respondent has trespassed 1.1/4 acres from the front side of the late Omary Kassim Kiluke's farm land. He added that, therefore, there was a necessity for the trial Tribunal to visit a locus in quo in order to reach into a just and fair decision. It was his submission that the Tribunal did not visit the locus, so as to ascertain whether the respondent has trespassed or not. The

appellant therefore prayed this court to visit the locus in quo to ascertain ownership of disputed land.

When replying, the 1st respondent conceded with the applicant's submission on the size of the suit land she bought from the late Omary Kassim Kiluke's farm land but disputed the location of the suit land. She insisted that the part of the land she purchased is located on the front side of the late Omary Kassim Kiluke's farm land and not from the other side as it is alleged by the appellant.

Having gone through both parties' submission and records tendered to this court, the main issue for determination is whether this appeal is meritorious.

Passing through the records of the appeal I have found out that the 1st respondent purchased the piece of land in dispute from one Nausi Saidi (the wife of the late Omary Kassim Kiluke) on 21st December 2000. The records further reveals that the 1st respondent did not develop the area and was not living around the vicinity. Records further reveal that the property bought by the 1st respondent is 1.1/4 acres out of 8 acres of the late Omary Kassim Kiluke where the appellant, the administrator of Omary Kassim Kiluke lives and occupy the land. It was also in record that the appellant was not aware of the dispute on the land until in 2017 when he came across notices of a broker attached on trees of his land ordering for the 1st respondent to be handed over the said land as lawful owner. Records further reveals that the appellant being aggrieved of such, instituted Application No. 76 of 2017 at the District Land and Housing Tribunal at Ilala, where the current appeal is emanating from.

Before this court the appellant claimed that the 1st respondent has been allocated a wrong suit property and that the Chairman did not take this into consideration. Both parties in their submissions agreed that the 1st respondent purchased a land measuring 1.1/4 acres from the estate of Omary Kassim Kiluke and that the only dispute between the parties is about the location of the said 1.1/4 acres purchased by the 1st respondent. The appellant insisted that the 1.1/4 is not measured from the front side of the farm land but from the other side of the farm (*bondeni*). The 1st respondent also conceded the fact she has bought 1.1/4 acres however; it is not located at *bondeni* rather from the front side of the late Omary Kassim Kiluke's farm land. Therefore, the dispute between the parties is the location of the 1.1/4 acres and not the size of the farm.

Passing through the trial Tribunal's decision I have found out that it is true that the Tribunal has awarded ownership of the disputed land to the 1st respondent, however, there is no indication as to where is the 1st respondent's 1.1/4 acres is situated from the 8 acres of the late Omary Kassim Kiluke. Undoubtedly, there was a necessity for the trial Tribunal to visit a locus in quo in order to reach into a just and fair decision. However, the Tribunal did not visit the locus in quo. Consequently, parties are still in question as to the location of the 1.1/4 acres bought by the 1st respondent.

As both parties have agreed that what in dispute is the location of disputed land, the appellants' appeal is meritorious. The judgment and decree of the trial Tribunal is quashed and set aside. I therefore order that the records of the Misc. Land Application No.76 of 2017 be remitted back to the trial Tribunal, the Chairman is ordered to visit the locus in quo and

ascertain the actual position of the 1.1/4 acres in dispute and compose a new judgement basing on his findings. I make no order as to costs.

Appeal Allowed.




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T. N. MWENEGOHA

JUDGE

29/10/2021