

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.122 OF 2021
(Arising from Misc. Land Application No. 548 of 2020)

ALOYCE CHACHA KENG'ANYA APPELLANT

VERSUS

JOHN ONESMO WILSON RESPONDENT

JUDGMENT

Date of Last order: 19.10.2021

Date of Judgment: 26.10.2021

A.Z.MGEYEKWA, J

The present appeal stems from the decision of the District Land and Housing Tribunal for Temeke in Land Application No. 548 of 2020. The material background facts to the dispute are not difficult to comprehend. They go thus: the appellant and the respondent are disputing over a piece of land located. The appellant claimed that he is the administrator of the estate of his late Makarani Mohamed Abdallah who is the father of the

appellant and the first respondent is his cousin. The first respondent claimed that he legally sold the disputed piece of land to the second and third respondents in a tune of Tshs. 11,400,000/=. The appellant claims that the sale was illegal and at the time when he sold the suit land, the first respondent was not appointed as an administrator of the estate. The first respondent claimed that the suit land was a family land and their late father divided some portion of the plot to his children thus the suit land is not part of those plots.

Aggrieved, the appellant appealed before this court against the decision of the District Land and Housing Tribunal for Temeke at Temeke and raised two grounds of grievance, namely:-

- 1. That the Honourable Tribunal grossly erred in law for failure to consider that the appellant established sufficient cause to grant the application.*
- 2. That the Honourable Trial Chairman grossly erred in law and facts in deciding that the applicant's affidavit was necessary while the affidavit presented in the Honourable tribunal suffice.*

When the matter came up for judgment on 13th October, 2021, the appellant prayed for extension of time to file a reply and the respondent

to file a rejoinder. Court acceded to the parties' request. Pursuant thereto, a schedule for filing the submissions was duly conformed to.

I have given careful consideration to the record of the case and the arguments for and against the appeal filed by the appellant. However, before I embark to determine the appeal on merit, I noted that the learned counsel for the respondent raised an issue that draw the attention of this court. Mr. Mvumbagu contended that the matter before the Tribunal was involving two respondents. It was his concern that since the decision arising from this appeal is going to affect Haji Mwikalo too, then it was fundamental for Haji Mwikalo to be joined too so that he can be afforded the constitutional right to be heard. For the aforesaid reasons, he urged this court to dismiss the appeal in its entirety with costs for being inappropriate,

In his rejoinder, Mr. Mwitwa Emmanuel conceded that Haji Mwikalo was a part of the trial proceedings. He urged for this court to add him only if this court will find that he is going to be affected. It was his view that the 1st respondent never entered an appearance as a result the matter proceeded *ex parte* against him. I have heard the concern of both parties. It was not proper to lodge an appeal against one respondent while the

matter at the trial tribunal proceeded against two respondents. The normal procedure was for the appellant to include both parties at appellate since in case this court will decide in favour of the appellant then the decision will affect both respondents and it will be difficult for Haji Mewikalo to comply with the court order, as a result, the execution of the Decree might not be fulfilled.

The appellant was required to raise the issue of joining the 1st respondent earlier on before hearing the appeal. Since the same was raised by the respondent during the hearing, then this court is not in a position to order an amendment to add the 1st respondent at this juncture. However, as long as the appellant's Advocate has conceded, I find it prudent to strike out the appeal with leave to refile within 30 days from today. No order as to the costs.

Order accordingly.

Dated at Dar es Salaam this date 26th October, 2021.



A.Z.MGEYEKWA

JUDGE

26.10.2021

Judgment delivered on 26th October, 2021 in the presence of Mr. Raphael Lukindi, learned counsel for the appellant and the respondent.




A.Z.MGEYEKWA
JUDGE
26.10.2021