

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

**LAND APPEAL NO. 6 OF 2021**

(From the decision of the District Land and Housing Tribunal for Kibaha in Land  
Application No. 82 of 2015)

**MAHMODU ALLY SALUM.....1<sup>ST</sup> APPELLANT**  
**ABDULRAZAK ALLY SALUM.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**ABDULAZIZ MOHAMED .....1<sup>ST</sup> RESPONDENT**  
**MASUDI MIKIDADI.....2<sup>ND</sup> RESPONDENT**

*Date of Last order:19/05/2021*  
*Date of Judgement:30/07/2021*

**J U D G M E N T**

**MANGO, J.**

The Respondents instituted Land Application No. 82 of 2015 before the District Land and Housing Tribunal for Kibaha, contesting ownership of a piece of land situated at Msangani Village, Kibaha, Pwani Region. Respondents allege that the Appellants have trespassed into the suit land and they prayed for the following orders:-

- 1. Perpetual injunction restraining the Appellants from trespassing into the suit land;**
- 2. To be declared as lawful owners of the suit land;**
- 3. Costs;**

#### **4. Any other relief the Tribunal may deem fit to grant.**

The Trial Tribunal held in favour of the Respondents. Aggrieved by the decision of the Tribunal, the Appellants preferred this appeal on the following grounds;

- 1. That the Trial Tribunal erred in law and in fact by declaring the Respondents as the lawful owners of the suit land basing on the deed of sale which does not show and contain descriptions of the suit land;**
- 2. That the Trial Tribunal erred in law and in fact by entertaining the matter which was initiated by a defective application;**
- 3. That the Trial Tribunal erred in law and in facts by failure to analyse the evidence adduced by the Appellants;**
- 4. That the Trial Tribunal erred in law and facts by entertaining the Application which was out of time.**

The Appellants were represented by Mr. Godfrey F. Alfred, learned advocate while the Respondents were represented by Abdallah R. M. Matumla learned advocate. On 24<sup>th</sup> March 2021 the court ordered the appeal to be argued by way of written submissions.

Submitting in support of the first ground of appeal, the Appellants counsel argued that the Trial Tribunal based its decision on a deed of sale which was tendered by the Respondents and admitted by Tribunal as Exhibit P1. He argued that the deed of sale does not describe the land purchased by the respondent and that there is no evidence that establish that the Respondents purchased the suit land.

He argued further that, even if some witnesses testified that the Respondents are owners of the suit land but since there is a written deed of sale, oral evidence becomes value less. He cited Section 101 of Evidence Act as the provisions which excludes oral testimony for agreements on disposition of land.

On the second ground of appeal he submitted that, the Trial Tribunal erroneously entertained the Respondents Application despite being defective. He argued that the application contravened the provisions of Regulation 3(2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) which requires an application to contain address of the suit premises or location of the land involved in a dispute. According to him, the description of the suit land in the application does not conform with the legal requirements. He argued that the application indicates that the suit land is located at Msangani Village, Kibaha District Coast Region without indicating the size and boundaries of the said land.

Citing the decision of my brother, Hon. Utamwa, J in the case of **Daniel Dagala Kanunda (As administrator of the estate of the late Mbalu Kashaha Bulada versus Masaka Ibeho and 4 Others**, Land Appeal No. 26 of 2015, High Court of Tanzania at Bukoba, he argued that failure to describe the land in dispute is fatal.

On the third ground of appeal, he submitted that the Appellants evidence regarding ownership over the suit land weighs more than the Respondents evidence thus, it was wrong for the Trial Tribunal to hold in favour of the Respondents. Highlighting pieces of evidence adduced by the parties to this case, he stated that, the Respondents allege to have purchased the suit land

from one HAMISI SELEMANI BANDA who had no title over the suit land. The said Selemani Banda alleges to have been given the suit land by the owner but he did not tender any deed of gift to substantiate his allegations. The Appellants testified to the effect that the suit land belonged to their late father who purchased the same from one Zainabu Ndete in 1993. Their testimony is corroborated by the testimony of Mwajuma Abdallah (DW2), a former secretary to the village council who witnessed the sale transaction involving the suit land between their late father and the said Zainabu Ndete.

He argued that, the Trial Tribunal did not analyse properly evidence tendered by the Appellants that is why it ruled in favour of the Respondents. He is of the view that the Appellants evidence weighs more than the Respondents. Citing the case of **Hemed Said Versus Mohamed Mbilu**, [1984] TLR 113 he argued that the Trial Tribunal ought to have ruled in favour of the Appellants as their evidence weighs more than the Respondents' evidence.

In his reply submission, learned counsel for Appellants argued that, the Respondents are lawful owners of the suit land and they have been in peaceful enjoyment of the suit land from 1990 to 2007 when the dispute arose. He argued that, if the suit land is not the property of the Respondents then, the Appellants' father would have claimed the same from the Respondents during his life time.

Submitting on the first ground of Appeal, he submitted that, the sale agreement tendered by the Respondents contains description of the suit land. According to the descriptions contained in the deed of sale which was tendered without objection and admitted as Exhibit P1, the land in dispute has the following boundaries: East, Public way; South, Mwajuma Makuka;

West, Saleh Kalamola; North East Ndendekile and North, public road. He is of the view that the descriptions contained in the deed of sale are satisfactory.

On the second ground of Appeal he submitted briefly that, the application was not defective.

On the third ground of appeal he submitted that the analysed properly evidence tendered before it. According to him, the Appellants failed to convince the tribunal on how they acquired ownership over the suit land.

On the fourth ground of appeal he submitted that, the application was not time barred as time limit for proceedings for recovery of land is 12 years as per paragraph 22 of the law of limitation Act. He argued that the Respondents have been occupation of the suit land for 17 years. The dispute arose in 2007 and the Application was preferred in 2015 which is only 8 years, thus, the application is not time barred.

In his brief rejoinder, the Appellants counsel reiterated his submission in chief and argued that the Appellants were the one occupying the land and not the Respondents as alleged in the Respondents Submission. He added that, the Respondents started claiming ownership over the suit land after the passing on of the Appellants' father.

On the alleged to proof as to how the Appellants acquired ownership over the suit land, he conceded that the Appellants did not tender sale agreement between their late father and Zainabu Ndete. He argued that, failure to tender the said agreement does not mean the Appellant did not have the sale agreement. The Appellants had the agreement but the tribunal rejected to admit the same, because stamp duty was not paid. He argued further

that, had the Tribunal allowed the Appellants to pay stamp duty, the agreement would have been tendered as evidence. He insisted that the Appellants had stronger evidence compared to the Respondents.

I have considered submissions made by both parties and Court Record. The first ground of appeal concerns the contents of the deed of sale tendered by the respondents and admitted by the Trial Tribunal as exhibit P1. I have read the sale agreement and I am of a considered view that, it describes the land sold to the Appellants. According to exhibit P1, Hamisi Banda sold his farm to Respondents, Abdul Aziz Mohamed and Masudi Mikidadi, on 16<sup>th</sup> May 1990. The sale agreement indicates that the land sold to the Appellants has the following borders: East, foot path to Madina; South, Mwajuma Makuka and Nguyai; West, Salehe Kolomela; North, Main Road to Madina and North East, Ndandakile and a big tree. With these boundaries anybody who is familiar with the place the land is situated can easily identify the piece of land described in the sale agreement. Thus, deed of sale contains description of the land purchased by the Respondents. The first ground of appeal is unfound.

Findings on the first ground of appeal, disposes also the second ground of appeal in which the Appellants alleges that the application does not contain description of the suit land as required by the law. I hold so because it is well settled that in determining whether the application contains necessary features prescribed by the law, one need to consider the application in its entirety. In the case of **Stanbic Finance Tanzania Ltd versus Giuseppe Trupia and Chiara Malavasi** [2002] TLR 221 when the Court was determining whether the plaint discloses a cause of action against the

defendants, it held that in determining such issue, the Court need to consider the plaint within its four corners including its annexures.

I have also considered the application lodged before the Trial Tribunal and found the sale agreement between the Respondents and Hamisi Banda was annexed to the application. Thus, the sale agreement which contains description of the suit land, forms part and parcel of the Application lodged before the tribunal. In such circumstances it cannot be said that the application does not contain description of the suit land.

The third ground of appeal should not detain much this court as the Appellant Counsel admitted that the sale agreement between the Appellants' father and Zainabu Ndete was not admitted as evidence. Court Record indicates that the sale agreement sought to be tendered by DW1, ABDUL RAZAK ALLY SALUM was not rejected by the tribunal. The Appellants advocate, Mr. Karume prayed to withdraw the prayer to tender it as evidence. What the tribunal did, was merely to grant the prayer. For reasons best known to the Appellants and their advocate, the sale agreement was not tendered as evidence before the tribunal.

In absence of the sale agreement, the Appellants testimony is basically hearsay because the vendor of the disputed land, Zainabu Mdetete was not summoned as a witness, the Village Secretary, Mwajuma Abdallah Makuka (DW2) did not witness the execution of the sale agreement. She was involved in issuing a hand written agreement after confirmation of the sale from the ten-cell leader. However, this witness did not tender the alleged to be hand written sale agreement issued by the village office to the Appellants' father. It is not clear why the agreement was not tendered.

The Respondents who testified as PW1 and PW2 testified that they purchased the suit land from Hamis Selemani Banda. They tendered their sale agreement with Hamis Selemani Banda as Exhibit P1. Their vendor, Hamis Selemani Banda (PW3) testified to the effect that he was given the suit land by Mzee Zabron, his uncle and he sold the disputed land to the Respondents. PW4 Ally Mohamed Gandi, the Village Chairman testified to the effect that the suit land belongs to the Respondents and that, the dispute arose after the Appellants trespass into the suit farm. He testified further that, during the life time of the Appellants father, there were no dispute over ownership of the suit land.

In such circumstances I agree with the Hon. Trial Chairman that the Respondents evidence weighs more than the Appellants. Borrowing wisdom from the case cited by the appellant, **Hemed Said Versus Mohamed Mbilu's** case, that he whose evidence weighs more must win, I hereby hold in favour of the Respondents because their evidence, weighs more than the Appellants.

For those reasons the Appeal is hereby dismissed with costs.



  
**Z. D. MANGO**  
**JUDGE**  
**30/07/2021**