

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

LAND APPEAL NO. 191 OF 2020

*(Arising from Temeke District Land and Housing Tribunal in Land Application  
No.24 of 2020)*

**ASUMINI BUSHIRI ..... APPELLANT**

**VERSUS**

**ABDUL HAFAR IDRISA JUMA ..... 1<sup>ST</sup> RESPONDENT**

**CAROLINA BAKARI ..... 2<sup>ND</sup> RESPONDENT**

**MBARAKA MUSA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

*Date of last Order: 03.08.2022*

*Date of Judgment: 11.08.2022*

**A.Z.MGEYEKWA, J**

The present appeal stems from the decision of the District Land and Housing Tribunal for Temeke in Land Application No.24 of 2020. The material background facts to the dispute are; that the appellant who is the legal wife of the third respondent lodged an application before the District

Land and Housing Tribunal for Temeke alleging that she is the legal wife of the 3<sup>rd</sup> respondent and they have two children. The appellant claimed it came to her knowledge that the suit premises was mortgaged without her consent. The 1<sup>st</sup> respondent claimed that she is the lawful owner of the suit premises. She bought from the 2<sup>nd</sup> respondent, the said house was mortgaged to CRDB Bank. The 2<sup>nd</sup> respondent testified to the effect that she is the lawful owner of the suit premises and she sold it to the 1<sup>st</sup> respondent. The 3<sup>rd</sup> respondent testified to the effect that the suit premises belong to the 2<sup>nd</sup> respondent and testified to the effect that the 2<sup>nd</sup> respondent sold the suit property to the 1<sup>st</sup> respondent.

The trial tribunal determined the application and ruled out that the appellant failed to prove her claims hence he dismissed the application with costs. Aggrieved, the appellant appealed before this court against the decision of the District Land and Housing Tribunal for Temeke and raised seven grounds of grievance, namely:-

- 1. That the District Land and Housing Tribunal grossly erred both in law and facts for failure to properly analyses and consider the evidence tendered.*

2. *That the trial tribunal erred both in law and fact for relaying on inconsistent evidence hence arrived in a wrong and unjustifiable decision.*
3. *That the trial District Land and Housing Tribunal erred in law and fact for failure to determine the house in dispute.*
4. *That the trial Chairperson erred both in law and fact by failure to give reasons for differing with opinion of the second assessor.*
5. *That the trial District Land and Housing Tribunal erred both in law and fact for failure to assign reason re-assignment.*
6. *That the trial District Land and Housing Tribunal grossly erred in law by entertain the extraneous matter which no proof presented and hence arrived into a wrong decision.*
7. *That the decision of the tribunal is contrary to evidence adduced.*

When the matter came up for orders on 3<sup>rd</sup> August, 2022 the matter was heard via video conferencing whereas the appellant had the legal service of Mr. Martin Frank, learned counsel, and the 1<sup>st</sup> and 2<sup>nd</sup> respondents enjoyed the legal service of Mr. Godfrey Francis, learned counsel.

In his written submission, the appellant opted to combine the 1<sup>st</sup>, 2<sup>nd</sup>, and 7<sup>th</sup> grounds and argued them together. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> grounds were argued separately.

Submitting on the first, second, and seventh grounds that relate to documentary and inconsistency evidence, the appellant's counsel contended that the records reveal that DW4 testified that the suit premises was owned by the 3<sup>rd</sup> respondent and the 3<sup>rd</sup> respondent bought the suit premises to a tune of Tshs. 90,000,000/= and had no letter of offer while the 2<sup>nd</sup> respondent bought the suit premises to a tune of Tshs, 30,000,000/= and had a letter of offer to prove his claims. The learned counsel went on to submit that the appellant tendered a sale agreement which was executed by the local Government while the 2<sup>nd</sup> respondent's sale agreement was made in the Advocate Chamber.

He went on to submit that DW4 testified to the effect that the 3<sup>rd</sup> respondent's premises were located near Zakim grounds while the 2<sup>nd</sup> respondent was located on the other side of the street. He testified that the appellant and the 3<sup>rd</sup> respondent are residing in the suit premises. The learned counsel for the appellant contended that during the visit of locus in quo DW4 testified the opposite that the 2<sup>nd</sup> respondent was residing in the house located near Zakim grounds and the 3<sup>rd</sup> respondent's house was located on the other side of the street.

He further claimed that the trial tribunal's decision was based on inconsistent evidence because DW4 departed from his previous

testimony. Mr. Martin stated that the 3<sup>rd</sup> respondent took a loan from the CRDB Bank and the 2<sup>nd</sup> respondent allowed him to secure the mortgage by using the suit premises as a security, however, the documents do not state that the 3<sup>rd</sup> respondent took a loan and mortgaged the suit premises. To support his submission he referred this court to exhibit D2.

Mr. Martin continued to submit that the 1<sup>st</sup> respondent conduct a search and confirmed that the 2<sup>nd</sup> respondent was the owner of the suit premises. He went on to argue that the CRDB Bank was not featured in the tribunal's judgment instead the Chairman referred to Amana Bank. He contended that the 2<sup>nd</sup> respondent claimed that he allowed the 3<sup>rd</sup> respondent to take a loan while the records do not state if the 3<sup>rd</sup> respondent is the one who obtained the loan and the 2<sup>nd</sup> respondent was the guarantor and there are no any documents from the bank relating to the guarantor.

As to the third ground, the appellant's counsel submitted that the tribunal admitted exhibit P3 and exhibit P4 which shows that Mbaraka bought a house to a tune of Tshs. 90,000,000/= and the 2<sup>nd</sup> respondent's house valued Tshs. 30,000,000/= but the house on sale belonged to the 3<sup>rd</sup> respondent. He blamed the tribunal Chairman for failure to differentiate the two houses as to whether or not the house which was sold belonged to the 2<sup>nd</sup> respondent.

On the fourth ground, the appellant contended that the Chairperson did not state reasons for differing with assessors. He stated that the Chairman sat with two assessors and simply stated the opinion of assessors and disregarded the opinion of other assessors without stating reasons and the assessors' opinions were recorded in the proceedings. To buttress his submission he cited the case of **Elilumba Elezel v John Jaja**, Civil Appeal No. 30 of 2020.

With respect to the fifth ground, Mr. Martin contended that the tribunal erred in law and fact for failure to assign reasons for re-assignment. He stated that the matter started on 30<sup>th</sup> January, 2020, and Hon. Mnzava was assigned whereas parties appeared at the tribunal and on 4<sup>th</sup> February, 2020 Hon. Chenya delivered a ruling and signed as successor Chairman and the case file was returned to Hon. Mnzavas and he adjourned the matter then Hon. Kirumbi continued with hearing until 3<sup>rd</sup> March, 2020 when Hon. Chenya took over and he assigned reasons for the transfer. He insisted that they are disputing the procedure of moving the file from Mnzavas to Chanya.

As to the sixth ground, the learned counsel for the appellant contended that the respondents in their Written Statement of Defence did not mention the loans taken and there was no any loan agreement between the 3<sup>rd</sup>

respondents and the Bank. He added that the loan was not backed up by any document. He stressed that the appellant's right was infringed since the suit premises is already been sold by the 2<sup>nd</sup> respondent who is not the lawful owner of the suit premises.

On the strength of the above submission, he urged this court to allow the appeal, quash and set aside the decision of the tribunal with costs.

In reply, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents contended that the tribunal analysed the evidence on record the appellant's evidence was weak compared to the respondent. He added that the appellant tendered a Sale Agreement (Exh.P2) but it did not show the particulars of the suit premises and her name is not stated, therefore, the tribunal did not consider it as a valid sale agreement in relation of the suit premises.

In his view, the appellant failed to defend her case and convince the tribunal that they are lawful owners of the suit premises and his witnesses failed to prove the appellant's case. The learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondent went on to testify that DW4 proved that he entered into an agreement with the 2<sup>nd</sup> respondent and the Certificate of Title shows that the suit premises belong to the 2<sup>nd</sup> respondent who sold the same to the 1<sup>st</sup>

respondent. To fortify his submission he cited the case of **Hemedi Said v Mohamed Mbilu** (1984) TLR.

Submitting on the third ground, the respondent's counsel argued that the evidence of the vendor was to the effect that he sold the suit premises to the 2<sup>nd</sup> respondent bought the suit land and the said house was not in dispute. He went on to submit that during visit locus in quo the DW4 was able to show the said house and there was no any inconsistency in DW4'S testimony.

On the fourth ground, Mr. Godfrey submitted that the Chairman considered the reasons for departing from the assessors' opinions. He referred this court to page 20 of the tribunal judgment specifically section 24 of the Land Disputes Courts Act. He contended that the Chairman is not compelled to record the assessors' opinions on the record. He added that the opinions of the assessors are reflected in the tribunal proceedings.

On the fifth ground, the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> respondents contended that the tribunal proceedings show that the Chairman gave his reasons for re-assignment. Supporting his submission he referred this court to page 2 of the impugned judgment. Mr. Godfrey stated that Hon. Kirumbi recorded the evidence of PW1 and PW2 then Hon. Chenya took over and assigned reasons for the transfer.



With respect to the 6<sup>th</sup> ground, Mr. Godfrey simply argued that there is no any extraneous matter since the tribunal determined the matter based on the framed issues by the parties.

On the strength of the above submission, he urged this court to dismiss the appeal.

The 3<sup>rd</sup> respondent had not much to say. He submitted that he and his wife bought the suit premises in 2014 and her mother had a quarrel with his wife. He added that he was astonished to find out that his mother sold the suit premises. He claimed that her wife's name could not appear in the sale agreement because she is a Government employee. The 3<sup>rd</sup> respondent claimed that his house is valued at a tune of Tshs. 90,000,000/= and the vendor claimed that he did not know if the suit premises valued Tshs. 30,000,000/=. I urged this court to do justice.

In his rejoinder, Mr. Martin reiterated his submission in chief. He submitted that the 3<sup>rd</sup> respondent's names are stated in the sale agreement and no one disputed that the appellant is the legal wife of the 3<sup>rd</sup> respondent. He stressed that Hon. Chanya did not state reasons for reassignment when the case file was transferred Hon. Mnzavas. He insisted that the Chairman stated that the assessors' opinions were not considered and the Chairman did not

state reasons for differing with their opinions. He insisted that the Chairman was required to record the assessors' opinions.

I have revisited the evidence and submissions of both sides now, I am in a position to determine the appeal. I will consolidate the first, second, third, sixth, and seventh grounds because they are intertwined. The fourth and fifth grounds will be determined separately. In order, they appear.

On the first, second, third, sixth, and seventh grounds, the appellant's advocate contended that the tribunal did not consider properly analysed and consider the evidence tendered. In my firm opinion, every Chairperson, Magistrate, or Judge has his own style of composing a judgment. However, what matters is for the court to observe and abide by the format of writing a judgment. As it was set under Oder XXXIX Rule 31 which provides that:-

*"31 The Judgment of the Court shall be in writing and shall state:-*

- (a) The points for determination;*
- (b) The decision thereon;*
- (c) The reasons for the decision; and*
- (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

I have perused the tribunal's Judgment and noted that the important ingredients of a judgment are observed. I have read the judgment of the District Land and Housing Tribunal it is well composed.

The Chairperson pointed out the issue for determination and the facts of the case and he analysed and stated the reasons for her decision and ended up dismissing the application. In analyzing and determining the evidence on record, the Chairman in his judgment analysed all witnesses' testimonies. At the tribunal, the 3<sup>rd</sup> respondent in this appeal testified that the suit premises belongs to his mother, the 2<sup>nd</sup> respondent and. The 3<sup>rd</sup> respondent in his testimony disputed the fact that they bought the suit premises jointly with the appellant. DW4 testified to the effect that the late Hamdi Pango left behind two houses; the 2<sup>nd</sup> respondent bought a house with a letter of Offer to a tune of Tshs. 30,000,000/= and the 3<sup>rd</sup> respondent bought a house with a Certificate of Title to a tune of Tshs. 90,000,000/=. To substantiate his testimony, he tendered a Sale Agreement (Exh. D4).

The appellant in her testimony dwelt on the aspect of joint ownership. She claimed that she and the 3<sup>rd</sup> respondent bought the suit land jointly, however, she did not tender any cogent document to prove her

allegations. I am saying so because exhibits D4 and D5 contain the name of the 3<sup>rd</sup> respondent in exclusion of the appellant's name. The Certificate of Title bears the name of the 2<sup>nd</sup> respondent. The Sale of Agreement (Exh.D1) is in regard to Plot No. 398 Block 'L' located ta Mbagala area in Temeke Municipality at Dar es Salaam and the same is between Caroline Bakari and Abdulhafar Idrissa Juma.

Regarding the suit premises, the counsel blamed the Chairman for failure to differentiate the suit premises. At the trial tribunal DW1 testified to the effect that he bought the suit land from the 2<sup>nd</sup> respondent, and the house was mortgaged therefore the 2<sup>nd</sup> and 3<sup>rd</sup> respondents wanted to sell it in order to rescue the suit premises from being auctioned. DW3 testified that the suit premises belongs to her mother. DW2 stated that she was the lawful owner of the suit premises (Plot No. 398 Block 'L') and has sold the same to DW1. DW4 testified that he sold a house to the 2<sup>nd</sup> respondent to a tune of Tshs. 30,000,000/= and the 3<sup>rd</sup> respondent bought a house to a tune of Tshs. 90,000,000/=. He insisted that the 2<sup>nd</sup> respondent bought the suit premises.

In my view, the suit premises were well identified by the parties in the case and the Chairman in his final anaylsis stated that the evidence on records

and exhibit D3 reveals that the Plot No. 398 Block 'L' belongs to the 2<sup>nd</sup> respondent and the appellant before this court is claiming ownership over the same suit premises. Therefore, the Chairman differentiated the two houses and at the end he made it clear that the 2<sup>nd</sup> respondent was the lawful owner of the suit premises.

During the visit *locus in quo*, Shabani Ngunga (DW4), the vendor was recalled to testify, he testified to the effect that the house in front of the Chairman is located at Zekhem Kiwanjani and the house which he sold to the 3<sup>rd</sup> respondent is located on the other side of the road. The appellant in his Application claimed that they owned the suit premises located in Plot No. 398 Block 'L' located at Mbagala near Zakhem, Temeke at Dar es Salaam. I am in not in accord with the learned counsel for the appellant that DW4 in his testimony contradicted himself. In his testimony he stated that the deceased lived in Mbagala Zakham and he left two houses located ta Mbagala Zakham which means both houses were located at Mbagala Zakham, therefore, saying that the 3<sup>rd</sup> respondent bought the house on the other side does not mean that the said house was not located at Mbagala Zakham. DW4 in his testimony was certain that the 2<sup>nd</sup> respondent bought the suit premises and the same was sold to DW1. Therefore this ground is demerit.

Therefore, I do differ with the appellant's counsel's submission that the tribunal's decision is contrary to the evidence adduced. As shown above, the appellant failed to prove her case. While the 1<sup>st</sup> and 2<sup>nd</sup> respondents proved their case that the 2<sup>nd</sup> respondent was the lawful owner and she sold the suit premises to the 1<sup>st</sup> respondent. Therefore these grounds are demerit.

As to the fourth ground, the appellant's counsel is claiming that the Chairman did not state the reasons for differing with the assessors. The record shows that Chairman in his judgment analysed the evidence on record and then he referred this court to section 24 of the Land Disputes Courts Act, Cap. 216 which requires the Chairman in reaching its decision to state reasons for differing with assessors' opinion. The Chairman stated that he differs from one assessor's opinion and his opinion was not considered as explained above.

Examining the above reasoning, the Chairman stated why he did not consider the assessors' opinion, he analysed the evidence and declared that the 2<sup>nd</sup> respondent was the lawful owner of the suit premises thus, the 2<sup>nd</sup> respondent had a right to sell the suit premises to the 1<sup>st</sup> respondent. As long as the Chairman analysed his position and stated that the other

assessor's opinion was not considered based on the above reasoning, means he considered the assessors' opinions.

Moreover, the Chairman on 26<sup>th</sup> July, 2021 issued an order notifying the parties that the assessors' have given different opinions and he wrote their comments in the proceedings. Furthermore, the assessors' handwritten opinions are reflected in the tribunal proceedings. In the case of **Edina Adam Kibona v Absolom Swebe (Sheli)**, Civil Appeal No. 286 of 2017, it was held that:-

*“... the opinion of assessors must be given in writing and be reflected in the proceedings before a final verdict is issued”.*

*[Emphasis added]*

Based by the above findings, it is obvious that this ground is demerit.

On the fifth ground, the learned counsel for the appellant complained that the Chairman did not state reasons for re-assignment. The law requires when the file is transferred from the predecessor Chairman to the successor Chairman, the successor Chairman is required to state the reasons for taking over. The tribunal proceedings reveal that on 3<sup>rd</sup> March, 2020, Hon. Chenya, the successor Chairman took over the matter from the predecessor Chairman and stated the reasons for taking over. Therefore,

Hon. Chenya had jurisdiction to subsequently preside over the trial at that stage.

The counsel for the appellant in his rejoinder insisted that Hon. Chenya was required to state reasons for taking over at the stage when the matter was in its preliminary stage. In my opinion, the counsel's submission cannot hold water since the hearing of the case was not commenced and there is no mandatory requirement of the law to assign reasons in the preliminary stage of hearing the application. Therefore, this ground is demerit.

That said and done, I hold that in instant appeal there are no extraordinary circumstances that require me to interfere with the findings of the tribunal. Therefore, I proceed to dismiss the appeal without costs. Order accordingly.

Dated at Dar es Salaam this date 11<sup>th</sup> August, 2022.



A.Z.MGEYEKWA

JUDGE

11.08.2022

Judgment delivered on 11<sup>th</sup> August, 2022 via video conferencing whereas both learned counsels were remotely present.





A.Z.MGEYEKWA

**JUDGE**

11.08.2022

Right to appeal fully explained.