

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

**LAND APPEAL NO. 261 OF 2021**

(Originating from Kinondoni District Land & Housing Tribunal at Mwananyamala in Land Application No.63 of 2019)

**DENIS JUMA@DENIS EPHREM MAUNGA AND  
DENIS EPHREM SHAYO .....APPELLANT**

**VERSUS**

**EPHREM JUMA SHAYO.....RESPONDENT**

Date of Last Order: 12.08.2022  
Date of Judgment: 09.09.2022

**JUDGMENT**

**V.L. MAKANI, J**

The appellant herein lost at Kinondoni Land and Housing Tribunal (the **Tribunal**) in Land Application No. 63 of 2019 (Hon. R. L Rugarabamu, Chairman). At the Tribunal, he was seeking among others, for an order declaring him the lawful owner of the land described as Plot No.107/A, Block A with Certificate of Title No.186313/107 situated at Mikocheni area, Kinondoni District within the City of Dar es Salam (the **suit land**).

This matter is between a father and a son. The son being the appellant and the father the respondent. The main dispute between them is who is the lawful owner of the suit land. The Tribunal after hearing the matter decided in favour of the respondent. Being dissatisfied with the decision of the Tribunal the appellant has preferred this appeal based on the following grounds:

- 1. That, the tribunal erred in law and fact by failing to direct itself to the root of the dispute.*
- 2. That the trial tribunal erred in law and fact by failing to consider the issues framed as well as the trial tribunal argued and reasoned out of the issues framed.*
- 3. That the tribunal erred in law and fact by totally failing to evaluate properly the evidence in the records hence arrived to a wrong conclusion of the matter before it.*
- 4. That the trial tribunal erred in law and fact by failing to verify properly the documents submitted by the appellant.*

The appellant prayed for the appeal to be allowed and the decision of the Tribunal be quashed and set aside.

This appeal was argued orally by Mr. Carlos Cuthberty, Advocate for the appellant and Mr. W. Manase, Advocate for the respondent.

After giving a brief background of the matter Mr. Cuthberty as regards the first ground, said that the respondent at the Tribunal did not prove that he is Denis Juma but he was known as Ephraim Juma Shayo. He said that **Exhibit D4** the Sale Agreement reflects the name of the appellant and as is shown in the Certificate of Title the appellant is the owner of the the suit land. He said that there is a Deed Poll which shows that the respondent no longer uses the name DENIS JUMA. That the Deed Poll is dated March 2021. That contradiction in names shows that the respondent is not the owner of the suit land. That the document was tendered at the Tribunal but the Tribunal did not analyse it.

Mr. Cuthberty said at the respondent stated that he bought the suit land from Kabika Muteseri in Machi, 1990 in the name of DENIS JUMA. That he had already bought another plot in the name of EPHRAIM JUMA, so he used the name of DENIS JUMA as by then leaders were not allowed to own two plots. He said he was allowed to use another name by Deed Poll. Mr. Cuthberty said the evidence does not hold water as by 1990 the late Mwalimu Nyerere was no longer in power. The issue that leaders were not allowed to own two plots was not proved. He said it is was not understood what the respondent meant

by the statement that he was allowed by the Minister to own another plot by a Deed Poll. He said that the suit land was bought by the appellant's parents and was given to him until 2019 when he was evicted. Mr Cuthberty said the dispute arose when the appellant's mother died in 2017 and his father wanted to sell the suit land claiming that it belonged to him. He said the plot bears the names of the appellant and therefore belongs to the appellant.

Mr. Cuthberty abandoned the second ground of appeal and proceeded to argue the rest. As for the third and fourth grounds he said that there was no proper evaluation of the evidence and verification of documents tendered by the appellant. He said **Exhibit P1** is an affidavit verifying names and it was not objected. He said the names of the appellant in the affidavit is DENIS JUMA, so the property belongs to the appellant. He said the respondent wanted to sell the plot by forging the documents and stating that he is DENIS JUMA. That appellant thus filed a caveat at the Commissioner for Lands.

Mr Cuthberty went on saying that **Exhibit D5** is the Sale Agreement of the suit plot by respondent (alias DENIS JUMA) to Rural Urban Development Initiatives (**RUDI**). He said that the purchase price has

been received but transfer could not be affected because of the caveat. That the Tribunal did not direct itself to the issue of who is the owner of the suit land. Mr Cuthberty relied on the case of **Farah Mohamed vs Fatuma Abdallah (1992) TLR 208** that one must have good title to pass otherwise there is no transfer. That good title means the one whose name appears on the title. He observed that there was no fair hearing and the Tribunal did not take cognisance of Article 13(1) of the Constitution as most of the evidence was not written and if written was not considered. He said Article 107A and E of the Constitution were not complied with as the Tribunal went on technicalities rather than substantive justice. So, the rights of the appellant of the appellant were not considered on the basis of the evidence presented in the Tribunal.

Mr. Manase replied to the grounds of appeal generally saying that they all revolved around the issue of ownership of the suit land. He said that appellant failed to prove his case at the Tribunal. He said that the burden of proof cannot shift from the appellant to the respondent. He said that it is true that there is an affidavit stating that the appellant's name is DENIS JUMA but the law requires him to bring Birth Certificate, School Certificates, Driving Licence or National ID to prove

his name is DENIS JUMA but he decided not to do so in order to conceal that his name is not DENIS JUMA but DENIS EPHRAIM SHAYO or DENIS EPHRAIM MAUNGA. He added that before the suit at the Tribunal, the matter was addressed by the Minister for Lands who told the appellant that the suit plot was not in his name. That it was the Minister who advised the respondent to prepare a Deed Poll to clear the name and problems between him and his son. He said the appellant had no document to prove ownership.

Mr. Manase said in 1994 when the suit plot was purchased the appellant was 4 years old with no mandate to own property and as per the Sale Agreement the suit plot was not bought for the appellant by his parents as alleged. He said according to page 8 of the Tribunal's judgment, the appellant is accused to conning a property and was convicted (**Exhibit D2**). He said that there is no proof that appellant lost the Certificate of Title at the time of eviction in 2019. Mr. Manase said in the same year 2019, the appellant was given by the respondent a plot worth TZS 85,000,000/= at Kinyerezi in the name of DENIS EPHRAIM MAUNGA (**Exhibit D3**) so that he would stop harassing him. He said the appellant failed to prove that his name is DENIS JUMA. He distinguished the case of **Farah Mohamed** (supra) as the

appellant failed to prove his case. He further said Article 13(a) and 107A and E of the Constitution cited are irrelevant because the Tribunal is guided by specific laws resolving land matters. He prayed for this appeal to be dismissed with costs.

In rejoinder, Mr. Cuthberty reiterated his main submissions and added that there is nowhere that the respondent is disputing that the appellant's name is DENIS JUMA and that there is no law that bars a person from having more than one names. He prayed for the decision in the Tribunal to be quashed and set aside and costs of the appeal be granted.

I have listened to the rival submissions by Counsel for the parties. The main issue for consideration is whether this appeal has merit.

The grounds of appeal shall be discussed generally as they are all centred on the weight of evidence. It is on record that the Certificate of Title bears the name of DENIS JUMA and the appellant claims that this is one among his names. But on the other side, the respondent claims that he was the one who bought the suit land and registered it in the name of DENIS JUMA to preserve it because by then civil

servants in leadership were not allowed to own more than one property.

According to the testimony at the Tribunal, the appellant's claim of ownership is that his parents gave him the suit land as a gift. However, the respondent who is the appellant's father denies having given the suit land to his son as a gift. The appellant himself did not have any proof to show that indeed, the suit land was given to him as a gift. Or otherwise as the Chairman pointed there was no evidence to show that the parents purchased the suit land for the appellant who is their son. If that were the intention, then there would have been a Deed of Gift to show a clear transaction of the title passing from the parents to the son. But since there is none then the claim that he was given the suit land or the suit land was given to him by his parents as a gift cannot stand.

It is on record that the Certificate of Title was issued in 1991 and according to the evidence the appellant was by then 5 years old. As correctly stated by the Chairman, the appellant could not have been eligible in law to own land at the said age because a person under the age of majority cannot contract in terms of section 11 of the Law of



Contract Act CAP 345 RE 2019. It should be noted that the Certificate of Title is a contract with terms and obligations which are binding upon signing. In essence therefore, the appellant as correctly said by the Tribunal, could not have owned the suit land considering his age at the time of procuring the Certificate of Title.

On the other hand, the appellant could have so owned the suit land under the guardianship of either his father or mother. But unfortunately, this was not the case, and this clearly means that the parents did not have any intention of giving the appellant ownership of the land or holding the said land on his behalf. In the result, I agree with the Chairman that the respondent never gave the suit land to his son as a gift, and he never held the said land on his behalf.

There was also a complaint by the appellant at the Tribunal that the plot was bought by his mother so as a beneficiary he was supposed to claim his share of the estate of his mother. However, the complaint cannot stand either because the suit land is not jointly owned by the parents. The name of the plot bears only one name DENIS JUMA.

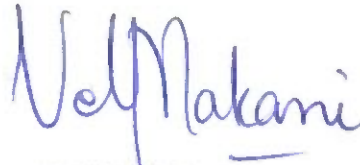
Now coming to the issue of names. It is on record that the respondent was known by other names including the name of DENIS JUMA and he used this name together with the current name interchangeably until he decided to swear a Deed Poll (**Exhibit D1**). The Deed Poll which was duly registered in 2017 was to the effect that he would only use one name Ephrem Juma Shayo as his official name. In other words, the respondent dropped the other names and remained with the name EPHREM JUMA SHAYO. It is apparent that initially the name of DENIS JUMA was in use by the respondent, then it found its way in the Certificate of Title. On the other hand, it was expected from the appellant to give a history of usage of the name DENIS JUMA especially when his father said he did not give him the said name. The School Certificates, the driving licence and the National ID all bear the names of DENNIS EPHREM MAUNGA. It is only the affidavit to verify names and the caveat all which came after the dispute arose which bear the names of DENIS JUMA. It is my considered view that if the name DENIS JUMA was meant for the appellant, then his father who registered this name in 1991 in the Certificate of Title when the appellant was only 5 years would not have turned around and register him in school in the names of DENNIS EPHREM MAUNGA which name the appellant is using todate. In any case, the respondent who is the

father of the appellant categorically stated that he has never named his son DENIS JUMA. In that respect, I am satisfied that the Chairman properly analysed the evidence and the complaints by the appellant specifically that his name was DENIS JUMA have no merit.

Mr. Cuthberty in his submissions observed that the appellant tendered documents but they were not considered. I would wish to point out that not all documents that are tendered and admitted have evidential value worth to prove the case. And the Tribunal is not bound to use all the documents which were tendered in court but only those which are deemed worth using in terms of the evidence presented in court. Mr. Cuthberty also raised the issue of technicalities which in my view is misconceived as there is nowhere the Tribunal has used any technicalities to arrive to its decision. I agree with Mr. Manase that he who alleges must prove (see section 110 of the Evidence Act CAP 6 RE 2022) and it is apparent from the evidence at the Tribunal that the appellant has failed to prove his case to the standards required by the law in civil matter of balance of probabilities.

With the above reasoning, I find no fault in the decision of the Tribunal, and subsequently this appeal has no merit, and it is dismissed with costs.

It is so ordered.



**V.L. MAKANI**  
**JUDGE**  
**09/09/2022**