

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

**LAND APPEAL NO. 302 OF 2021**

(Originating from Temeke District Land & Housing Tribunal in Land Application No.275 of 2015)

**LUCY BONAVENTURA NAMUBA.....APPELLANT**

**VERSUS**

**PATRICK YOHANA CHIUNDA.....1<sup>ST</sup> RESPONDENT  
PETER SILAS ABEID.....2<sup>ND</sup> RESPONDENT**

Date of Last Order: 12.08.2022  
Date of Judgment: 09.09.2022

**JUDGMENT**

**V.L. MAKANI, J**

This is an appeal by LUCY BONAVENTURA NAMUBA. She lost at Temeke District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 275 of 2015 (Hon. P. I Chinyele, Chairman).

Being dissatisfied with the decision of the Tribunal, the appellant preferred this appeal with five grounds hereunder reproduced:

- 1. That, the Tribunal erred in law and fact by not considering that the 1<sup>st</sup> respondent admitted in his pleadings that he did not construct the frames of the appellant as the prior condition before selling the disputed land to the second respondent.*

- 2. That the trial tribunal erred in law and fact by not considering that the sale between the respondents was illegal had no documentary evidence to that effect.*
- 3. That the chairperson erred in law and fact by not considering that there was an oral contract between the appellant and the 1<sup>st</sup> respondent before selling her plot to the 2<sup>nd</sup> respondent.*
- 4. That the trial tribunal erred in law and fact by not evaluating evidence adduced by the appellant viz via that of the respondents.*
- 5. That the tribunal erred in law and fact by disregarding appellants evidence and passing the judgment in favour of the respondent.*

The appellant prayed for the appeal to be allowed and the decision of the Tribunal to be set aside and the appellant be declared the rightful owner of the suit land namely a parcel of land situated at Baghdadi Mbagala, Temeke Municipality, Dar es Salaam.

With leave of the court the appeal was argued by way of written submissions. Ms. Hawah Nyanzi, Advocate drew and filed submissions on behalf of the appellant. Mr. Lutufyo Mvumbagu, Advocate drew and filed submission in reply on behalf of the 2<sup>nd</sup> respondent. The 1<sup>st</sup> respondent did not file any submissions, so the matter proceeded ex-parte against him.

In the course of arguing the appeal, Ms. Nanyanzi dropped the third ground of appeal, she consolidated the fourth and fifth grounds and argued the remaining grounds separately.

On the first ground of appeal, Ms. Nanyazi said that the Tribunal was in fault by not considering the pleadings as part of the appellant's case. She said the 1<sup>st</sup> respondent had no good title to pass to the 2<sup>nd</sup> respondent before fulfilling the condition of the appellant. He said that the pleadings of the 1<sup>st</sup> respondent in his amended reply filed on 26/09/2017 clearly indicated at paragraph 7 that the contents of paragraph 6 (a) (vii) were denied and that the construction of shop stalls started but only to be stopped when this application was filed in the Tribunal. She said the 1<sup>st</sup> respondent had built a corrugated iron sheet wall for the purpose of constructing shop stalls as building rules requires and there was a foundation being constructed. That the 1<sup>st</sup> respondent in answering the appellant's amended application filed on 12/05/2017, paragraph 6 (a) (vii) stated that the title to the 2<sup>nd</sup> respondent by the 1<sup>st</sup> respondent was illegal as it was not authorized by the applicant and because the 1<sup>st</sup> respondent had not fulfilled the conditions upon which he would be given the plot. She said it was clear that the 1<sup>st</sup> respondent was not bound to fulfil the condition of

the appellant before he could sell the disputed plot. That since according to the pleadings the respondent was given conditions and this meant he was bound by the pleadings. He relied on the case of **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others; Commercial Case No. 5 of 2015 (HC-Commercial Division, DSM)** (unreported).

On the second ground, she said that the 1<sup>st</sup> respondent testified at the Tribunal that he sold the suit land to the 2<sup>nd</sup> respondent but the contract was not tendered. That the 2<sup>nd</sup> respondent alleged that the contract was entered and witnessed by the street chairperson, but it was not seen at all. That in absence of the sale agreement the alleged sale was illegal ab initio. She said that the 2<sup>nd</sup> respondent alleged that the 1<sup>st</sup> respondent had a Residential License from the local government which belonged to the appellant. That if the 2<sup>nd</sup> respondent was not given that Residential License after sale then how could he verify that it was a legal transaction. He said that if both the 1<sup>st</sup> and 2<sup>nd</sup> respondents pleaded that there was a sole Residential License in regard to the property sold to the 2<sup>nd</sup> respondent, but how come that the residential licence was not tendered and also the Contract of Sale? She said that it was the evidence that the 1<sup>st</sup>

respondent knew that he had no title to pass and that is why he remained with the appellant's Residential Licence and did not hand it over to the 2<sup>nd</sup> respondent. She insisted that the sale agreement between respondents was vital for the Tribunal to examine and make analysis.

Ms. Nyanyazi argued the fourth and fifth grounds together. She said that, the evidence on record indicates that the 1<sup>st</sup> respondent had no title to pass to the 2<sup>nd</sup> respondent. That SM3 testified that he used to carry out agricultural activities in the appellant's land for over 15 years and the 2<sup>nd</sup> respondent trespassed on it, cut down the trees and built a house. She said the statements of the 2<sup>nd</sup> respondent at the Tribunal were contradictory as there was no Residential Licence given to him after purchase. She said that the Tribunal should have considered all these before making any conclusion. She added that, the testimony of SM1 and SM2 corroborated in regard to the condition that was given to the 1<sup>st</sup> respondent in order to be given the gift of land which he never fulfilled, and the Tribunal ignored all that. She prayed for the appeal to be allowed.

In reply, Mr. Mvumbagu gave a brief background of the matter. In reply to the first ground he said the facts pleaded by the appellant to claim an existence of the alleged verbal agreement, to construct shop stalls as condition precedent to the 1<sup>st</sup> respondent being awarded the disputed plot, were underlined in paragraph 6 (a) (iv), (v), (vi) and (vii) of the amended land application filed by the appellant. He said the 1<sup>st</sup> respondent vide his Written Statement of Defence disputed the existence of the said agreement and therefore the Chairman properly admitted evidence in respect of the non-existence of the said agreement. That the 1<sup>st</sup> respondent did not dispute the existence of the said work given to him by the appellant. He only disputed that the said work was not precedent to the gift of the suit land given to him as the said facts was approved by the applicant herself while testifying at the Tribunal. He said the cases cited by appellants side are irrelevant as in those cases the trial court admitted evidence which was not pleaded while in this case they were properly pleaded.

On the second ground Mr. Mvumbagu said that courts sit to determine only issues which are in dispute. That it was unequivocally admitted by the appellant, 1<sup>st</sup> and 2<sup>nd</sup> respondents that the suit property was sold to the latter. That under those circumstances the trial Tribunal

was not required to dwell so much on this while all parties to the suit acknowledged and admitted existence of the said sale by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent.

On the fourth and fifth grounds Mr. Mvumbagu said that there was plenty of evidence from appellant and her witnesses showing that the appellant with natural love and affection decided to award gift unconditionally to any work to be executed by the latter. That those facts were corroborated by the wife to the 1<sup>st</sup> respondent testifying that they visited the appellant to pay homage in respect of the gift granted to the 1<sup>st</sup> respondent. He said that the suit property properly passed to the 1<sup>st</sup> respondent including the right of sale to the 2<sup>nd</sup> respondent. He prayed for the appeal to be dismissed with costs.

In rejoinder, Ms. Nyanzi reiterated her main submission and added that since the 1<sup>st</sup> respondent did not enter appearance in this appeal whatever defence made in his favour by the 2<sup>nd</sup> respondent should be disregarded.

I have gone through the records of the Tribunal and submissions by Counsel to the parties. The main issue for consideration is whether

this appeal has merit. It should be noted that this being the first appellate court it is entitled look at the evidence and evaluate it and come its own decision (see the case of **Jamal Tamim vs. Felix Mkosamali & the Attorney General, Civil Appeal No. 110 of 2012 (CAT)** (unreported). This court will confine itself to the issue whether the 1<sup>st</sup> respondent had good title to pass on to the 2<sup>nd</sup> respondent.

The parties to this appeal are at one that the original owner of the suit land is the appellant. How did the 1<sup>st</sup> and 2<sup>nd</sup> respondents come in? It is the 2<sup>nd</sup> respondent's submission that the 1<sup>st</sup> respondent got the said land from the appellant as a gift and then he decided to dispose it to the 2<sup>nd</sup> respondent. The only consideration from the 2<sup>nd</sup> respondent is the legality of the title he alleged get from the 1<sup>st</sup> respondent. However, the said title to the 2<sup>nd</sup> respondent cannot be ascertained without first examining the legality of the 1<sup>st</sup> respondents title, regardless of his absence. It was alleged earlier that the 1<sup>st</sup> respondent got the title by way of a gift from the appellant. However, there is no document signifying the passing of the title from the appellant to the 1<sup>st</sup> respondent. In land matters, the context of transfer, must be well covered by specific executing documents. In



the context of a gift as alleged by the 2<sup>nd</sup> respondent, a Deed of Gift was expected to be in place. However, throughout the Tribunal proceedings, there is no such document that was tendered by respondents' side. It would therefore be unsafe to rely on mere assertions by the 2<sup>nd</sup> respondent without having the Deed of Gift. In the absence of the Deed of Gift or any evidence to that effect issued by the appellant to the 1<sup>st</sup> respondent, the title remains with the appellant as long as both parties are settled that the appellant is the original owner. As for the 2<sup>nd</sup> respondent since it has been established herein above that the purported transfer from the appellant to the 1<sup>st</sup> respondent was a nullity, it is therefore clear that the alleged second transfer from the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent is also a nullity as title did not pass in the first sale and so it cannot pass in the second sale. In the case of **Farah Mohamed vs. Fatuma Abdalla [1992]** TLR 205 where it was held that:

*"He who has no legal title to the land cannot pass good title over the same to another."*

In the case at hand, the 1<sup>st</sup> respondent had no good title to the suit land, in that respect he had nothing valid to pass to the 2<sup>nd</sup> respondent. The purported sale of the suit land by the 1<sup>st</sup> respondent to the 2<sup>nd</sup> respondent was a nullity as there was no good title that

passed. In that regard title remained with the appellant as there is no documentary proof of the transfer to the 1<sup>st</sup> respondent and subsequently to the 2<sup>nd</sup> respondent.

For the reasons above, this appeal has merit and it is hereby allowed with costs. The judgment and decree of Temeke District Tribunal is hereby quashed and set aside the appellant is declared the lawful owner of the suit land.

It is so ordered.



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