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

LAND APPEAL NO. 17 OF 2022
(Arising from Kinondoni District Land and Housing Tribunal in Land Application No.199 of 2018)

MOHAMED H. JAGWA.....APPELLANT

VERSUS

GAMA JUMA GAMA.....RESPONDENT

Date of Last Order: 19.08.2022
Date of Ruling: 26.09.2022

JUDGMENT

V.L. MAKANI, J

This is an appeal by MOHAMED H. JAGWA. He claimed at Kinondoni District Land and Housing Tribunal (the **Tribunal**) that he leased to the respondent house No.KIM/KLGA 12308 situated at Kimara Kilungule A, Ubungo Municipality within the City of Dar es Salaam (the **suit property**). That the tenancy ran from 2009 and sometimes in 2016 respondent's tenancy was terminated through notice. However, the respondent refused to vacate claiming that he was the lawful owner of the suit property. The appellant then filed against respondent Land Application No.199 of 2018 (Hon.L. R Rugarabamu, Chairman) where he lost. Being dissatisfied with the said decision, the

appellant has preferred this appeal basing on the following grounds as hereinbelow reproduced:

1. *That, Tribunal erred in law and fact by delivering decision in favour of the respondent without taking into consideration that the appellant is the lawful owner of the disputed land.*

2. *That the trial Tribunal erred in law and fact by entering judgment in favour of respondent without considering the strong evidence adduced by the appellant and his witness (PW2) concerning the alleged sale agreement.*

3. *That the trial Tribunal erred in law and facts by delivering decision in favour of the respondent without taking in to consideration the authenticity of the sale agreement tendered by the respondent.*

The appellant prayed for the appeal to be allowed and the decision of the Tribunal be set aside. He also prayed for the court to declare him the rightful owner of the suit property. The respondent did not enter appearance despite being served through publication in Mwananchi News Paper dated 30/03/2022. This appeal therefore proceeded ex-parte against him.

Submissions on behalf of the appellant were drawn gratis by Ms. Felister Deogratias Rugazia, Advocate of LEGAL AND HUMAN RIGHTS CENTRE. Having given a brief background of the mattershe argued the first ground that the appellant purchased the suit land in 1994

and has been using it. She said according to the evidence on record the appellant bought the suit property vide **Exhibit P1** which is the Agreement for the Purchase of the suit property. That ownership of land cannot be determined by relying on mere words adduced by the parties but on the basis of evidence showing who is the real owner. Ms. Rugazia said a person who alleges must prove and further that the Tribunal erred by failing to consider that the appellant is the lawful owner of the suit house as he has everything to prove his ownership. She relied on the case of **Amina Maulid Ambali & 2 Others Vs Ramadhani Juma, Civil Appeal No.35 of 2019 (CAT-Mwanza)** (unreported)

On the second ground Ms. Rugazia said that E**xhibit P1** shows that the appellant and the respondent entered into a Lease Agreement in 2009 but surprisingly, **Exhibit D1** tendered by respondent shows that the respondent purchased the suit property in 2007. She said the Tribunal had the duty to evaluate the authenticity of the Sale Agreement by respondent and the Lease Agreement by the appellant. She said that the question is how and why did the respondent rent the house in 2009 while he had already purchased the same in 2007? She observed that the trial Tribunal only considered the testimony of

DW2 because he is a local leader (*Balozi wa Nyumba Kumi*) without considering the genuineness of the document tendered. That even the Assessors were of the view that appellant is the rightful owner of the suit property as they observed that there were elements of forgery on the exhibit tendered by respondent. She said real evidence is heavier than oral evidence as it was stated in the case of **Teter vs. Sunday Post Limited (1954) 1 EA 424 (Can).** She further relied on section 110(1) of the Evidence Act, Cap 6 RE 2019 and prayed for the appeal to be allowed with costs.

Having gone through the submissions by the appellant, the main issue for consideration is whether the appeal at hand has merit.

The merit of this appeal rests entirely on the weight of evidence by the parties herein. At the Tribunal, both parties relied on oral and documentary evidence. The appellant herein relied on the Lease Agreement entered between him and the respondent dated 30/01/ 2009. On the other hand, the respondent relied on the Sale Agreement entered between him and the appellant on 7/10/2007 whereas in the said agreement the appellant is said to have sold the suit property to the respondent for a consideration of TZS 1,500,000/=. He claimed that

when he purchased the suit property there was a foundation and that later he built a house.

As said hereinabove, the Lease Agreement by the appellant was admitted as **Exhibit P1** while the Sale Agreement by respondent was admitted as **Exhibit D1**. The Lease agreement shows that the appellant leased his house to the respondent on 30/01/2009 but the Sale Agreement dated 07/10/2007 reflects that it preceded the Lease Agreement. The question is how did the respondent agree to pay rent (by way of lease) to the appellant over the property he had already purchased? Common knowledge intimates that once a person owns land he is not supposed to pay rent, but in this case **Exhibit P2** shows that the respondent paid six months rent that is from January to June, 2009. In normal circumstances that cannot work as the owner of the land cannot at the same time be a tenant. Unfortunately, the respondent did not enter appearance to state how this worked because he alleges that he bought the suit property but he did not controvert the evidence that he was also paying rent to the appellant. In that case the balance then leans in favour of the appellant in that the respondent was therefore as a tenant and not owner of the suit property as alleged.

It is also noted in the evidence that the respondent at the Tribunal tendered receipts that he paid property tax and also Electricity (TANESCO) and Water (DAWASCO) receipts. However, evidence of payment of property tax, electricity or water bills does not prove ownership of the suit property. In the case of **Hamisa Athumani vs. Halima Mohamed, Land Appeal NO. 28 of 2018 (HC-Tanga)** (unreported) the court stated that evidence of paying land rents or being in possession of receipts showing that one paid land rent in respect of a certain plot is not evidence of ownership of that plot. The court stated:

> *"... it should be noted that evidence of paying land rents or possession of receipts showing that one paid land rents in respect of a certain plot is not evidence of ownership of that plot."*

In any case, the electricity and water bills/receipts do not reflect that they are in respect of the house at the suit property. In other words, there is no description of the suit property on the said bills/receipts.

I have also observed that the dispute is over the house. However, the Sale Agreement relied by respondent states that the appellant bought a *shamba* from appellant. Even the foundation that has been alleged in the course of the evidence has not been reflected in the Sale Agreement. If at all, it should have been clearly stated in the Sale Agreement that the sale is in respect of a house or *shamba* with a foundation, as the

case may be. Sale of a *shamba* as stated in the sale agreement could be any piece of land at Kilungule different from the suit property. Even the receipts (**Exhibit D2**) allegedly received from the appellant do not describe the suit property. The receipts only say *"Deni la Kiwanja-Kimara Kirungule"* which in my view is a very vague statement. Further, one cannot be assured that the signature that is appearing on the receipt is that of the appellant as there is no name to support it. In view thereof, since the Sale Agreement was not specific then the Tribunal erred to rely to it as evidence to declare ownership to the respondent.

For the foregoing it is apparent that evidence at the Tribunal was not properly analysed in terms of the standards in civil cases of balance of probabilities which as elaborated hereinabove, clearly leans in favour of the appellant herein. In that regard, this appeal has merit, and it is allowed with costs. The decision of the Tribunal is hereby quashed and set aside, the appellant is declared the lawful owner of the suit property. It is so ordered.

THE HIGH COURT OF TANZANIA
LAND DIVISION

V.L. MAKANI
JUDGE
26/09/2022