

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

LAND APPEAL NO. 303 OF 2021

*(From Land Application No. 454 of 2015, by the District Land and Housing Tribunal
for Kinondoni)*

**MOHAMED RAJABU.....1ST APPELLANT
MARIAM HUSSEIN.....2ND APPELLANT**

VERSUS

LULU VICTOR KAYOMBO.....RESPONDENT

J U D G M E N T

Date of Last Order: 12.10.2022

Date of Judgment: 29.10.2022

T. N. MWENEGOHA, J.

The appeal lies on the following grounds; -

- 1. That, the trial tribunal erred in law and fact by delivering judgment in favour of the respondent basing on exhibits P1 and P10 while the same were not annexed;**
- 2. That, the trial tribunal erred in law and fact by holding that the respondent was lawfully purchased from Mary P. Kasonka in 2007 and Mariam Hussein in 2006 while the respondent was a minor.**

- 3. That, the trial tribunal erred in law and fact by misdirecting himself by wearing the respondent shoes when pronouncing judgment in favour of the respondent basing on un-recorded and presumed facts that the appellant had evil motive by denied the facts of respondent case;**
- 4. That, the trial tribunal erred in law and fact entertaining judgment in favour of the respondent based on insufficient and inadmissible evidence of letters of offer which were past event/did not exist at law;**
- 5. That, the trial tribunal erred in law and fact by hearing the case and making judgment without notice that the 1st appellant should have been sued as an Administrator of the Estate of the late Rajabu Hemed Litumbi;**
- 6. That, the trial tribunal erred in law and fact by awarding general damages which were not pleaded and proved to the tune of 15,000,000/=;**
- 7. the trial tribunal's judgment is defective for not containing facts, points for determination and proper analysis of evidence.**
- 8. The judgment is contrary to the law and evidence in record.**

The appeal was heard by written submissions. The appellants appeared in person, while the respondent was represented advocate Sinare Zahara.

In this judgment, I will consolidate the 1st to 6th grounds of appeal and discuss them together. Generally, the appellants have faulted the trial tribunal for its failure to make a proper analysis and evaluation of the

evidence before it hence wrongly decided the matter against him. In their written submissions Mr. Mutatina, maintained generally that, exhibit P1 and P10 were not annexed in the application, therefore they were not supposed to be admitted and used as evidence as stated in Regulation 10(3)(a) and (b) of the Land Disputes Court (the District Land and Housing Tribunal), Regulation, 2003 of G.N 174 of 2003. Also, the case of **Ayub Haji Mzava vs. Nuhu Matauna, Land Appeal No. 21 of 2018, High Court of Tanzania, Land Division at Dar es Salaam.**

They argued further that, the tribunal failed to see that the respondent was a minor at the time of buying the suit land. Hence, she had no legal capacity to enter into any contract as per Section 11(1) and (2) of the Law of Contract Act, Cap 345 R. E. 2019 and the case of **Tuongane Workshop versus Audax Kamala (1978) TLR No. 21.** Either, the 1st respondent was sued in his personal capacity instead of being sued as an Administrator of the Estate of the late Rajabu Hemed Litumbi. In addition to that, the trial tribunal was faulted for basing its decision on letters of offer which were not supposed to be admitted in evidence as they do not exist. These include exhibits P4A-P4Q. It was the contention of the appellants that these letters of offer were not registered. Therefore, they were not supposed to be admitted as directed by section 30 (1) of Land Act, 1999 Cap 113 R. E. 2019. Lastly on ground number 6, the appellants insisted that, the trial tribunal awarded general damages which were not pleaded and proved to the tune of 15,000,000/= . This, fact came after the trial tribunal found the 2nd appellant to be a trespasser hence was ordered to pay the said amount as compensation to the respondent.

In reply, Advocate Zahrani was of the view that, exhibit P1 was annexed as K-1 in an amended application filed on 18th December, 2017 and served

to the appellants on the 19th December, 2017. Exhibit P10 was included in the list of additional documents filed on the 24th October, 2019 as annexure 'B'. As for the claim that the respondent was a minor at the time of purchasing the suit land, the counsel for the respondent maintained that, the respondent was not a minor during that time as she was 20 years old at that material time. Above all, the appellants never raised this issue at the trial tribunal hence, they cannot raise it at this stage. As for the 3rd and 4th grounds, the respondent counsel argued that, the trial chairman's findings were purely based on the evidence tendered in court by parties. There is nothing in the judgment suggesting that the judgment was written based on presumed facts or inadmissible evidences. As for the capacity of the 2nd appellant as an Administrator of the estate of the late Rajab Hemed, it was contended that, there is no credible evidence showing that the suit land was owned by the said person. Either, it is the 2nd appellant who sold the suit land in his personal capacity as shown in exhibit P1 and P10. Further, in his written statement of defense, he insisted that he is the rightful owner of the said land, hence the respondent was right to sue in him in his personal capacity as the trespasser. On the 6th ground it was maintained that, the respondent prayed for 35,000,000/= but was awarded 15,000,000/= after the trial tribunal considered the evidence before it and satisfied itself that the said amount was proper to be awarded to the respondent.

I have gone through submission and records, on the 1st ground of appeal I find no merit. The records at hand are clear, the said documents were annexed and added in the list of additional documents as argued by the counsel for the respondent's counsel. The said records show that, exhibit P1 was annexed as K-1 in an amended application filed on 18th December,

2017 and exhibit P10 was included in the list of additional documents filed on the 24th October, 2019 as annexure "B". The 1st ground therefore lacks merit.

Same applies to the 2nd and 4th grounds, that it was the duty of the appellants to prove before the trial tribunal that, the respondent had no capacity of entering into any agreement at the time she purchased the suit land. Further, as contented by the appellants that, exhibits P4A-P4Q were not registered to be used in evidence also needed proof to make the tribunal believe that the same never existed in the register. In absence of evidence to the contrary, these two facts remain to be allegations which were to be proved by the appellants themselves to obtain the tribunal's decision in their favor (**see Sections 110, 111, 112 and 115 of the Evidence Act, Cap 6 R. E. 2019**). The 3rd ground is also baseless. The appellants seem to misdirect themselves as to the basis of the trial tribunal's judgment. To them it was based on exhibit P9, a mobile phone number contained in the signboard advertising the sale of that the suit land. The appellants insisted that it was the duty of the trial tribunal to satisfy itself that the contact number in question belonged to the 2nd appellant. But in its findings while addressing the said issue, the trial tribunal stated clearly that, it was satisfied beyond doubts that the advertisement was placed by the 2nd respondent. It arrived to that conclusion basing on the evidence of PW1-PW5 who showed that, the 2nd appellant sold the land in collaboration with her children and no one among her relatives objected to the said sale. This observation was intentionally concealed by the appellants in their submissions it seems with the intention to cement their assertion.

Coming into ground number 5, that, the 2nd appellant was supposed to be sued as a legal representative of the late Rajabu Hemed Litumbui. As contended by the respondent's counsel, the 2nd appellant sold the disputed land in his personal capacity. He maintained that fact in his pleadings, (Written Statement of Defense). He is bound by that and he is precluded from denying that fact. The law is clear on that. Under section 123 of the law of Evidence Act, Cap 6 R. E. 2019, it is provided that: -

" When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or his representative shall be allowed, in any suit or proceedings between himself and that person or his representative, to deny the truth of that thing".

The same rule was emphasized in the case **East African Development Bank v Blueline Enterprises Ltd, Civil Appeal No. 110 of 2009, Court of Appeal of Tanzania at Dar es Salaam (unreported)**, that;

"Estoppel, as we understand, is meant to preclude a party from contending the contrary of any precise point which having been distinctly put in issue, has been solemnly and with certainty determined against him".

The 2nd appellant is precluded to claim that he acted or sold the land as an Administrator of the Estate of the late Litumbui. Rather, he sold the same in his personal capacity. The respondent therefore was right to sue him in his personal capacity. The 5th ground also lacks merit.

As for the 6th ground, that the trial tribunal awarded general damages to the tune of 15,000,000/= which were not prayed and proved. This too is

a misconception on part of the appellants and I will not use much of my time on this. The pleadings(application) is clear, among the reliefs prayed by the applicant/ now respondent was order of payment of 35,000,000/= as general damages. The trial tribunal upon assessment and evaluation of evidence, awarded 15,000,000/=. Therefore, these allegations by the appellants are unfounded.

Hence, the 1st to 6th grounds of appeal, are found to be lacking merits and are rejected accordingly.

Coming to the 7th and 8th grounds of appeal. The appellants claimed that the judgment is defective and does not have any legal points for determination or analysis of the evidence tendered. On the other hand, the respondent's counsel disputed these allegations and maintained impugned judgment is free from any defects.

Indeed, I agree with the respondent's counsel, the judgment of the trial tribunal contains no defects. It has the points for determination well raised and written in it (see page 4 of the judgment in question). As stated above, the evidence was well evaluated and the findings are correct. That being the case, I reject the 7th and 8th grounds too.

To that end, the entire appeal is devoid of merits and the same is dismissed with costs. The decision and orders of the trial tribunal are upheld accordingly.

Costs to follow the event.




T. N. MWENEGOHA
JUDGE
29/09/2022