

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

LAND APPEAL NO. 138 OF 2021

(Originating from the Judgment and Decree of the District Land and Housing Tribunal for Ilala at Mwalimu House 6th Floor, Land Application No. 190 of 2017)

ASMA SHABANI MKANGO (Administrator for the deceased
Estate of late **SULTAN ABDALLAH PAZI**..... **APPELLANT**

VERSUS

LUGANDO AUGUSTINO KAMEL**RESPONDENT**

J U D G M E N T

Date of last Order:29/07/2022

Date of Judgment:15/09/2022

T. N. MWENEGOHA, J.

Appellant is the Administrator Estate of the late Sultan Abdallah Pazi who was the respondent in Land Application No. 190 of 2017 at the District Land and Housing Tribunal for Ilala (Tribunal).

In that Application the respondent herein claimed among other, order that the appellant herein be evicted at the premises and his house be demolished. The Tribunal was convinced with the respondent's herein evidence and granted the Application as prayed.

Dissatisfied with the said decision the Appellant preferred this Application with the following ground:-

- 1. That, the trial Tribunal erred in Law and fact by deciding the matter in favour of the Respondent without ordering joinder of the Ministry of Land and Attorney General as the necessary party to the case;**
- 2. The trial Tribunal erred in Law and fact by stating that the Appellant never bring or even tender any document to prove he purchased the disputed land from Seleman Mfingawafigo while the same was tendered as Annexure "A";**
- 3. That the trial Tribunal erred in Law and fact for failing to realize that the Appellant's was the first one to purchase and occupy the dispute land before the Respondent;**
- 4. That, the trial Tribunal erred in Law and fact in determine the dispute in favour of the Respondent without properly evaluating the evidence adduced by the Appellant.**

He therefore prayed for the following reliefs:-

- a. That this Appeal be allowed;**
- b. That the decision of the trial Tribunal be quashed;**
- c. That the Appellant be declared Lawful owner of the disputed land;**
- d. Any other relief(s) this Honourable Court may deem fit for the interest of justice.**

The respondent replied to the Memorandum of Appeal where he prayed for this Appeal be dismissed in its entirety.

The Appeal was disposed by way of written submissions. Appellant's submission was drawn in Gratis by Legal and Human Rights Centre while the respondent submission was indicated to be drawn by himself. Both submissions have been read and they will be reflected in my analysis.

Having gone through submission of both parties, I will determine each ground of Appeal as submitted.

The first ground of Appeal was that the Tribunal erred in Law and fact by deciding the matter in favour of the Respondent without ordering joinder of the Ministry of Land and the Attorney General as the necessary part to the case. That, the appellant blamed the acquisition and transfer of his land to the respondent herein, he argued therefore that the respondent herein was to join the Ministry of Land and Attorney General as the necessary party.

Having gone through the record of the Tribunal, I have noted that this issue has never been raised anywhere in the Tribunal, thus it is as good as an afterthought.

In addition to the above the records indicates that the appellant herein received compensation after the suit plot was allocated to the respondent. Therefore, I see there was no need of the Ministry of Land and Attorney General to be joined as the necessary part. After all the respondent had no claim against them. A person who files a claim has a room to choose who to sue taking into account the necessity to join the party in a suit. This ground has no merit.

On the second ground of Appeal the appellant argued that the tribunal erred in law and fact by stating that the appellant never brought or tendered any document to prove he purchased the disputed land from the vendor one Seleman Mfungafigo. The Appellant alleged that he tendered the sale agreement but unfortunately the same was not recorded at all. In reply respondent joined hand with the Tribunal that the appellant did not tender a sale agreement.

I have gone through the record of this Appeal it is clearly shown that the appellant had nothing to prove his ownership; with that in the record and lack of such alleged sale agreement the allegations from the appellant cannot be said to be true.

In addition, I noted from the record that there was no problem with the fact that the appellant was residing in the land way back before the respondent herein; that was an undisputed fact. The issue was that the appellant's land was acquired and allocated to the respondent herein.

On the third ground of Appeal the appellant provided that the Tribunal erred in law and fact for failing to realize that the appellant was the first one to purchase and occupy the disputed land before the respondent.

The appellant's allegation was that as the appellant was the first occupier of the disputed land, the respondent cannot claim the suit land. He cited the case of **Mbaraka Paul vs. Mgaya Paul & Others**, which held that:

"It is trite law that whenever there is a double allocation of land, consideration has to be given to the person who was first allocated the

land in dispute unless there is sufficient cogent and qualitatively good version of evidence to the contrary”.

I am in agreement with the principal of law that where there is double allocation the first person to be allocated need to be considered as the owner. However, the particulars of the case at hand are different and the position of the law highlighted above cannot apply. It is presented fact that the appellant owned the land earlier in 1999 which he purchased from Seleman Mfungafigo although no proof tendered. However, his land was acquired by the government and then allocated to the present respondent. There is no double allocation in the case at hand. Thus, this ground of Appeal has no merits.

The fourth ground of Appeal is that the Tribunal erred in law and fact in determining the dispute in favour of the respondent without properly evaluating the evidence adduced by the late Sultan Abdallah Pazi. In this ground the appellant see that the Tribunal had to give importance to testimony adduced by DW2 who was the presiding Chairman.

This ground will not taken much of my time as it is has been indicated in the proceedings the appellant herein presented his witness who was DW2. They also alleged that the appellant's land has been surveyed by Ministry of Lands whereby they were supposed to compensate him as exhibit D1 and D2. On the other hand, the respondent herein testified to have been allocated the suit land by the government the and that the appellant herein has been compensated. The evidence was not objected at the trial Tribunal.

Therefore, the trial Tribunal had nothing to do other than measure the evidence and favour the one with heavier evidence.

Therefore, I find that the Tribunal evaluated evidence that was placed before it.

Having address all the grounds as above, I find that the appeal lacks merit.

The Appeal is dismissed with costs.

It is so ordered.



T. N. MWENEGOHA

JUDGE

15/09/2022