

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

**MISCELLANEOUS LAND CASE APPEAL NO.48 OF 2022**

*(From Appeal Judgment of District Land and Housing Tribunal for Kinondoni, in Land Case Appeal No.51 of 2021, originating from the Ward Tribunal of Hananasifu Ward, in Application No.33 of 2020)*

**ABDALLAH MAKWAYA.....APPELLANT**

**VERSUS**

**FATUMA IDD SALEHE.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 09.11.2022*

*Date of Ruling: 25.11.2022*

**T.N. MWENEGOHA J.**

This appeal was filed based on the following grounds; -

1. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact in holding that, the respondent is the owner of the suit land without any sufficient proof to that effect.
2. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact for ignoring the defects of past land transactions on the disputed land.
3. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact for considering one part of the appellant's testimony and leaving the other part of the said testimony.
4. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact in siding with the opinion of Mzee Murusuri who

- opined on the existence of transfer of the suit land while mzee Boyi had no good title over the said land.
5. That, the District Land and Housing Tribunal for Kinondoni erred in law and in holding that the appellant did nothing after being aware on the defects in the map while to date the land in dispute is in offer status because of such defects.
  6. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact in disregarding the testimony of the sister of Omary Mwakibua who testified that his brother was just a mere possessor not the owner.
  7. That, the District Land and Housing Tribunal for Kinondoni erred in law and in fact in deciding in favor of the respondent for reasons that the land in dispute is part of Plot 258.

The appeal was heard by way of written submissions. Both parties appeared in person.

Submitting on the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds together, the appellant insisted that, the alleged early owner of the suit land one Omary Mwakibua was a mere possessor. He was not the owner of the land in dispute; hence he had no better title to pass the land to the respondent. There is no evidence to prove his ownership over the said land. Therefore, the learned chairperson was not right to rely on the opinion of assessors and uphold the decision of Hananasifu Ward Tribunal. He went on to submit on the 3<sup>rd</sup> and 6<sup>th</sup> ground that, the 1<sup>st</sup> appellate tribunal did not put any weight of testimony of the appellant and his witnesses. This is contrary to what the law says as it is the duty of the courts to consider all evidence before

it as stated in **Shaban Adam Mwajulu and Baraka Msafiri Mwakapala versus Republic, High Court of Tanzania, Criminal Appeal No. 131 of 2019 (unreported)**.

On the last ground, it was submitted that, there were irregularities during the survey that was made on the disputed land owned by the respondent. The 1<sup>st</sup> appellate tribunal did not make any follow up to discover the said defects before deciding in favour of the respondent.

In reply, the respondent maintained that, the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> grounds are devoid of merits. There was a valid sale agreement between Mzee Omary and Mzee Boyi, witnessed by Mr. Ngoma Boy who also appeared to testify at the trial tribunal. Therefore, both tribunals were right to decide in favour of the respondent. On the 3<sup>rd</sup> and 6<sup>th</sup> grounds, it was the submissions of the respondent that, the seller, Omary Mwakibuja has a good title, capable of passing the same to the respondent. On the 7<sup>th</sup> ground it was contented that, the survey was valid, the seller had a valid certificate of title therefore the sale was also valid. She cited the case of **Hemed Said versus Mohamed Mbilu (1984) TLR 113**.

In rejoinder, the appellant reiterated his submissions in chief.

I have considered the submissions of both parties for and against the appeal. I also went through the records from both tribunals. The issue for determination is whether the appeal has merits or not. In my discussion, I will consolidate all seven grounds of appeal and determine them together. Basically, when you look on all these grounds, the focus of the appellant is on the evaluation of evidence. He is not satisfied with the way

the trial tribunal and the 1<sup>st</sup> appellate tribunal analysed the evidence on records and reached the decision against him.

On my part, after going through the records especially from the trial tribunal, the appellant has been recorded acknowledging that before the sale of the suit property, he was consulted by parties(seller and buyer) see page 6 of the typed judgment of Hananasifu Ward tribunal. He didn't object the transaction, though he had reservation as to the survey of the said land. If he was against it, he had an interest on the said land, he could have prevented the said sale from happening until his is sure that his claims in that particular land have been settled. If he waived this right, he cannot come afterwards and challenge the legality of the said sale, that the seller had no capacity and the survey was illegal. These are new facts of which this court cannot deal with at this stage. In my opinion, the trial Ward Tribunal was right to decide in favour of the respondent based on the weight of the evidence adduced by parties before. So is the 1<sup>st</sup> appellate tribunal which upheld the decision of the trial tribunal. I say so because the rule is clear that, parties in a dispute(case) cannot tie, the one whose evidence is heavier than the other must win, see **Hemed Said versus Mohamed Mbilu**. On that basis, I find all 7 grounds of this appeal to be devoid of merits and reject them accordingly.

In the end, the appeal is dismissed. No order as to costs.



  
T.N. MWENEGOHA

JUDGE

25/11/2022