

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

**MISC. LAND APPEAL NO. 65 OF 2020**

*(Originating from the decision of the District Land and Housing Tribunal for Ilala in  
Land Application No. 294 of 2015)*

**SHAFIKI ALLY.....APPELLANT**

**VERSUS**

**MARTHA SAMWEL MPULULE** (Administratrix of the  
Late **HERONMUS DAUD**) .....**RESPONDENT**

**J U D G M E N T**

*Date of last Order:06/12/2021*

*Date of Judgment:18/02/2022*

**T. N. MWENEGOHA, J.**

The appellant being aggrieved by the decision of the District Land and Housing Tribunal for Ilala in Land Application No. 294 of 2015, delivered on the 23<sup>rd</sup> October, 2017 decided to appeal before this court on the following grounds;

1. That, the trial chairperson erred in law and in facts by breaching a principle of burden of proof by declaring the respondent owner of the suit property for reason that the appellant failed to prove good title of ownership of the suit property;
2. That the trial chairperson erred in law and facts for failure to evaluate and examine the testimonies of witness of the

respondent PW2 which prove that the late husband of the Applicant during his life time sold the suit property.

3. That, the chairperson erred in law and facts by declaring the respondent ownership of the suit property based on the insufficient and questionable evidence adduced by the respondent and her witnesses
4. That, the trial chairperson erred in law and facts for failure to note that the seller was necessary party to be joined as 2<sup>nd</sup> Respondent before the disposal of the application;
5. That, the trial chairperson erred in law and facts for failure to note that the respondent claims did not cover or concern the appellant as per the sale agreement of the annexure D-2 tendered before the Tribunal.

Wherefore, it is the appellant's prayer that, the appeal be allowed, the appellant be declared as a rightful and legal owner of the land in dispute, costs of this appeal and any other relief the court may deem just, fit and equitable to grant.

During the hearing of this appeal both parties appeared in person and unrepresented.

Submitting in support of his appeal, the appellant submitted that on the 2<sup>nd</sup> July 2006 he purchased the suit land from one Abdallah Hassan. That he peaceful enjoyed his property until 2010 when the dispute arose, after the respondent started to claim ownership of the suit property. He further submitted that before the trial Tribunal he called the following witnesses, Abdalla Hassan, Yunusu Salehe Kimweri, George Mashillano and Moses

Kakwira to testify in his favor. The appellant continued to submit that Abdallah Hassan testified before the trial Tribunal that they (with his wife) purchased the suit property from Yunus Salehe Kimweri and later decided to sell it to the appellant.

Mr. Yunus Salehe Kimweri testified that he never owned the suit land, that he was a mere representative of the really owner one George Mashillano. When he sold the suit land to the wife of Mr. Abdallah Hassan, he was representing Mr. George Mashillano. That, Mr. Mashillano testified that he purchased the suit land from the respondent's husband, Hermons Daudi Magubika.

He further submitted that Mr. Moses Kakwira testified by ~~introduced~~<sup>introducing</sup> himself as the neighbor of the appellant. He further testified that he is one among the people who purchased land plots from the respondent's husband, including George Mashillano. The appellant further submitted that Mr. Kakwira tendered his sale agreement which revealed that George Mashillano was his neighbor on the west side, Shabani Chakusaga on the East side, Taraji on the south side and on the north, there is a road. That, Mr. Kakwira submitted that the sale agreement was entered before *Mjumbe wa shina namba 7* in the 2003.

In reply the respondent disputed all grounds of appeal and added that the sale agreement tendered is invalid as it was entered without her consent, that as long as the suit land was a matrimonial property the husband was supposed to seek her consent before selling the suit property.

The respondent added that she only signed the sale agreement that she consented to and Mr. Kakwira's sale agreement is not among those sale agreements.

Having gone through the parties' submissions and the records of the trial Tribunal the main issue for determination is whether the appeal at hand has merit.

Tracing the root of ownership from the late Heronmus Daudi Magubika. The appellant, submitted that he purchased the suit land from Abdallah Hassan and that Abdallah Hassan purchased the suit land from Yunus Salehe. Before the trial Tribunal Yunus Salehe testified that, when he was selling the suit land to Mwazani Athuman he was representing the owner, one George Mashillano. The sale agreements between the appellant and Mr. Abdalla Hassan, and that between Mr. Yunus Salehe and Mwazani Athumani were tendered before the trial Tribunal. Mr. Yunus Salehe told the trial Tribunal that it is George Mashillano who purchased the land in dispute from the respondent's husband.

In reply, the respondent objected the appeal, and submitted that her late husband never vended the land in dispute to the person known as George Mashillano, and that Moses Kakwira's sale agreement tendered before the trial Tribunal is invalid as it was also entered without her consent.

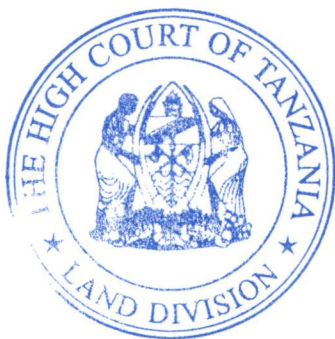
Passing through the records of the trial Tribunal I have discovered that Mr. Yunus Seleman when selling the land in dispute, acted as the representative of George Mashillano. Mr. Mshillano authorized Mr. Yunus to represent him since Mr. George Mashillano was required to travel outside the country for the military activities therefore, Mr. Mashillano did not appear before the trial Tribunal to testify regarding his ownership to the suit land.

The court finds that George Mashillano was a necessary party as he was the owner before the suit land was purchased by the appellant. He purchased the land in dispute from the respondent's husband therefore he had to prove the passing of title. Without him in court there is no evidence to validate sale to the subsequent purchasers of the suit land. Hence, he was a necessary party. The court note that he was a soldier on duty outside the country, unknowing of the litigation. So, it is fair he should be heard. For that reason, the matter is remitted back to the trial Tribunal for the chairman to summon a key witness George Mashillano to testify, thereafter, a new judgment has to be composed.

Henceforth, the appeal is allowed on the grounds other than those stated in the memorandum of appeal. Regarding to the nature of the case there shall be no orders as to costs.

**It is so ordered.**

Dated at Dar es salaam this **18<sup>th</sup>** day of **February, 2022.**



  
**T. N. MWENEGOHA**  
**JUDGE**