

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

**LAND APPEAL NO. 259 OF 2021**

*(Arising from judgment and decree of the District Land and Housing Tribunal for  
Kinondoni District at Mwananyamala in Land Application No. 389 of 2015)*

**IMELDA TILIA ..... 1<sup>ST</sup> APPELLANT**

**DENIS GEOFFREY TILIA ..... 2<sup>ND</sup> APPELLANT**

**VERSUS**

**MANGAA MDANGA DACHI ..... RESPONDENT**

**JUDGMENT**

*21/4/2022 & 27/4/2022*

**A. MSAFIRI, J**

The appellants Imelda Tilia and Denis Geoffrey Tilia were the applicants in Application No. 389 of 2015. They have instituted the said Application before the District Land and Housing Tribunal for Kinondoni at Mwananyamala. (herein as trial Tribunal).

In their claims at the trial Tribunal, they stated that the respondent has trespassed into a piece of land which is located at Kimara Stop Over area, off Morogoro Road, Dar es Salaam (herein as suit premises). They claimed that the suit premises is a matrimonial property, and the respondent is in the process of preparing ownership documents for the said piece of land without consent or prior knowledge of the applicants.

On his part, the respondent vehemently denied the claims by the applicants and put them to strict proof. He contended that he is the owner of the suit premises having bought it from the original owner Mr. Ignas Tilia Reginald (now deceased) in 2005.

After the trial, the District Tribunal decided in favour of the respondent. The appellants were aggrieved and lodged this appeal basing on four grounds of appeal which are;

- 1. That, the Tribunal Chairperson erred in law and in fact by declaring the Respondent to be rightful owner of the disputed piece located at Kimara Stop over within Ubungo District.*
- 2. That, the Tribunal Chairperson erred in law and fact by not considering the stronger evidence adduced by the appellant during the trial in Land Application No. 389 of 2017.*
- 3. That, the Chairperson of the District land and Housing Tribunal erred in law and in fact by relying on and adopting weak, untrue, unrealistic and uncorroborated documentary and oral evidence adduced by the respondent during the trial.*
- 4. That the Chairperson of the District Land and Housing Tribunal erred in law and in fact by refusing to pay a visit at the locus in quo to get the best evidence as earlier scheduled by another chairman.*

By leave of the Court, the appeal was argued by way of written submissions. The appellants' written submissions in chief and rejoinder were drawn and filed by Daniel Lisanga, advocate for the appellants, while the respondent's reply was drawn and filed by Haider Mwinyimvua,

advocate. I have considered the submissions adduced by both parties alongside the cited authorities and I thank the counsel for their efforts and energy. I need not reproduce all of what was submitted as the same are part of the Court records.

Having said that, I will go to the determination of this appeal to see whether it is meritorious. My determination will focus on the grounds of appeal raised by the appellant and the evidence adduced during the trial by both parties.

On the 1<sup>st</sup> ground of appeal, the appellants claims that the Tribunal Chairperson erred by declaring the respondent to be the rightful owner of the disputed piece located at Kimara Stop over within Ubungo District.

In his submission, counsel for the appellants stated that, the 1<sup>st</sup> appellant had clearly said that the piece of land which is in dispute forms part of the farm which she possessed since 1975. That she tendered the sale agreement of the said land in dispute as Exhibit P1, which was not challenged by the respondent.

Mr. Lisanga stated that, the trial Tribunal has wrongly entered judgment in favour of the respondent who is a trespasser. That, the admitted Exhibit D1 is defective and unrealistic. That the sale agreement Exhibit D1 was found with short falls such as; the seller was reported a deceased, but the fact that there was a need for legal representative to be summoned and testify on whether the seller was the owner of the piece of land was ignored by the trial Tribunal.

Mr. Lisanga, argued that, the purported sale agreement Exhibit D1 did not disclose the name of neighbours.

Mr. Mwinyimvua, counsel for the respondent responding against the 1<sup>st</sup> ground, stated that, the trial Chairperson was right to declare the respondent the owner of suit premises. He said that, the appellants have failed to prove the fact that the area that was alleged to be given to Ignas Tilia (the seller of land in dispute to the respondent) by the 1<sup>st</sup> appellant and her husband Sabinus Tilia is not the same as the area in dispute. That, the appellants allege that Ignas Tilia sold the land to Baba Jack, however they failed to bring that Baba Jack to prove their allegation. Further, the appellants did not produce any document of the purported sale of land from Ignas Tilia to Baba Jack.

Mr. Mwinyimvua, stated further that the respondent produced Exhibit D1 which was supported by one witness (DW2) to the purchase of the land in dispute, while none of the witnesses to Exhibit P1 were produced before the Tribunal to testify on the farm which was alleged to be bought in 1975. He submitted that the appellants failed to prove their case and discharge their burden of proof.

During the trial, the appellant testifying as PW1, stated that the suit property is part of her farm which she bought with her husband, in 1975. That at that time the area was bush land. She named the persons who were present during the sale agreement to be John Mtuitama, Ignas Tilia and John Makoko. She tendered the sale agreement as Exhibit P1.

She stated that, she and her husband sold part of the said farm to other people. She stated further that Ignas Tilia was her brother in law. That he has already passed away, but when he was alive, she (PW1) and her husband gave him a piece of land to construct a house which he constructed. That, Ignas Tilia sold his land to baba Jack who constructed a house. She said that the suit land is nearby the plot which they gave Ignas, and Ignas sold it before his death. She said that in 2017, the people invaded in the suit land and said they were sent by the respondent.

The 2<sup>nd</sup> appellant testified as PW2. He stated that, Ignas Tilia was the young brother of Sabinus Tilia, the husband of the 1<sup>st</sup> appellant. He said that Ignas was given a piece of land by his brother Sabinus which he sold to someone who constructed a house. That Ignas sold his land to baba Jack. He said further that the suit premises belong to PW1 who is his mother. He stated that he is the administrator of the estate of the late Sabinus, his father. He said that the respondent is a trespasser to the suit land.

The respondent testified as DW1. He said that on 16/01/2005 on, he bought a piece of land situated at Kimara Stop over from Ignas Tilia Reginard. He said further that the neighbours on the piece of land were Moses Mnape, Ramadhani Said, and the child of the 1<sup>st</sup> appellant who is now deceased. He tendered the sale agreement which as Exhibit D1.

He stated further that in 2007, there was a plan to survey the area, and in 2015 the survey plan commenced. That he and other people went at

Street Government to introduce themselves as owners of the area to be surveyed. He tendered the letter from the Street Government as Exhibit D3. That in 2015 December, the appellants summoned him and asked him how he got the land where he told them he bought it from Ignas Tilia Reginald and show them all the documents. That Ignas Tilia got the land he sold him from his brother Mzee Tilia (the husband of the 1<sup>st</sup> appellant).

DW2, Jafari Athumani Kindamba, testified that he was a witness when Ignas Tilia was selling the land in dispute to the respondent. He said that the sale took place at the house of Mzee Tilia (the 1<sup>st</sup> appellant's husband).

From the adduced evidenced, I have gathered that;

- i). There is no dispute that Sabinus Tilia and his wife the 1<sup>st</sup> appellant owned a large farm land which was purportedly bought in 1975.
- ii). That, the 1<sup>st</sup> appellant and her husband sold some parts of that farm land to various people.
- iii). That, the 1<sup>st</sup> appellant and her husband gave a piece of that land farm land to one Ignas Tilia who also sold it later to someone.
- iv). There is a dispute on whether the piece of land which was given to Ignas Tilia by the 1<sup>st</sup> appellant's is the same suit land which the respondent claims he bought from Ignas Tilia.

Having gone through the evidence, oral and documentary, I am satisfied with the findings of the trial Chairperson that, the respondent is the lawful owner of the land in dispute. I say so because the evidence

adduced by the respondent heavily supported the fact that, that piece of land in dispute is the land which was owned by the late Ignas Tilia Reginald, and is the same which the respondent bought from the said Ignas. All the available evidence points that the late Ignas Tilia Reginald owned a piece of land from the large farm which was owned by the 1<sup>st</sup> appellant and her late husband. This was confirmed by PW1, PW2, DW1, and DW2. They said that Ignas Tilia was given a piece of land. PW1, and PW2 stated that Ignas Tilia sold his piece of land to one Baba Jacky. They argued that, the suit land claimed by the respondent is not the piece of land given to Ignas Tilia. PW3 also admitted that Ignas sold that piece of land to another person whom he did not name.

There is no dispute between the parties to the suit that Ignas Tilia sold the piece of land given to him, the dispute is was that piece of land sold to the respondent?

I have noted that, the piece of land given to Ignas Tilia measures the same size with a suit plot which the respondent claims to have bought from Ignas. I have noted also that, the appellants did not bring that Baba Jacky to give evidence on the claims that he bought the piece of land from Ignas Tilia. Since the appellants have to bring that Baba Jacky who purportedly bought the land, then the respondent established that he was the one who bought the land from Ignas Tilia. This is evidenced by Exhibit D1 which shows that Ignas Tilia sold that piece of land to the respondent. Among the witnesses was Jaffer Athumani who has testified as DW2 and confirmed to that fact. Exhibit D1 shows that the piece of land was located at Kimara stop over.

In the circumstances, I am of the view that the trial Chairperson did not error when he found that the respondent was the owner of the land in dispute. The appellants' counsel have raised the issue of the need to have there been a legal representative of the deceased Ignas Tilia to prove that the late Ignas owned the land. However, I find that to be a new issue raised at the appeal level since the records does not show whether this issue was raised during the trial. Even the counsel for the appellants did not say whether this issue was raised before the trial Tribunal and was ignored. I find the 1<sup>st</sup> ground of appeal to have no merit and I dismiss it.

I will consolidate the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal which states that the trial Chairperson erred when he failed to consider the stronger evidence adduced by the appellants and relied on weak, untrue, and uncorroborated evidence of the respondent. I have already gone through the evidence adduced by both sides to the matter during the trial.

I have analysed the evidence by the appellants and found that, they are disputing that, the late Ignas Tilia did not sell a piece of his land to the respondent but he sold the same to one Baba Jacky. I believe that, in proving their case, it was important for the appellants to bring the said Baba Jacky to prove the claims that the land was sold to him.

According to the appellants, the land in dispute which they claim to be trespassed by the respondent is different from the land which was owned by Ignas Tilia. However, their evidence shows that, Ignas Tilia



was given a piece of land, a part of the farm which was owned by the 1<sup>st</sup> appellant and her late husband and which is located at Kimara Stop Over.

The land which was sold to the respondent is also located at Kamara Stop Over.

The respondent produced exhibit D1 which shows that Ignas Tilia sold him the land. It was also in his evidence that, Ignas Tilia told him that the land was given to him by his brother Mzee Tilia. This piece of evidence tally with the evidence of the appellants that part of the farm land was sold and a piece was given to Ignas Tilia.

It was the duty of the appellants to establish their case that the land purported to be sold by Ignas Tilia is not the land in dispute. From the Court records particularly the evidence adduced during the trial, the evidence of the respondent was believable as he produced Exhibit D1 which was corroborated by DW2. And since the piece of land was given to Ignas Tilia as per evidence, he did not need seek consent to sell it nor did the respondent needed consent of the appellants to buy it.

It is a trite law that he who alleges must prove. This is enshrined in our law of evidence as per the provisions of sections 110,111 and 112 of the Evidence Act, Cap 6 R.E 2019.

I therefore entirely agree with the findings of the trial Chairperson at page 5 of the impugned judgment that the appellants failed to prove

their claims that, the land in dispute did not belong to Ignas Tilia. I also dismiss the 2<sup>nd</sup> and 3<sup>rd</sup> grounds of appeal.

On the 4<sup>th</sup> ground, it was stated that the trial Chairperson erred by refusing to pay a visit at the locus in quo as earlier scheduled by another Chairman.

I think this need not take much time. It has been said over and again in numerous decisions by the Court of Appeal that the visit to the locus in quo is the discretion of the Court pending on the case.

In the case of Sikuzani Said Magambo & another vs. Mohamed Roble, Civil Appeal No. 197 of 2018, CAT at Dodoma (unreported), the Court of Appeal observed that;

*"..... We are mindful of the fact that there is no law which forcefully and mandatorily requires the Court or tribunal to conduct visit at the locus in quo, as the same is done at the discretion of the Court or the tribunal particularly when it is necessary to verify evidence adduced by the parties during the trial".*

Relying on the hereinabove principle, I am of the view that the trial Chairperson was satisfied by the evidence adduced by parties and went on to determine the case basing on that evidence. I also find this 4<sup>th</sup> ground of appeal to have no basis and I dismiss it.

In the upshot, I find the appeal to have no merit and I dismiss it with costs. Right of appeal explained.

It is so ordered.

Dated at Dar es Salaam this 27<sup>th</sup> April, 2022.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal line.

**A. MSAFIRI,  
JUDGE**