

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 43 OF 2022

(Arising from Land Application No. 313 of 2015 from the District
Land and Housing Tribunal for Ilala)

GEOFFREY E. MKONYI APPELLANT

VERSUS

FATUMA SHABAN 1ST RESPONDENT

FREDSON GEOFFREY MKONYI 2ND RESPONDENT

FLAMINGO AUCTION MART CO. LTD 3RD RESPONDENT

JUDGMENT

Date of Last order: 07.06.2022

Date of Judgment: 10.06.2022

A.Z.MGEYEKWA, J

At the centre of controversy between the parties to this appeal a landed property. The decision from which this appeal stems is the judgment of

the District Land and Housing Tribunal for Ilala in Land Application No. 313 of 2015.

The material background facts to the dispute are not difficult to comprehend. They go thus: the appellant who is the biological father of the 2nd respondent lodged a complaint that the respondents have taken his house located in Plot No. 222 Block 4 Ugombolwa at Tabata Segerea within Ilala Municipality. In his reliefs he urged the tribunal to declare him the lawful of the suit landed premises. The 1st respondent complaint that the suit landed property is a matrimonial asset and the same was subjected to division of properties among the 1st respondent and the 2nd respondent. The 2nd respondent conceded to the application. The tribunal determined the matter and ended holding that the court declared that the suit landed property is a matrimonial asset. Therefore, the trial tribunal hold the same and dismissed the suit.

Believing the decision of the District Land and Housing Tribunal for Ilala was not correct, the appellant lodged a petition of appeal containing six grounds of appeal as follows:-

1. *That the trial tribunal erred in law and fact by failing to determine the issue of ownership of the house located on the Plot No. 222 Block 4 Ugombolwa – Tabata Segerea, Ilala Dar es Salaam, while it is the tribunal vested with jurisdiction to determine the ownership.*
2. *That the trial tribunal grossly erred in law and facts by relying as evidence in determining the ownership based on the un-documented, unlawful, and unregistered purported will of the 2nd Respondent.*
3. *That the trial tribunal grossly erred in law by determining that since the matrimonial cause between the 1st and 2nd Respondent determined the house in dispute is the matrimonial property hence the trial tribunal ceased with jurisdiction to determine the ownership of the disputed house, while the Appellant firstly filed objection proceeding in the matrimonial cause and subsequently was entitled to be determined the status of ownership of the disputed property.*
4. *That the trial tribunal was grossly erred in law and facts by not relying the dully registered title deed as the proof of ownership simply because the title deed was issued after the commencement of the matrimonial cause between the 1st and 2nd Respondents, without considering the length of the process of obtaining the same, and to the fact that there*

was no objections from any person in the procurement and the registration of the said title deed.

- 5. That the trial tribunal grossly erred in law and facts in failure to determine the ownership of the property in dispute in favour of the Appellant basing on the grounds that only the son of the Appellant witnessed the sale agreement, and the seller of the property was not brought in Court for testifying the ownership.*
- 6. That the trial tribunal grossly erred in law and facts by determining the ownership of the disputed property to be the matrimonial property of 1st and 2nd Respondents by merely relying on the evidence of the unregistered sale agreement tendered by the 1st Respondent, as well as to the tenants' agreements.*

When the matter was called for hearing before this court on 11th May, 2022 the appellant enlisted the legal service of Mr. Ignelt Milanzi, and the 1st and 2nd respondents appeared in person, unrepresented. The matter proceeded *ex parte* against the 3rd respondent who was duly been served through substitution of service to appear but did not show appearance. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant

filed his submission in chief on 23rd May, 2022, the respondents to file a reply on 1st June, 2022. The appellant waived his right to file a rejoinder.

The appellant in his written submission started with a brief background of the facts which led to the instant appeal which I am not going to reproduce in this appeal. The appellant opted to combine the first and third grounds, the second and sixth grounds and argue them together and opted to argue the fourth ground separately.

On his first and third grounds, the learned counsel for the appellant complained that the appellant lodged an objection proceedings at the District Land and Housing Tribunal challenging the matrimonial Cause No. 48 of 2012 to include the property in dispute as a matrimonial. The application collapsed hence the appellant lodged the present appeal. Mr. Milanzi argued that at the District Land and Housing Tribunal for Ilala the appellant lodged a claim of ownership of the suit landed premise, trusting the courts and tribunals were in position to determine the issue of ownership. Supporting his submission he referred this court to section 167 (1) of the Land Act, Cap.113 [R.E 2019]. He claimed that the District land

and Housing Tribunal Chairperson was not correct to rule out that the suit landed property was a matrimonial asset.

As to the second and sixth grounds, Mr. Milanzi contended that the trial tribunal admitted the exhibit D1 but unfortunately in analysing the evidence on record, the Chairperson did not consider the said exhibit. He claimed that the tribunal used collaboration evidence in reaching its decision. He went on to argue that the trial tribunal admitted exhibit D3 which was the tenancy agreement as a proof of ownership of the suit landed property between the 1st and 2nd respondent while the did not prove ownership of the disputed premises.

Arguing for the fourth ground, Mr. Milanzi argued that the trial tribunal escaped its primary duty of determining who the lawful owner of the suit landed property. He claimed that the appellant tendered a Title Deed which was registered and related to the Plot No. 222 Block Y Ugombolwa Street, Segerea. He argued that the process of obtaining a Title Deed commenced way back in 2001 when the property was purchased. Fortifying his submission he referred this court to exhibit P2 and P3. He further stated that the suit landed property was obtained before the

marriage disputes, thus, the process was initiated by the appellant while the two were residing in the suit landed property.

Submitting on the fifth ground, the learned counsel for the appellant submitted that the trial tribunal erred in law and facts in failing to determine the issue of ownership of the suit landed property for the mere reason that the appellant' son was the only witness who witnessed the sale agreement and the vendor was not called to testify. He claimed that PW3 who was involved in procurement of the Title Deed was called to testify.

On the strength of the above submission, the appellant's counsel urged this court to set aside the trial tribunal decision and allow the appeal with costs.

Opposing the appeal, the 1st respondent from the outset submitted that the appeal is demerit. She began by tracing the genesis of the matter which I am not going to reproduce in this appeal. On the first and third grounds, the respondent's confutation was strenuous. The respondent came out forcefully and defended the District Land and Housing Tribunal decision as sound and reasoned. She valiantly contended that the grounds of appeal are baseless and misconceived. It was her view that

the District Land and Housing Tribunal was correct to order the suit landed property a matrimonial asset as ordered by Buguruni Primary Court in Matrimonial Cause Non 48 of 2012.

On the second and sixth grounds, the 1st respondent was brief. She contended that these grounds are baseless and lack merit. She submitted that the tribunal analysed and determined the ownership of the suit landed house and analysed the evidence adduced by parties.

As to the fourth and fifth grounds, it was the 1st respondent submission that the District Land and Housing rightly decided the matter and found that the purported Title Deed was a fabricated document, therefore, the Chairperson was not in position to decide on the appellant's favour. The 1st respondent claimed that the appellant was required to proof his claims at the Primary Court in Matrimonial Cause No. 48 of 2012.

In conclusion, the appellant urged this court to dismiss the appeal for lack of merits with costs.

Having summarized the submissions and arguments by both learned counsels, I am now in the position to determine the grounds of appeal

before me. In my determination, I will start with the first ground since the same can dispose of the appeal.

In the light of pleadings filed by both parties, the following issues were framed to guide the Tribunal in determining the matter:

1. Whether the suit land is Plot No. 222 Block 'Y' Ugombolwa Street, Segerea at Tabata is a matrimonial property.

2. To what reliefs are the parties entitled to.

Reading the pleadings, the Plaintiff's claims are related to ownership of land. However, the issues for determination were not framed as required by the law. Order XIV Rule 1 (5) of the Civil Procedure Code, Cap. 33 [R.E 2019] provides that:-

*" (5) At the first hearing of the suit the court shall, after reading the plaint and the written statements, **if any, and after such examination of the parties as may appear necessary, ascertain upon what material proposition of fact or law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.**" [Emphasis added].*

Applying the above provision of law, the trial tribunal was required to frame and record relevant issues for determination. It is worth noting that failure to frame the essential issue (s) may lead to the wrong award. In the instant case the trial tribunal framed a matrimonial issue hence the Chairperson ended up dismissing the application without determining the issue of land ownership. I have scrutinized the District Land and Housing Tribunal's pleadings and found that the appellant's claims are related to land ownership. In Application No. 313 of 2015, specifically on paragraph 8 stated that the cause of action is related to suit landed property whereas the appellant alleged that he is the lawful owner of the suit landed property located on Plot No. 222 Block 'Y' Ugombolwa Street, Tabata Segerea, Ilala within Dar es Salaam Region. Therefore, I am not in accord with the holding of the District Land and Housing Tribunal that since the disputed before the Chairperson was a land matte. Thus, it was important for the tribunal to frame issues related to ownership of land. The omission to frame issues related to facts stipulated in the pleadings results in a failure to decide properly the point in question amounting to a failure of justice.

Therefore, I fully subscribe to the appellant's counsel submission that failure for the District Land and Housing Tribunal to frame issues related

to facts stipulated in the pleadings rendered the trial tribunal to determine the case on the matter which were not pleaded by parties. In the case of **Stanslaus Rugaba Kasusura v The Attorney General and Phares Kabuye** (1982) TLR 338, the Court of Appeal of Tanzania nullified the judgment and proceedings of the High Court for failure to frame issues for determination. The above finding sufficiently disposes of the appeal. Consideration of other complaints raised will not affect the above finding. I accordingly refrain from delving on them.

Consequently, I quash the tribunal proceedings and remit the case file to the District Land and Housing Tribunal for Ilala before another Chairman to start afresh. The parties and tribunal to frame relevant issues for determination and the tribunal to conduct hearing and compose a new Judgment. The appeal is allowed without costs.

Order accordingly.

DATED at Dar es Salaam this 10th June, 2022.




A.Z MGEYEKWA

JUDGE

10.06.2022

Judgment delivered on 10th June, 2022 in the presence of Mr. Milanzi,
learned counsel for the appellant and the first respondent.




A.Z MGEYEKWA

JUDGE

10.06.2022