

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

LAND APPEAL NO. 217 OF 2021

*(Arising from Land Application No.22 of 2021 of the District Land and Housing
Tribunal for Ilala)*

**BALTAZAR NGOWI.....APPELLANT
VERSUS**

AFRICARRIERS LIMITED.....1ST RESPONDENT

JESSICA M. MOTO.....2ND RESPONDENT

YUNGI YANGI.....3RD RESPONDENT

J U D G M E N T

Date of Last Order:04.05.2022

Date of Judgment:31.05.2022

T. N. MWENEGOHA, J.

Two grounds of appeal are awaiting to be determined by this court as follows; -

- 1. That, the trial tribunal erred in law and fact by reaching into a decision in favour of the respondent without taking into consideration of the appellant's evidence and his witness.**
- 2. That, the trial tribunal erred in law and facts by delivering a judgment without showing the opinion of assessors.**

The dispute is over ownership of plots, located at Mogo Street, at Kipawa Ward, Plots Na. ILA/KPW/MOG 36/22, ILA/KPW/MOG 36/22A, ILA/KPW/MOG 36/21A, ILA/KPW/MOG 36/21 and ILA/KPW/MOG 36/17.

The appellant claims to have ownership of the suit lands as he bought them from the 3rd respondent in 2018 at a price of 5,000,000/=. The dispute was fully heard and determined in favour of the 1st respondent by the District Land and Housing Tribunal for Ilala, herein after called the trial tribunal. Aggrieved by the said decision, the appellant lodged the instant appeal.

The appeal was heard by way of written submissions. The appellant appeared in person while Advocate Ngasa Ganja represented the 1st respondent. The appeal proceeded ex-parte against the 2nd and 3rd respondents.

In his submissions in support of the appeal the appellant maintained in the 1st ground that, when one goes through the impugned decision of the trial tribunal one will agree that, the suit land has connections with someone called Mchina. That, the appellant purchased the suit land from the 3rd respondent as he was entrusted by the Ward Counselor one Kenedy at that time. That, the Chairperson of the Uwanja wa Ndege Street since 2004 never knew if the said land was owned by anyone, hence the appellant is a bonafide purchaser for value and should be protected as stated in **Halima Simba Salum vs. Ramadhan Yakub (As Administratrix of the estate of the late Ramadhan Ali Yakub and 3 Others, Land Appeal No. 115 of 2020(unreported))**. He went on to argue that, his evidence at the trial tribunal was heavier than that of the respondents. Therefore, under the rules given in **Hemed Said versus Mohamed Mbilu (1984) TLR**, were to be applied in his favour.

On the 2nd ground, it was maintained that, going through the decision of the trial tribunal, it is evident that there is nowhere the opinion of assessors have been shown. That, this is contrary to law as the assessors were not involved during the trial. That it is also against Section 24 of the Land Disputes Courts Act, Cap 216 R. E. 2019. Also, the case of **Benard Sembula versus Tabia Mbeveteta, Land Appeal No. of 2020, High Court of Tanzania at Mbeya**, which cited the case of **Tubone Mwambete vs. Mbeya City Council, Land Appeal No.25 of 2015, High of Tanzania at Mbeya**.

In reply, the 1st respondent's counsel maintained that, it was proved beyond doubt that the plots in question belonged to the 1st respondent as she purchased the same in 2009 and 2010 as evidence by exhibit D1 -D4. Also, the evidence of PW-6, Rashid Bakari also supported this fact as he was a middle man to the transaction at that material time. Therefore, based on the case of Hemed Said supra, the evidence of the 1st respondent was heavier than that of the appellant. That also, section 110 of the Evidence Act, Cap 6 R. E. 2019 favors the 1st respondent.

On the 2nd ground it was maintained that, hearing of the case was done in presence of assessors throughout the trial and they also gave their opinion during the judgment. Also, the trial chairperson elaborated as to why he departed with the opinion of the assessors as stated in the case of **Grace Fredrick Mwakipiki vs. Jackline Fredrick Mwaipiki and Another, Land Appeal No. 34 of 2019**.

In rejoinder, the appellant reiterated his submissions in chief.

Having gone through the submissions of the parties and the records at hand, the question is whether the appeal has merits.

I will start by determining the second ground of appeal that, the trial tribunal erred in law and facts by delivering a judgment without showing opinions of assessors, I went through the record of the Tribunal and found that the opinion of the assessor are included and well pinned together with the handwritten judgment of the trial chairperson. The proceedings also show that the assessors were present during the trial. Therefore, this ground lacks merits and it is rejected.

In determining the 1st ground of Appeal, I examined exhibit P4 collectively which contain the sale agreement between the appellant and one Rashid Bakari. The same is very vague. At first it seems like the said person was being paid by the appellant to provide security to the land belonging to the Chinese people. The said person was a care taker of the said land since 2004 when the said Chinese people left the area. The agreement was entered on the 18th December, 2018.

However, another document shows that, on the 8th of November, 2018, the same person sold a land to unnamed person. The agreement do not state specifically which land was being sold and to who.

However, if you go through the 1st respondent's documents, they are self-explanatory. The 1st respondent acquired the whole area in 2009 from Emmanuel Thadei Mlingi, who acted on behalf of Thadei Saronga Mlingi. The said vendor being the owner of the property in question comprising of a Residencial License No. ILA026246.

Therefore, if we invoke the balance of probability rule, the evidence of the 1st respondent was heavier than that of the appellant, hence the trial tribunal was right to decide in the favor of the 1st respondent, see **Hemed Said vs. Mohamed Mbilu**. The first ground of appeal is also rejected.

In the end the entire appeal is dismissed with no order to costs.

Right of Appeal explained.




T. N. MWENEGOHA
JUDGE
31/05/2022