

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPEAL NO.55 OF 2022

(Arising from the District Land and Housing Tribunal for Kinondoni at
Mwananyamala in Land Application No. 204 of 2020)

UNDERSON KAGISA MUTEMBEI APPELLANT

VERSUS

FLORA KAGISA MUTEMBEI RESPONDENT

JUDGMENT

Date of Last Order: 21.06.2022

Date of Judgment: 24.06.2022

A.Z.MGEYEKWA, J

This appeal stems from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Application No. 204 of 2020. The matter of controversy between the parties to this appeal is on the landed property located at Plot 71 Block 3 Hanasasifi, Kinondoni District within Dar es Salaam Region. The material background facts to the dispute are briefly as follows; the appellant filed a case at the District Land and Housing Tribunal in Land Application No. 204 of 2020. The

appellant testified to the effect that she is the lawful owner of the suit landed property, he bought it from Saidi Salum on 16th May, 1990.

On their side, the respondent refuted the appellant's claims. He claimed that the suit land belonged to his late father. To support his evidence he tendered a sale agreement, land rent receipt, and other receipts (Exh.P1). The tribunal analysed the evidence on record and found that the respondent's late father was the lawful owner. Therefore the application was dismissed.

In this appeal, the appellant has accessed the Court seeking to impugn the District Land and Housing Tribunal decision through a memorandum of appeal premised on 8 grounds of grievance and 1 additional ground, namely:-

1. *That the trial Chairperson erred in law and fact for failure to consider the weight of evidence tendered by the appellant.*
2. *That, the trial Chairman erred in law and fact by commenting that the sale agreement tendered by the appellant was a forged document.*
3. *That the tribunal Chairperson erred in law and fact by relying on his decision on unsworn evidence.*

When the appeal was placed before me for hearing on 30th May, 2022, the appellant enlisted the legal service of Mr. George Muhanga, learned counsel, and the respondent appeared in person. By the court order and consent of the parties, the appeal was argued by way of written submission, whereas, the appellant filed his submission in chief on 7th June, 2022. The respondent filed his reply on 16th June, 2022 and the appellant waived his right to file a rejoinder.

In support of the appeal, the appellant's Advocate started to narrate a brief background of the appeal which I am not going to produce in this appeal. On the first ground, the learned counsel contended that it is the appellant's contention that the tribunal failed to resolve the issue of the rightful owner of the suit's landed property. He submitted that for the right of ownership to existing one has to prove on the balance of probability that he is the lawful owner.

He went in to submit that unfortunately, the respondent failed to prove his case. He added that the appellant did not produce any documentary evidence to prove his allegations. To buttress his contention he cited the case of **Tanzania Breweries Ltd v Alloyce Muyai**, Civil Revision No.9 of 2004, and section 69 of the Evidence Act, Cap.6 he claimed that the Chairman did not compare the signatures against any other signature in other documents.

Stressing on the point of a forged document, the learned counsel for the appellant argued that the appellant tendered an original sale document which was prepared on 16th May, 1990 and witnessed by four witnesses including the Local Government Authority.

On the third ground, the appellant's counsel argued that the records of the tribunal show that DW3 did not affirm before giving her evidence which is contrary to section 4 of Oaths and Statutory Declaration Act, Cap. 34 [R.E 2019] and **Daudi Hagma v Salum Ngezi & Another**, Civil Appeal No. 313 of 2017.

On the strength of the above submission, the learned counsel for the appellant urged this court to quash and set aside the tribunal judgment and allow the appeal with costs.

In reply, the counsel for the respondent's confutation was strenuous. He came out forcefully and defended both tribunal decisions as sound and reasoned. On the first ground, the respondent submitted that during the trial the appellant brought a copy of the sale agreement which was rebutted following the anomalies which were observed and found by the trial tribunal. The respondent was guided with a case of **Tanzania Breweries** (supra). He went on to submit that the appellant did not call the vendor to testify at the tribunal nor any witness who witnessed the sale agreement. Thus it was her view that the appellant has failed to prove her

allegations. Fortifying his position he cited the case of **Hemedi Saidi v Mohamed Mbilu** (1984) TLR 113 and section 119 of the Evidence Act. Cap.6.

On the second ground, the respondent submitted that the appellant had to prove her allegations by tendering cogent evidence. She added that the Chairperson did not state that the sale agreement was forged but he had doubt about the handwriting since the sale agreement seems to bear the signature of the same person. Supporting his submission he referred this court to page 4 of the tribunal judgment. He added that the appellant proved his ownership of land on the balance of probabilities.

As to the third ground, the respondent was brief and focused. She stated that the respondent's witness testified under oath. He lamented that the appellant is trying to discredit the testimony given by DW3 who recognized him as the landlord's son. It was his submission that a party with heavier evidence wins the case. Insisting she claimed that the appellant failed to prove the validity of the sale agreement. He added that the tribunal evaluated the evidence on record and found that the respondent's evidence was heavier compared to the appellant's evidence. To support his position he cited the case of **Ally Abdallah Rajab v Sauda Abdallah Rajabu** (1994) TLR 132.

On the strength of the above submission, the learned counsel prayed for this court to dismiss the appeal and uphold the decision of the tribunal.

I have subjected the rival arguments of both learned counsels for the parties to this appeal to the strict scrutiny they deserve. However, before I embark on the grounds of appeal, let me, firstly, ask the parties to address the court whether the respondent had locus to be sued.

The learned counsel for the applicant submitted that the respondent was appointed to administer the estate of her father but unfortunately the respondent was sued in her own capacity which is not correct in the eyes of the law. The respondent had not much to say, she stated that she was appointed to administer the estate of her late father.

Back on the wagon. The record reveals that the respondent in her testimony testified to the effect that the suit land belonged to their late father. In her testimony, she testified that she was appointed to administer the estate of her late father. The appellant sued the respondent over a piece of land that was not the property of the respondent. The appellant was required legal action against the administrator of the estate of the respondent, the land which could probably be their inheritance. Had there any evidence that the suit land was bequeathed to the respondent then the respondent could be in possession.

On the contrary, the suit land at issue belonged to the respondent's late father and there are several beneficiaries over the land. In my judicial interpretation, therefore, following the death of the respondent's father, who was the owner, the disputed land is to be inherited by several heirs and the proper person to handle the land of the deceased was the administrator of the estate. I found fortification in this stance in the case **Felix Costantine v Jofrey Modesti**, Land Appeal No. 9/2010 HC Bukoba (unreported), and in the case of **Tatu Adui v Mlawa Salum & Another**, Misc. Civil Appeal No. 8 of 1990 HCT at Dar es salaam (unreported) held that:-

*".. **only administrators of the estate** who is also a personal legal representative of the deceased **can sue or be sued over the estate.***

" [Emphasis added].

Similarly, in the case **Felix Costantine v** (supra), the court observed as follows:-

*"..to be on heir of the estate creates an interest on the part of the heir, **but it doesn't give him an automatic locus standi to sue or be sued over the property of the deceased**". [Emphasis added].*

Having found that the respondent had no *locus standi*, it goes that all of the proceedings and decisions of the District Land and Housing

Tribunal are a nullity. In the same veins, no appeal could lie against nullity proceedings.

I thus found no need to dwell on the grounds of appeal. I further quash the proceedings and orders of the District Land and Housing Tribunal. Any interested party can institute a fresh suit if she/he still so wishes. I order no cost in the circumstances of this case.

Order accordingly.

Dated at Dar es Salaam this date 24th June, 2022.



Z.MGEYEKWA

JUDGE

24.06.2022

Judgment delivered on 24th June, 2022 via audio teleconferencing whereby Mr. George Muhanga, learned counsel for the appellant and respondent were remotely present.



Z.MGEYEKWA

JUDGE

24.06.2022

Right of Appeal fully explained.