

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

LAND APPEAL NO. 225 OF 2020

(Originating from the decision of the District Land and Housing Tribunal for
Mkuranga in Land Application No. 50 of 2016)

ATHUMANI MOHAMED KWANGAYA

(Administrator of the Estate of the Late

SEIF MTAMBO)APPELLANT

VERSUS

MWANAIDI OMARI MTAMBO RESPONDENT

J U D G M E N T

Date of last Order: 10/12/2021

Date of Judgment: 28/02/2022

T. N. MWENEGOHA, J.

Being aggrieved by the decision of the Mkuranga District Land and Housing Tribunal (herein after the trial Tribunal) delivered on the 7th October 2020 the appellant appealed before this court against the judgment and decree through the following grounds;

- 1. That the hon. Trial chairperson erred in law and in fact by considering exhibit D1 as a valid sale agreement.**
- 2. That the honorable trial chairperson erred in law and in fact by failing to evaluate evidence on record before the Tribunal and hence reached to a faulty decision.**

3. The hon. Trial chairperson erred in law and in fact by declaring the respondent as the lawful owner of the suit land.

Wherefore, it is the appellant's prayer that the appeal be allowed and the decree of the trial Tribunal dated 7th October, 2020 be quashed and set aside, the appellant be declared the lawful owner of the suit land, the appellant be awarded the costs of this appeal and that of the trial Tribunal and any other relief this court may deem fit and just to grant.

During the hearing of this appeal while the appellant was represented by advocate Masama Elias, the respondent appeared in person and unrepresented. By the court's order given on the 10th December, 2021, the hearing of this appeal proceeded by way of written submissions. The appellant adhered to the submission schedule, however the respondent did not do the same. It is a trite law that failure to submit written submission as scheduled amounts to non-appearance. This position has been well stated in the matter of the **Estate of the Late Peter Ksumo and In the Matter of Application for Revocation of Letter of Administration by Peter Kisumo (Misc. Land Application No. 441/2018)** that:-

"I can say the applicant failure to file his written submission as ordered by this Honorable Court is a serious noncompliance. I'm mindful with the trite law that if the parties are to act in total disregard to the Court orders, then Court business will be rendered uncertain and that will not be good for the efficient of Administration of justice. Therefore, disobedience of an order, court naturally draws sanctions".

Therefore, the Appeal proceeded *ex parte* against the respondent.

On the merit of appeal, submitting in support of the 1st ground of appeal, Mr. Elias submitted that, the sale agreement which was tendered before the trial Tribunal as exhibit D1 is void, this is due to the fact that it was neither signed by the parties nor their witnesses. To support his argument, he cited **Section 10 of the Law of Contracts Act, Cap 345 R. E. 2019.**

He submitted further that, the purported sale agreement, did not indicate the size of the land purported to have been sold to the respondent, also that the said sale agreement was authorized by village officials from Mkupuka, while it is situated in Umwe Kaskazini Village.

Submitting in support of the 2nd ground of appeal the appellant submitted that, in the trial Tribunal the appellant herein appeared in person and unrepresented, therefore, he was not aware of the procedures and substantive laws governing the principles of when to object to the tendered documents. However, that the appellant herein tried to object the validity of exhibit D1 as well as the respondent's testimonies but his objections were never recorded and the tendered exhibit D1 was admitted. He submitted further that the trial Tribunal before admitting exhibit D1 was supposed to satisfy itself on its validity. That even the witnesses (DW2 and DW3) who were called to testify in favor of the respondent denied to have witnessed the tendered exhibit.

In regard to the 3rd ground of appeal, he submitted that, after the demise of Salum Seif Mtambo, the owner of the suit land, it was placed under the care of the respondent. She was only entitled the temporary right to use it (the usufructuary rights) but not to sell the same.

Having gone through the appellant's submission the main issue for determination is whether the appeal before me has merit. In my analysis I will answer each ground of appeal as submitted

Submitting on the first that Trial Chairperson erred in law and in fact by considering exhibit D1 as a valid sale agreement. Mr. Elias contended that the Sale Agreement is void as it was not signed by the parties not witnessed.

I find it prudent to reproduce what has been tendered as sale agreement herein:-

"HALMASHAURI YA SERIKALI YA KIJJI CHA MKUPUKA

AFISA MTENDAJI WA KIJJI

KIJJI CHA MKUPUKA

SLP 68 KIBITI

1/02/1982

YAH: UTHIBITISHO WA KUUZA SHAMBA LA MIKOROSHO

Mimi salumu seif Mrambo nimeuza shamba langu la mikorosho kwa thamani ya Tshs Efu nne (4,000/=) tu amelipa zote simdai chochote. Nimemuuzia Bi. MMwanaidi Omari Mtambo,

Sahihi:-

Muuzaji:- (thumb print)

Mnunuzi:- (thumb print)

(sgd)

AFISA MTENDAJI WA KIJJI

CHA MKUPUKA

RUFJI'

It is evident, when one examine the sale agreement one find the followings. first, what was admitted as a sale agreement has a different heading and is referred as "UTHIBITISHO WA KUUZA" to mean proof of

sale not sale agreement. Second, the said exhibit did not show the location of the land or its size. Third, the said sale agreement was not witnessed by any one except the Village Executive Officer. Only the seller and buyer have put their thumb prints. This make it difficult for anyone to testify whether the said thumb print is really of the seller in absence of the witness.

If that was not enough it has been alleged in the trial Tribunal that the land in question is located at Umwe Kaskazini Village while the said alleged sale agreement has been witnessed by Village Executive Officer of Mkupukwa. In addition, DW1 during cross-examination admitted that it was not proper to prepare document of sale agreement for the land which is located in another village.

The importance of description of property has been stated in the number of cases including the case of Daniel **Dagala Kanuda (Administrator of the Estate of the late Mbalu Kushaha Buluda) vs. Masaka Ibeho and 4 Others, High Court Land Appeal No. 26 of 2015, at Tabora** (unreported) where the court held that;

"...the importance of making the detailed descriptions of the suit land in resolving land disputes cannot be emphasized. The law has been consistently underscoring that significance. The provisions of order VII rule 3 of Cap 33 for example provide for a better wording of the requirement. It guides that in claims for immovable properties, the plaint shall disclose "a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number, in my settled opinion Reg.3(2) (b) of the

GN No.174 of 2003 cited supra should also be construed to mean what was envisaged under these provisions of Cap 33."

Applying the above authority, I subscribe to the submission of the counsel on this ground and I find it to have merit.

On the second ground of the appeal the counsel is challenging the valuation of evidence as to why the Tribunal admitted the said exhibit taking into account appellant herein was unrepresented thus it was its duty to analyse it before admitting the same. He also points out that even the witnesses (DW2 and DW3) who were called to testify in favor of the respondent denied to have witnessed the tendered exhibit.

I find nothing wrong with the trial Tribunal admitting exhibit D1. Admitting and exhibit is one thing and applying it is another. As long as it was disputed the Chairman was duty bound to examine the said exhibit in his evaluation and point the defects which are clear seen as explained above.

It has been further noted that the two witnesses of the respondent herein were not sure of the sale, but they were certain that the land belonged to the deceased Seif Mtambo who allowed the defendant to live there since 1982.

These two defects pointed out make this ground to have merits also.

The last ground was that, the Hon. Trial chairperson erred in law and in fact by declaring the respondent as the lawful owner of the suit land.

On this ground the counsel submitted that after the demise of Salum Seif Mtambo who was the only surviving legal heir of his grandfather, the land

was placed under the care of the respondent. She was only entitled to the temporary right to use it (the usufructuary rights) but not to sell the same.

The above testimonies are also found in the proceedings of the Tribunal. Taking that into account together with the defects as stated above and the two witnesses presented by the respondent herein who were not sure nor present during the alleged sale, but rather were sure that it belonged to the late Seif Mtambo, I hold that the Tribunal was not correct to declare the respondent a lawful owner of the land. All evidence pointed out that the land in dispute belonged to Seif Mtambo and therefore should have been placed under the appellant herein as his administrator of his estate. This ground also have merit.

In view of the above, the appellant's appeal has merits. The decision of the Tribunal is hereby quashed and set aside; the appellant is hereby declared a lawful owner as administrator of the late Seif Mtambo. The appeal is hereby allowed, no order as to costs.

Right of Appeal explained.




T. N. MWENEGOHA

JUDGE

28/02/2022