

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

LAND APPEAL NO. 144 OF 2021

(Originating from Temeke District Land and Housing Tribunal in Land Application No. 418 of 2016)

BABU AMANI.....APPELLANT

VERSUS

DANIEL GAO.....RESPONDENT

Date of Last Order: 13.12.2021
Date of Judgment: 31.01.2022

JUDGMENT

V. L. MAKANI, J

This appeal is by BABU AMANI. He is appealing against the decision of Ilala District Land and Housing Tribunal (the **Tribunal**) in Land Application No. 418 of 2016 (Hon. Mgulambwa, Chairperson).

The dispute is on ownership of land in Viwege Majohe Ilala Dar es Salaam (the **suit land**). The appellant claims that he has been in possession of the suit land since 21/08/2007. He said he bought the suit land from the late Mohamed Kashushu who was the 2nd respondent in the matter at the Tribunal. It is on record that the said 2nd respondent passed away before the matter was concluded but he

was able to file his defence. Since there was no appointed administrator, the matter proceeded without any representative of the 2nd respondent. The decision of the Tribunal was in favour of the 1st respondent and he was declared the lawful owner of the suit land. Being dissatisfied with this decision the appellant has filed this appeal with the following grounds:

- (a) *That the learned tribunal and its chairperson erred in law and in facts in granting decision of this suit by basing on invalid possessive documents to the respondent.*
- (b) *That the learned tribunal and its chairperson erred in law and facts by failing to survey the dispute land so as to obtain the real size and dimension dispute land.*

The appellant prayed for the court to quash and set aside the trial Tribunal decision with costs and make this appeal active (sic!).

The appeal was argued by way of written submissions drawn and filed by the appellant personally and by Mr. John J. Lingopola, Advocate for the respondent.

I have gone through the grounds of appeal and the submissions by the appellant, and to say the least they are incomprehensible, in that regard my understanding of the grounds of appeal are as follows:

- (a) *That the Tribunal and its Chairperson erred in law and in facts in delivering its decision basing on invalid documents tendered by the respondent.*
- (b) *The Tribunal and its Chairperson erred in law and fact by failing to visit the **locus in quo** to assess the size and dimension of the suit land.*

The above grounds have also been followed by Mr. Lingopola who also complained of failure to grasp the gist of the grounds of appeal and the submissions filed by the respondent.

As for the first ground the appellant said the Chairperson erred as she relied on documents of the respondent which were not valid. He said the appellant purchased the suit land from Mohamed Kashushu in two instalments of TZS 200,000/= and TZS 100,000/= and paid through Daudi Mrisho as a representative. He said the respondent showed two different Sales Agreement of different dates stating that he bought the suit land from Mohamed Kashushu for TZS 600,000/=. The appellant claimed that in one of the Sales Agreement the seller is Haruna Mohamed who is not responsible in any way with the suit land.

As for the second ground the appellant said the Tribunals failed to survey the suit land to get its size dimension and ownership of the suit land that is why the Chairman went contrary to facts of the case.

In response to the submissions by the appellant, Mr. Lingopola resisted the first ground on the reasons that: (i) the respondent bought the suit land from the late Mohamed Kashushu and in his defence the said Mohamed Kashushu denied to have sold it to the appellant but insisted that he sold it to the respondent, (ii) the respondent tendered exhibits to support his case **Exhibits D1, D2 and D3**, (iii) the respondent called 4 witnesses to prove his case among them being the member of the Local Government Authority of Majohe Kivule, Mr. Omary Suleiman Mtuhungu (**DW3**) and Hamidani Juma Swalehe (**DW4**) the witness to the Sales Agreement, (iv) the appellant never questioned the validity of the respondent's documents during the trial and it is trite principle of the law that one cannot challenge the admissibility of a document at the appeal stage. He relied on the case of **Magnus K. Lauren vs. Tanzania Breweries Limited, Civil Appeal No. 25 of 2018 (CAT)** (unreported).

Mr. Lingopola further said the appellant had a duty to prove the case according to the elementary principle that he who alleges is the one responsible to prove. He relied on the case of **Abdul Karim Haji vs.**

Raymond Nchimbi Alloyce & Joseph Sitta Joseph [2006] TLR 420.

As regards the contradiction of the Sales Agreements and certificate of occupancy, Mr. Lingopola, said that the respondent has two plots within the same area. One plot was bought from Haruna Mohamed on 30/08/2008 and the other one was bought from Mohamed Kashushu on 19/09/2008. He said the confusion arose on cross examination where the issue of sale of the other plot sold by Haruna Mohamed came into the picture whereas the local government only issued one certificate for both the plots. He said the evidence of the respondent is heavier than that of the appellant as in the case of **Hemed Said vs. Mohame Mbilu [1984] TLR 113.**

As for the second ground Mr. Lingopola said that it is not mandatory for the trial Tribunal to visit the *locus in quo*. He said the issue of the size and dimension of the suit land was not an issue so there was no need for the site visit. He cited the case of **Bomu Mohamed vs. Hamisi Amiri, Civil Appeal No. 99 of 2018 (CAT-Tanga)** (unreported). He concluded by saying that with the evidence

presented there is no need to interfere with the decision of the Tribunal. He prayed for the appeal to be dismissed with costs.

In rejoinder the appellant reiterated his main submissions and emphasized that the citing of **Magnus K. Lauren** (supra) is misconceived and also the case of **Hemed Said** (supra) has been used contrary to the facts of the case. He also observed that it is compulsory for the learned Chairperson to go to survey the suit land before making any decision. He also reiterated the prayers for the decision of the Tribunal to be quashed and set aside with costs.

I have gone through the submissions by the appellant and learned Advocate and the main issue for consideration is whether this appeal has merit.

As for the first ground I would state at the outset that the documents that were tendered by the respondent were not invalid, but they all supported his case that he bought land from one Mohamed Kashushu and Haruna Mohamed. These documents were admitted during the trial. Indeed, the appellant objected to the admission of the documents, but he did not adduce plausible reasons for the objections

as such the Chairperson proceeded to admit the same. Subsequently, this court has not received any satisfactory reasons to go contrary to the decision of the Chairperson as such the said exhibits cannot at this stage of appeal. This ground has no merit and is dismissed.

As for the second ground it is a settled principle of law that it is not mandatory for the court or tribunal to visit *locus in quo* as it was held in the case of **Dar es Salaam Water and Sewage Authority vs. Didas Kameka, Civil Appeal No.233 of 2019 (CAT-DSM)**

(unreported) where it was stated:

*"The case before us presents similar outlook which seals the fate of the appellant who faulted the trial court for not inspecting the Locus in quo. Based upon the foregoing principle, we think, the learned trial judge found it unnecessary to inspect the Locus in quo which is not mandatory and as rightly argued by Mr. Kariwa, the learned trial judge found the facts and evidence placed before him were sufficient to dispose of the dispute. In any case, the learned trial Judge did not find the need to go into fishing expedition by assuming the role of an investigator and gather fresh evidence at the trial something which is abhorred as stated in the case of **Nizar M.H.Ladak** (supra) and **Mukasa** (supra)".*



Similarly, in this case as correctly stated by Mr. Lingopola the issue before the Tribunal was on ownership and not boundaries, size or dimensions. In any case, the appellant had not given the size of his suit land so it was not even necessary for the Tribunal to embark on issues which were not part of the application. In that respect, this ground also fails.

In view of the above, this court finds no reason to fault the decision of the Tribunal. The appeal is hereby dismissed with costs.

It is so ordered.



V.L. MAKANI
JUDGE
31/01/2022


