

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

**LAND APPEAL NO. 270 OF 2021**

*(From the Decision of the District Land and Housing Tribunal of Temeke District at Temeke in Land Application No.48 of 2009, dated 13<sup>th</sup> October, 2013)*

**RAHEL JEFTA ULOMI & GODLACK JEFTA ULOMI**

*(Suing as Administratrix and Administrator of Jefta Shiike) .....APPELLANTS*

**VERSUS**

**GLORIA MICHAEL OTARU & JIMMY MICHAEL OTARU**

*(Suing as Administratrix and Administrator of the Estate of Michael John*

*Otaru).....1<sup>ST</sup> RESPONDENT*

**YOHANA KIPANDE.....2<sup>ND</sup> RESPONDENT**

**PPROSPER PETER.....3<sup>RD</sup> RESPONDENT**

**J U D G M E N T**

*Date of Last Order: 16.06.2022*

*Date of Judgment: 28. 06.2022*

**T. N. MWENEGOHA, J.**

The two appellant here in above are aggrieved by the decision of the District Land and Housing Tribunal for Temeke District, hereinafter called the trial tribunal. They have jointly filed this appeal based on the following grounds; -

- 1. That, the trial tribunal erred in law and fact by declaring the 1<sup>st</sup> respondent to be the lawful owner of the suit land without taking into consideration of the fact that he did not**

**finalize purchasing of the suit property, hence lacked locus standi to institute this suit;**

**2. That, the trial tribunal erred in law and fact by declaring the 1<sup>st</sup> respondent as a lawful owner of the suit property while he purchased the same from a person who had no tittle to pass;**

**3. That, the trial tribunal erred in law and facts by grating reliefs in favour of the respondent which were not pleaded.**

**4. That, the trial tribunal erred in law and facts granting specific damages which were not specially proved.**

Hearing of the appeal was by way of written submissions and exparte against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Advocate Lutufyo Mvumbangu appeared for the appellants while Advocate Dickson Venance Mtogeswa represented the 1<sup>st</sup> respondent.

In his submissions in favour of the appeal, Mr. Lutufyo abandoned the 1<sup>st</sup> ground of appeal and remained with grounds No. 2, 3 and 4. On the 2<sup>nd</sup> ground it was submitted that, the 1<sup>st</sup> respondent purchased the suit land from the person who had no title over it hence the said sell was null and void. That, Nora Thobias Mshili who was the Administratix of the estate of late Renata Thobias Mshili, (her mother) is the one who sold the property in question to the 1<sup>st</sup> respondent, but in real sense the said property was not part of the estate she was administering.

That, there is no evidence to prove that, the suit property was once transferred or bequeathed to the late Renata Thobias Mshili from the purported owner, the late Thobias Mshili, who is said to have purchased the same from one Raphael Soka. It is obvious that the 1<sup>st</sup> respondent purchased the property in dispute from a person who had no title to pass

the same to him. He referred to the case of **Kashinde Rajabu Mrisho & Another vs. Seleman Ally Madohola, Land Case No. 361 of 2014, High Court of Tanzania, (unreported)**, which stated that: -

*"It is a settled principle of law that, a person without a good tittle to goods cannot pass a good tittle to the transferee from his own. This has been enshrined in the Latin maxim nemo dat quod non-habet, which means that no one can transfer a better tittle than himself."*

He went on to argue on the 3<sup>rd</sup> ground that, it is a settled law that, parties are bound by their pleadings. The trial tribunal was wrong to grant reliefs that were not prayed or pleaded by the 1<sup>st</sup> respondent. That, the trial tribunal ordered the respondents to vacate the suit premises and also ordered the 1<sup>st</sup> respondent to complete the transfer process contrary to what was pleaded. That, there was no prayer in respect of eviction of the appellants.

As for the 4<sup>th</sup> ground, Mr. Lutufyo maintained that, the specific damages granted by the trial tribunal in favour of the 1<sup>st</sup> respondents to the tune of 17,000,00/= and payment of 5000/= per month for being loss suffered due to the alleged trespass is also illegal. The same were never pleaded nor proved. The rule is that, specific damages ought to be specifically pleaded and strictly proved as stated in **Zuberi Augustino vs. Anicet Mugabe (1992) TLR 137.**

In reply, Mr. Mtogesewa's view on the 2<sup>nd</sup> ground of appeal was that the arguments by the appellants' counsel are baseless. That, he cannot legally challenge the land transaction between the parties as it is a new issue not entertained at the trial tribunal.

As for the 3<sup>rd</sup> ground, he argued that, the trial tribunal was right to give the orders it gave in favour of the 1<sup>st</sup> respondent as it was prayed that it should grant any other relief which it deemed fit to grant.

Lastly on the 4<sup>th</sup> ground, that, the counsel for the 1<sup>st</sup> respondent conceded to the grant of 5000/= per month, he argued that the same was not pleaded. As for the grant of 17,000,000/= as special damages, the counsel was of view that the trial tribunal was correct on that as the appellants demolished the foundation owned by the 1<sup>st</sup> respondent without any justifiable cause.

I have considered the submissions of parties through their respective counsels, in line with the records of the trial tribunal. The issue for determination is whether the appeal has merits or not.

Mr. Lutufyo has insisted in his arguments in support of the 2<sup>nd</sup> ground of appeal that, at the person who sold the suit land to the 1<sup>st</sup> respondent had no capacity to do so. That, Nora Thobias Mshili who was the Administratrix of the estate of the late Renata Thobias Mshili, did not have a good title over the suit land, hence she cannot pass the same to the 1<sup>st</sup> respondent. He maintained that, there was no evidence adduced at the trial tribunal to suggest that, the suit property was transferred to the late Renata after the demise of Mr. Thobias Mshili. Further, the seller (Nora Thobias Mshili) to have also acquired the property through the transfer.

I agree with the arguments of the counsel for the appellants. It is true that, the Trial Tribunal was wrong to declare the 1<sup>st</sup> respondent as a lawful owner of the disputed property. There is no evidence of the said land to have been transferred or given into the name of the seller, if at all it was a part of the estate of the late Renata Thobias Mshili or Mr. Thobias Mshili

himself. In absence of that proof, the seller lacks capacity to sell the same to any other person see, **Kashinde Rajabu Mrisho & Another vs. Seleman Ally Madohola** (supra).

Additionally, the evidence on record has shown that, the suit property is owned by one Raphael Albert Soka to date. The evidence of the Land Officer (PW2), Eliakira Ruben Pallangyo has proved so. If the same was not transferred to any of the parties named during the trial to have acquired it, it remains in the ownership of the late Soka. It may be true that, the late Raphael Soka once sold the suit property to the late Tobias Mshili. However, transfer of ownership of the said land was not completed. That makes the late Raphael Soka to continue owning the suit property to date.

This is due to the fact that; the suit land is a surveyed land. Disposition of a surveyed land has its rules and procedures. It is settled that, disposition of a landed property in Tanzania is a tripartite agreement, involving land authorities (Land Commissioners and Registrar of Titles), see **Abualy Alibai Aziz vs. Bhartia brothers Limited, Misc. Civil Appeal No.1 of 1999, (TLR 2000),288, Court of Appeal of Tanzania**, also the case of, **Registered Trustees of Holy Spirit Sisters Tanzania versus January Kamili Shayo and 136 others, Civil Appeal No. 193 of 2016, Court of Appeal of Tanzania, (unreported)}**. There is no evidence on record showing that, Mr. Soka conveyed the ownership of the suit land to Mr. Mshili, hence the claim that the land was owned by Mr. Mshili are misconceived. As observed in the quoted authorities herein above, I would emphasis that, the purported disposition of the suit land between the late Raphael Soka and Tobias Mshili remains ineffectual. That is to say, the suit land has never been

part of the estate of the late Thobias Mshili. The same could not also be part of the estate of Renata Mshili to be or transferred in the administration of Nora Thobias Mshili. And this takes us back to the arguments by Mr. Lutufyo that, Nora Thobias Mshili had no good title over the property. Hence, she cannot sell it to the 1<sup>st</sup> respondent. The 2<sup>nd</sup> ground of appeal has merit and is allowed accordingly.

As I have allowed the 2<sup>nd</sup> ground, I will not proceed to discuss the 3<sup>rd</sup> and 4<sup>th</sup> grounds. The two remaining grounds basically are challenging the reliefs granted to the 1<sup>st</sup> respondent. Allowing the 2<sup>nd</sup> ground, means the said reliefs were wrongly granted.

In the upshot, the appeal is allowed with costs. The decision of the trial tribunal is hereby quashed and its orders are set aside.

Right of Appeal explained.



  
**T. N. MWENEGOHA**

**JUDGE**

**28/06/2022**