

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

LAND APPEAL NO. 32 OF 2021

*(Arising from Land Application No.49 of 2020 of District Land and housing
Tribunal for Morogoro before Hon. R.S. Mnyukwa- Chairperson on
28/1/2021)*

JARIBU SIMBE1ST APPELLANT

SIXBERT MUBILIGI2ND APPELLANT

VERSUS

FATUMA FLORA RICHARD MWAKASITU.....1ST RESPONDENT

SOPHIA S. DUWE2ND RESPONDENT

JUDGEMENT

*Last Court Order on 6/5/2022
Judgement date on 6th June 2022*

P. J. NGWEMBE, J.:

The Appellants herein were among the respondents before the trial tribunal and the respondents herein were among the applicants before the trial tribunal. Upon hearing both parties, the tribunal ended up declaring the appellants as trespassers and condemned them to pay costs. Having so decided, the appellants were aggrieved, hence preferred this appeal to this temple of justice.

Originally, this appeal traces back to the ownership of the suit plots, whereby the respondents herein were among four (4) applicants before the District Land Tribunal, while the two appellants were among six (6) respondents at the tribunal. Both sides claimed ownership of pieces of plots at Block "B" located at Mkundi area within Municipality of Morogoro. Every person therein claimed ownership of such plots of land. Hence, the dispute landed before the District Land and Housing Tribunal for Morogoro. At the end, the appellants were declared trespassers and were condemned to pay costs.

Being aggrieved with such judgement and decree, they came up with three grounds, namely:-

1. The tribunal erred in law and in fact in condemning the 1st appellant with costs as a trespasser when there was no evidence of trespass by the appellant to plot No. 75 of Block "B" Mkundi, Morogoro Municipality;
2. The chairperson erred in law and in fact in holding that plot No. 81 Block "S" belongs to the 2nd respondent when evidence tendered erroneously rejects by the tribunal showed that the lawful owner is the 2nd appellant; and
3. That Hon. Chairperson failed to analyse the evidence before him, thus reaching the wrong conclusion in respect of both appellants.

Both parties in this appeal procured services of learned advocates, while the appellant had the service of Stephen Asseri Msuya from Semphombe Law chambers, the respondents were represented by advocate Ignas Punge from PJC Premier Attorneys. On the hearing of this appeal, both counsels agreed and asked this court to allow them to proceed by way of written submissions, which prayer was granted and

both complied with the scheduling order of filling their arguments. The learned advocate for the appellant argued the 1st ground by insisting that the 1st appellant denied from the beginning of trial that, he is a stranger to the suit for he has no claim of ownership of any plot of land at Mkundi area. More so, he denied to know even the area where parties are disputing. That in any event, the 2nd respondent sued a wrong party, rested on this ground by asking an unanswered question on how he should be declared as a trespasser and condemned to pay costs? Thus, the appeal be allowed with costs.

Arguing on plot No. 81 Block "S" he insisted that the suit plot belong to the 2nd appellant and the trial Tribunal erred in law in declaring that, same belong to the 2nd respondent. Since the 2nd respondent had no valid documents indicating ownership of the suit plot, obvious she had no right over the suit land.

Added that the 2nd appellant had every right over the suit plot for he purchased from one Almas Charles Mvungi. Thus, the trial tribunal failed to analyze evidences adduced during trial, hence arrived into a wrong conclusion. Prayed this court to allow this appeal with costs.

In reply, the learned advocate for the respondents contradicted all arguments advanced by the appellant as irrelevant and insisted the appeal be dismissed with costs.

Insisted that at the time when the application was instituted at the tribunal, the 1st appellant encroached into the respondent's suit land and the respondents proved trespass by the 1st appellant to the satisfaction of the tribunal. Went further to argue that, the joint written statement of defence indicated clearly that they owned such pieces of land.

Therefore, parties are bound by their pleadings unless amended otherwise, they are bound by it. Referred this court to the case of **A.G. Vs. Francisco Teotionio Bragaza (1953 – 1957) 2 TLR 86**, where the court held, an objection on irregularities therein should be taken at the earliest possible time and not later. Also referred to the case of **Betty Kassiri Vs. Eastern and Southern African Management Institute (ESAMI) [2001] TLR 478** where the court insisted that the preliminary point of law should be raised as soon as it becomes apparent either from the pleadings or from the statutory law.

Disclosed that, the suit land is surveyed land and the respondents are the registered owners. On this point he referred this court to section 2 of the Land Registration Act Cap 334 R.E. 2019. Also referred this court to the case of **Amina Maulid Ambali and 2 Others Vs. Ramadhani Juma, civil Appeal No. 35 of 2019**.

Submitting on the second ground, he traced the evidences of Almas Mvungi who testified as RW- 7, that he failed to tender neither sale agreement nor judgements as he said, he won in some cases of similar nature. Argued that, in the absence of those documentary evidences, the only irresistible conclusion is that, they never existed if they existed, there production during trial would spoken against the appellants in respect of the land in dispute.

Further referred this court to section 61 of the Evidence Act that facts may be proved by oral evidence except the contents of the document. Rightly so, he insisted that oral evidence cannot be used to prove the contents of a document. Rested by a prayer that, the appeal be dismissed with costs.



Having summarized the rival arguments advanced by learned advocates, substantially, I find there are three pertinent issues calling for determination by this court. First, whether the inclusion of the 1st appellant as a party in a suit land was proper, and two who owns plot No. 81 Block "S" between the 2nd appellant and the 2nd respondent; finally, whether the trial tribunal erred in arriving to its conclusion. Upon determining these issues, I am certain the appeal will be conclusively determined.

To answer the first issue, basically is simple because, it is both statutory and factual. Always, the plaintiff or petitioner or applicant has every right to bring an action against any person whose claim may be satisfied. Therefore, in law the plaintiff has every choice to sue whoever has claim against. Obvious the defendant or respondent cannot choose who should sue him or her, but has every right to raise an objection against the plaintiff or petitioner that he has no cause of action against him.

In respect to this appeal, the 1st appellant jointly filed written statement of defence where jointly answered in paragraphs 9, 10 and 11 that the tribunal may declare them as lawful owners. However, such written statement of defence may be termed as omnibus defence covering every respondent without specifying who denied which fact. Though I agree with the submission of the defence counsel, that parties are bound by their pleadings, yet when there are many defendants/respondents like in this appeal, obvious not all parties may have exactly interest and similar facts, diversity is normal. Therefore, I have to peruse on their evidences as they testified during trial.

The 1st appellant testified during trial as RW2 who clearly said:

"I don't have any residence neither plot of land at Nguvu kazi. I just received summons from the chairman of the street. I don't have plot of land at Nguvu kazi at Mkundi Ward.

In cross examination, he said *"I am not a proper party I pray the said applicant to find a proper respondent"* Went further during cross examination to deny any knowledge on the suit plot of land by saying *"I strongly object what has been written in the WSD. I did not know their claims I only became aware yesterday. Let the applicant find her respondent but not me"*

This evidence is quite strong disclaimer over the suit land. However, the 1st respondent who was the applicant during trial testified as AW2 among others, she tendered an offer of ownership over the suit land and proceeded to point fingers to Jaribu Msimbe who trespassed in her land and built a house therein on December 2019. *"Ms. Jaribu is the one trespassed my plot, it was on December 2019 the trespasser built on the suit land. Wherefore, I pray to be declared as lawful owner of the suit land and an order for permanent injunction and Jaribu be declared trespasser"*

These evidences are contradicting each other and bring this court into a serious consideration. If the one who was alleged to trespass the suit plot denies totally to know the said plot, while at the same time the respondent firmly point all fingers to the appellant as trespasser and built a house therein. I find this ground should not tie me up, since the appellant has denied and from the beginning he denied to have engaged in that plot of land at Mkundi area, I find prudence dictates this court to



rule out that the trial court misdirected in ordering a stranger to a suit liable to costs and permanent injunction.

Considering on the second issue on who owns plot No. 81 Block "S" between the 2nd appellant and the 2nd respondent. Obvious, the evidence on record does not favour the appellant whose purchase agreement was not admitted during trial.

Moreover, I think the law is clear under section 2 of the Land Registration Act which define the owner of any piece of land should be registered under that law. The same position was emphasized by this court in the case of **Salum Mateyo Vs. Mohamed Mateyo [1987] TLR 111** where it was held:-

"A person for the time being in whose name the estate or interest is registered"

The same position recently was confirmed by the Court of Appeal in the case of **Amina Maulid Ambali & 2others Vs. Ramadhani Juma (Supra)** where the Court held:-

"When two persons have competing interests in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawful obtained"

Undoubtedly, a certificate of title is a conclusive evidence that the person named therein is the true owner of the land and his title is indefeasible unless revoked by legal process. I may add that, once a certificate of title is issued to a particular person, whoever wishes to challenge it or claim ownership of the same plot of land his claim must involve the registrar of titles who issued that certificate. This is a

position of law which should not be forgotten, unless the law is amended. To buttress this position, **the book titled Conveyancing and disposition of Land in Tanzania** by Dr. R.W. Tanga and Dr. S.J. Mramba, Law Africa, Dar es Salaam, 2017 at page 330 had this to say:-

".. the registration under a land titles system is more than a mere entry in a public register; it is authentication of the ownership of, or a legal interest in, a parcel of land. The act of registration confirms transaction that confer, affect or terminate that ownership or interest. Once the registration process is complete, no search behind the register is needed to establish a chain of titles to the property, for the register itself is conclusive proof of the title"

In respect to this appeal, the 2nd respondent proved ownership of the suit plot as against the 2nd appellant. The evidence on record does not support that the appellant is a lawful owner of the suit land. Even upon considering the legal arguments advanced by the learned advocate, yet does not convince my conscience that the appellant had strong case when compared to the evidences of the 2nd respondent. I have perused with due care, the whole evidences and documents pleaded and tendered during trial by the 2nd respondent, same indicates that Sophia S. Duwe had heavier evidence than the appellant. Even if the tribunal could admit the alleged sale agreement executed between the 2nd appellant and Almas Mvungi, yet the law would protect the respondent whose title was registered.




Out of curiosity, the evidence of Almas Mvungi during trial, portrayed as original owner of the suit plot, that he purchased such land from various persons and at one time won several cases in respect to that land. Unfortunate may be, he failed to produce a single contract and or mention one case which he won. Thus, remained statements with no proof therein. This position draw inference from the case of **Justine Paul Makabi & 50 Others Vs. Nyaso Enterprises Co. Ltd & Another, Land Case No. 128 of 2012** (unreported) held:-

"In addition to that section 119 of the Evidence Act, states clearly that, when the question is whether any person is owner of anything to which he is shown to be in possession, the burden of proving that he is not the owner is on the person who asserts that he is not the owner. Since the plaintiffs asserted in the plaint are the rightful owner of the land in dispute it was their duty to prove the first defendant is not the owner of the land".

Since the 2nd respondent herein asserted that she is the rightful owner of the suit land, it was the duty of the 2nd appellant herein to prove otherwise by producing relevant documents and or producing reliable witnesses whose evidences would prove contrary to the assertion of the 2nd respondent. In the case of **Sokwo Vs. Kpongbo 2008 & NWLR PT 1086 P 342 at P 344** the court held:-

"It is a cardinal principle of Law that he who asserts must prove his case with credible and unchallenged evidence. In civil case, a party who wishes to succeed in obtaining judgment in his favour must adduce such credible evidence for such cases are decided on preponderance and balance



of probability. It is after a plaintiff has proved his case in this manner that the burden of proof shifts"

Another equally important legal issue to remember is, justice is not one sided, the winner and the loser have equal rights before the law and justice is done and seen to be done to both. In adversarial system like ours, the winner takes all and the loser losses all. The same position was rightly considered in the case of **Hemedi Said Vs. Mohamedi Mbilu [1984] TLR 113**, where the court held:-

"According to law both parties to a suit cannot tie, but the person whose evidence is heavier than that of the other is the one who must win"

It is established principle of land law that, the court will only grant protection to a person who has subsisting right over land. The protection of the Court can only be granted or extended to the person who has valid, subsisting right over land. Such protection does not extend to trespassers.

In this appeal, the 2nd appellant has not shacked the reasoning and conclusion meted by the trial tribunal. Accordingly, I would uphold same and declare that the 2nd appellant was/is a trespasser to plot No. 81 Block "S" located at Mkundi area in Morogoro Municipality.

In totality and for the reasons so stated, I proceed to order as follows:-

First the appeal on the 1st ground is meritorious same is granted; second the 1st respondent is the true owner of the suit plot and no one claims ownership on same; third, the 1st respondent is declared the true

owner of the suit plot and every developments made therein, the 1st appellant is prohibited to interfere over ownership of the suit plot; Lastly, the decision of the trial tribunal in respect to the 1st appellant is set aside.

In respect to the 2nd appellant, this court uphold the judgement and decree meted by the trial tribunal that the 2nd appellant was/is a trespasser to the rightful ownership of the suit plot of the 2nd respondent. In the circumstance of this appeal, it is just and equitable to order each party to bear his/her own costs.

I accordingly Order.

DATED at Morogoro this 7th June, 2022



P.J. NGWEMBE

JUDGE

07/06/2022

Court: Judgement delivered at Morogoro in Chambers on this 6th day of June, 2022 in the presence of the appellants and Alfa Sikalumba for Ignas Punge, Advocate for the Respondents.

Right to appeal to the Court of Appeal explained.



P.J. NGWEMBE

JUDGE

07/06/2022