

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

LAND APPEAL NO. 222 OF 2021

*(Arising from Misc. Land Application No.196 of 2014, by the District Land and
Housing Tribunal for Kinondoni District)*

**SAID JUMA KANKI
HUSSEIN MOHAMED
RAMADHANI K. TUWA
BARAKA
SAID ALLY HASSANI
DASTAN MONJI
FRANCIS MSELLE
CECILIA MWAVILENGA
JOYCE ANNON SANOGA**

.....APPELLANTS

VERSUS

SALUMU KONDO.....RESPONDENT

R U L I N G

Date of Last Order: 23.06.2022

Date of Ruling: 30.06.2022

T. N. MWENEGOHA, J.

The appeal is based on the following grounds; -

- 1. That, the trial Honourable Chairman erred in law and in fact by failure to join necessary party to the suit who is Elizabeth Atela Zangila.**
- 2. That, Honourable Chairman erred in law and in fact by failure to order *status quo* of the disputed property as prayed by the appellants.**

- 3. That, the trial Honourable Chairman erred in law and in fact by holding that the respondent is the lawful owner of the disputed property without adducing strong evidence such as sale agreement.**
- 4. That, the trial Honourable Chairman erred in law and in fact by failure to observe fraud between Elizabeth Atela Zangila Mboto and Said Juma Kanki and the respondent.**
- 5. That, the trial Honourable Chairman erred in law and in fact by not taking into consideration the legality of the evidence of the appellants who purchased the disputed from Said Juma Kanki, acting under the authority of Elizabeth Atela Zangina.**
- 6. That, the trial Honourable Chairman erred in law and in fact by failure to observe the principles of estoppel.**
- 7. That, the trial Honourable Chairman erred in law and in fact by failure to observe and notice the weak evidence of the respondent.**
- 8. That, Honourable Chairman erred in law and in fact by entertaining the incompetent application.**
- 9. That, the trial Honourable Chairman erred in law and in fact by delivering the judgment which does not show any reasons or principles of the law applicable.**

Briefly, the dispute is on a land, measuring 5 acres, located at Kwembe, within Ubungo Municipality, in Dar es Salaam. The said land was once owned by one Elizabeth Atela Zangila Mboto (PW2 at the Trial Tribunal). It was alleged by her that, in 2002, being among the directors of the respondent, agreed with other directors and sold the said land to the

respondent. On the other hand, the appellants alleged that, they purchased their plots in the same land, from one Said Juma Kanki who was acting on behalf of PW2, Elizabeth Atela Zangena.

The dispute between the parties reached the District Land and Housing Tribunal for Kinondoni District, vide Land Application No. 196 of 2014. The decision came in favour of the respondent; hence the instant appeal was preferred. The same was heard by way of written submissions. Advocate Gabriel B. Masinga appeared for the appellants and Advocate Joseph Assenga appeared for the respondent.

On the 1st ground, the submissions of Mr. Masinga were that, Elizabeth Atela Zangila Mboto was a necessary party who ought to be joined in the suit as she was the vendor. This was observed in **Juma B Kadala vs. Laurent Mnkande (1983) TLR 103, Sadick Athuman vs. Republic, (1986) TLR 235** and also the case of **Zephanis Lateshu vs. Muruo Ndelamia, Civil Appeal No. 31 of 1998.**

In reply, Mr. Assenga maintained that, Elizabeth Atela Zangila Mboto was not at all a necessary party as she was not a trespasser like the respondents. Above all, it is a new issue. It was not addressed at the trial Tribunal. That, the same should fail as stated in **Elisa Mosses Msaki vs. Yesaya Ngateu Matee, (1990) TLR.** In his rejoinder submissions on the 1st ground, the counsel for the appellants reiterated his submissions in chief.

In analysing the facts, I was given and on record I find that, on the 1st ground, the Said Elizabeth Atela Zangila Mboto appeared before the trial tribunal as PW2 and that suffices to prove her involvement in the transaction between her and the vendor who is the respondent. If the

purchaser (respondent) had failed to produce PW2 before the tribunal, we would have drawn an inference that her testimony is against the respondent. As of now, her testimony before the trial tribunal was enough to prove that she sold the land in dispute to the respondent. Therefore the 1st ground is rejected.

The 2nd, 3rd, 4th, 5th 6th and 7th grounds will be consolidated and discussed together. In these grounds, the bone of contention is on evaluation of evidence to the extent that, the trial tribunal reached to a wrong decision in favour of the respondent. It was further contended that, the trial tribunal failed to consider the appellant's prayer of maintenance of *status quo* of the suit land. This followed its failure to visit the locus in quo as stated in **Avit Thadeus Massawe vs. Isdory Assenga, Civil Appeal No. 6 of 2017, Court of Appeal of Tanzania, (unreported)**.

That, in the hearing of the application, the respondent produced four witnesses who are all blood relatives. There was no single independent witness including local government official to prove the existence of the transaction between the respondent and the purported vendor over the suit land. This fact shows that there was fraud in the transaction itself as it was done against the Land Act, Cap 113, Section 64(1)(a) and (b). That, in general, the evidence on part of the respondent who was the applicant was weak compared to that of the appellants. Even the Sale Agreement was admitted wrongly owing to the fact that it was not stamped, contrary to the Stamp Duty Act, of 1962.

In reply to the submissions as far as the 2nd, 3rd, 4th, 5th 6th and 7th grounds of appeal are concerned, the counsel for the respondent insisted that, based on the nature of the dispute, that is land ownership, the visit

to the locus in quo was not necessary as stated in the case of **Avit Thadeus Massawe**, (supra). The sale agreement was rightly admitted subject to Section 47 of the Stamp Duty Act and the argument that the same was not stamped is unfounded. As for the fraud complained by the appellants, the burden of proof lies to them as per section 110 and 11 of the Evidence Act, Cap 6 R. E. 2019. In rejoinder, for these grounds, the applicant's counsel reiterated his submissions in chief.

I have gone through the evidence on record, the testimonies of the parties and their witnesses, my findings are not different from the findings of the trial tribunal. I find that, the evidence of the respondent in respect on how she acquired the land in question is heavier than that of the appellants. Hence the results see **Hemed Said vs. Mohamed Mbilu (1984), TLR 113**.

At that material time when the transaction occurred, the land was unsurveyed, hence the provisions of the Land Act (Section 64(1)(a) and (b) cited by the appellants could not be applied in the said transaction. The sale involved Local Governments as shown under exhibit P4. The evidence was well evaluated and it was for the appellants to prove that the land was obtained fraudulently by the respondent as contended by the counsel for the respondent. It was their duty owing to the facts that, they are the ones alleging. See **Section 110 and 11 of the Evidence Act, Cap 6 R. E. 2019**.

As for visiting the locus in quo, it has already been settled that, it is not mandatory rather necessary when the circumstances of the case require to do so, see **Avit Thadeus Massawe** (supra). The 2nd, 3rd, 4th, 5th 6th and 7th grounds of appeal are also rejected.

I turn to the 8th ground, where the trial tribunal was faulted for entertaining an incompetent application. That, the application contravened the mandatory provisions of Regulation 3(2) of G.N No. 174 of 2003. That, the application was amended several times without justification and the same did not comply with Form No. 1. The respondent's counsel on his part maintained that the application was competent before the Trial Tribunal.

This argument also will not detain me much. The applicants were supposed to object the application at the trial tribunal if they were against the amendments of pleadings as they claim at this stage. However, what is on record is the objection on the locus stand on part of the applicant which was overruled. Hence the 8th ground is denied too.

Lastly on the 9th ground, that the decision of the trial tribunal lacks reasons and principles of law. I find these to be devoid of merits and for obvious reasons I see no need to reproduce the arguments of counsels for the parties for and against it. What was complained by the appellants was not reflected in the said judgment. The same contains reasons as to why the trial chairperson decided in favour of the respondent and against the appellant. This ground is also rejected.

That marks all the 9 grounds to have been rejected and the entire appeal is dismissed with costs. The judgment and decree of the trial tribunal are upheld accordingly.

It is so ordered.




T. N. MWENEGOHA
JUDGE
30/06/2022