

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

LAND APPEAL NO. 273 OF 2021

(Arising from Land Application No. 414 of 2016 of the District Land and Housing Tribunal for Kinondoni at Mwananyamala)

TANZANIA POSTAL BANK.....APPELLANT
VERSUS

JAMILA SALEHE (Administrator of the Estate of the late
JUMA SHABANI SWED) RESPONDENT

J U D G M E N T

Date of Last Order: 27.06.2022

Date of Judgment: 20.07.2022

T. N. MWENEGOHA, J.

The case at hand has its roots from the District Land and Housing Tribunal of Kinondoni District, herein after called the Trial Tribunal, vide Land Application No. 414 of 2016. The decision was in favour of the respondent; hence the instant appeal was preferred based on the following grounds:-

- 1. That, the Honourable Chairman erred in law and fact by failure to evaluate and consider appellant's evidence;**
- 2. That, the Honourable Chairmen erred in law and fact deciding on a matter which the Tribunal lacks jurisdiction;**
- 3. That, the Honourable Chairman erred in law and facts by interfering with the appellant.**

The appeal was heard by way of written submissions. The appellant was represented by Adeline Elisei (Advocate), while George Dogani Mwalali represented the respondent.

In this judgment I prefer to start with the 2nd ground of appeal where the appellant faulted the trial Chairman for deciding on a matter which the Tribunal lacks jurisdiction. It was contended by Advocate Adeline that, the issues drawn by the trial tribunal were outside the jurisdiction of the Land tribunal as the same were not concerning a land dispute. Rather the dispute was on the existence or non-existence of a debt owed to the deceased by the appellant. That, the Respondent should have filed the matter before a proper court as stated in **John Agricola vs. Rashid Juma (1990) TLR**. That, the Trial Tribunal contravened the mandatory provisions of Section 33(1)(a) and (b) of the Land Disputes Courts Act, Cap 216 R. E. 2019.

In reply to the 2nd ground of appeal, Mr. Mwalali for the respondent maintained that, the dispute before the trial Tribunal was a land matter. The case was concerning with the appellant's act of attempting to dispose the landed property belonging to the deceased as there was a default in paying the debt due on part of the deceased, the late Juma Shaaban Sued. Therefore, the case at the said tribunal aimed at stopping the appellant from disposing the house in question. To cement his argument, he cited the case of **Rick Mulaki vs. William Jackson Magero, Civil Appeal No. 69 of 2017, High Court of Tanzania, Land Division at Dar es Salaam (unreported)**.

To resolve this ground, I will dwell on the settled rules proposed in the case of **Exim Bank (T) Limited vs. Agro Impex (T) & Others, Land Case Appeal No. 29 of 2008**, as quoted in **Rick Mulaki vs. William Jackson Magero case** (supra), where it was observed that:-

"Two matters have to be looked upon before deciding whether the court is clothed with jurisdiction. One, you look at pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the court has power to grant them and whether they correlate with the cause of action."

I went through the records of the trial tribunal. My focus was at paragraph 6 (a) of the Application which constitutes a cause of action and brief statement of the claim, it reads as follows:-

"The Applicant claims against the respondent is that, the respondent intends to dispose the applicant's property while the applicant has settled the debt. The applicant further claims that the amount Tshs. 16,585,964.20 is not true debt the applicant is owing to date; the respondent has realized the applicant's debt by selling the applicant's two motor vehicles namely Mitsubishi Fuso Truck Mode 2005 Registration No. 250 ARZ and Fuso Truck Registration No. T 510 AUH".

Also, at paragraph 7 of the on the reliefs the applicant, who is now respondent herein claimed the following:-

1. *"The declaratory order that the Applicant has repaid the principal sum plus interest thereon, following with the respondent's act of selling, the applicant's two motor vehicles namely Mitsubishi Fuso Truck Mode 2005 Registration No. 250 ARZ and Fuso Truck Registration No. T 510 AUH.*
2. *Permanent/ perpetual injunction against the Respondent, her workmen and or her agents and or her agents and any other person claiming to act under instruction from the respondent be restrained from entering into possession of the applicant's and /or selling the applicant's residential property pending hearing and determination of this application inter parties.*
3. *The order that the respondent be restrained from disposing the applicant's property as the applicant has paid the principal sum plus interest".*

Now, looking at the claim along with the reliefs, one cannot say that the case before the trial tribunal was not a land matter. The reliefs claimed are self-explanatory as the intention of the appellant is to sell a landed property which she claims was given as security for the loan in question.

The respondent did take prompt action to protect the landed property which was to be sold by the appellant. The intention of the appellant threatens to deprive the respondent the ownership and possession of the said landed property and there is no other court in my opinion which can entertain such dispute other than a land court. Though the trial tribunal concentrated much with the existence or non-existence of the debt due, but that was necessary as it proved the discharge or otherwise of the mortgage agreement between the appellant and the late Juma Shaban

Seif. The 2nd ground is therefore devoid of merits and it is rejected accordingly.

Back to the 1st ground on the improper evaluation of evidence on part of the trial tribunal. It was the contention of the appellant's counsel that, the respondent failed to prove her case before the trial tribunal. On the other hand, the evidence of the appellant was heavy, considering the fact that she tendered the mortgage agreement to prove that the suit land was mortgaged as security for the loan in question. That, Sections 110(1) and (2) of the Evidence Act, Cap 6 R. E. 2019 were not complied with. Also, referring to the case of **Sudi Kisapa vs. Paulo Futakamba, Land Appeal No. 15 of 2021, High Court of Tanzania at Sumbawanga.**

In reply to the 1st ground of appeal, the respondent's counsel was of the view that, the case at the trial tribunal was well proved. It was proved that the loan between the appellant and the late Juma Shaban Sued has already been repaid by the act of the appellant to sell the truck with registration No. T 250 ARZ.

I agree with the respondent's counsel on this fact. It is on records that, the truck with registration No. T 250 ARZ was taken by the appellant and was never returned back to the respondent. This fact shows clearly that the debt was extinguished upon confiscation of the said truck. This is what the trial tribunal stated in its decision and I find no reason to change the same.

Lastly on the 3rd ground of appeal. The appellant has insisted that it is her right to sell the mortgaged property. The trial tribunal was wrong to interfere with this right. The appellant's counsel in his arguments in favour of this ground, cited the case of **National Bank of Commerce (NBC)**

vs. Dar es Salaam Education & Office Stationery (1995) TLR 272,

where it was held that:-

"Where a mortgage is exercise its power of sale under a mortgage deed, the Court cannot interfere unless there was corruption or illusion with the purchase in the sale of the property."

The respondent on the other hand, through her learned counsel maintained that, since the appellant had acquired two motor vehicles from the Respondent and handed them over to the auctioneer to be sold, she had already realized her claim. She is not entitled to sell the suit land.

On my party, I would have agreed with the appellant on her right to sell the mortgaged property as stated in the **National Bank of Commerce case**, (supra). However, as said earlier, the records shows that she had already acquired a truck which its whereabouts are unknown to date. That it vanished while it was under her possession. Clearly the Appellant chose to take the vehicles as payment of his debt. That means the debt had already been realized and the mortgage was discharged. The 3rd ground also is rejected.

Eventually, the entire appeal is dismissed with costs. The decision and orders of the trial tribunal are upheld accordingly.

It is so ordered.




T. N. MWENEGOHA

JUDGE

20/07/2022