

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 38 OF 2022

(Arising from Appeal No. 628 of 2021 at the District Land and Housing Tribunal for Ilala at Mwalimu House, decision of Honorable Kirumbi Chairman dated 11 February, 2022)

BETWEEN

SABRINA RAMADHANI1ST APPELLANT

MAULID MBWANA2ND APPELLANT

VERSUS

MKUDE M. KUNAMBI 1ST RESPONDENT

MOHAMED S. MKWEPU..... 2ND RESPONDENT

JUDGMENT

Date of last Order: 20/7/2022

Date of Judgment: 09/08/2022

A. MSAFIRI, J.

The appellants were the applicants in Misc. Application No. 628 of 2021 before the District Land and Housing Tribunal of Ilala District at Ilala (the District Tribunal). They have instituted before the said District Tribunal an objection proceedings seeking for the orders that; first, the District Tribunal be pleased to investigate their claims of ownership over the suit premises located at Kipunguni B, Machimbo, Kitunda Ward, Ilala Municipality, and determine the objection proceedings accordingly, second, the District

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Tribunal be pleased to issue an order of vacating the demolition (sic) or eviction order issued over the suit premises; third, the District Tribunal be pleased to declare the applicants as the lawful owners of the suit premises, costs of the application and other orders or reliefs the Court may deem fit and just to grant.

After hearing, the District Tribunal rejected the application and dismissed it with no order as to costs. The applicants were aggrieved and hence they lodged the present appeal; advancing five grounds of appeal namely;

1. That, the learned Chairperson erred in law and fact for holding in general that the whole application was based on the purpose to save family interest.
2. That, the learned Chairman erred in law and fact for deciding the matter without legal ground.
3. That, the Honourable Chairman erred in law and fact for delivering ambiguous yet erroneous decision.
4. That, the Honourable Chairman erred in law and fact for not taking on board the fact that the Appellants herein were not part to the suit in the former suit.
5. That, the Honourable Chairman erred in law and in fact for not taking into consideration that the Appellants were now adults who can file a case and defend their rights.

The appellants prayed that this appeal be allowed and the whole decision of the District Tribunal be quashed and set aside with costs. *Adls.*

The appeal was heard orally and the appellants were represented by Mr. Fredrick Ododa, learned advocate. The respondents appeared in person, unrepresented.

Submitting on the first ground, Mr. Ododa stated that, the Hon. Chairman erred when he held that, the whole Application No. 628 of 2021 was based on the purpose to save family interest. He argued that, there was two applications i.e. Application No. 626 and Application No. 628 before the District Tribunal.

That, Application No. 626 was for stay of Execution of Order in Land Dispute No. A/22/2019 before the Ward Tribunal, and that the appellants were not parties to the dispute. He said that the Hon. Chairman was wrong in his decision that the land in dispute was a family property while the appellants have a right to own the properties individually.

The 1st respondent replied on the 1st ground and stated that the District Tribunal investigated and discovered that four disputes were instituted by the same parties from members of the same family. He said further that he was the one who filed Land Dispute No. A 72/2019 at Kipunguni Ward Tribunal, against the 2nd respondent who is the father of the family of appellants on the claims of trespassing on his property.

That the 2nd respondent was aggrieved and lodged an Application No. 22 of 2020 before the District Tribunal. He said that the Hon. Chairman was correct to hold that there was multiple applications instituted by one family to save family interest. *Atilla*

The 2nd respondent submitted briefly that the appellants have right to be heard because they are the lawful owners of the suit premises.

In determining this first ground of appeal, I had to go through the impugned judgment and proceedings of Application No. 628 of 2021 before the District Tribunal.

From the court records of the District Tribunal, I have gathered that the origin of this dispute was Shauri No. A/72/2019 which was instituted by Mkude M. Kunambi (now the 1st respondent) at Kipunguni Ward Tribunal. The suit was instituted against Mohamed S. Mkwepu (now the 2nd respondent). The dispute was over suit premises. Mkude Kunambi was claiming that he is the lawful owner of the suit premises and that Mohamed Mkwepu has trespassed on the said suit premises. He said that he bought the suit premises from two relatives, Abdallah Mtengela and Zainabu Mtengela, and he bought the same in 04/2/2007. Mohamed Mkwepu denied the claims and argued that, he bought the suit premises in 2009 from one Zainabu Hemedi and that he was with his wife Ashura Mohamed and they bought the place for their children Sabrina and Maulidi.

After that the Ward Tribunal visited the locus in quo whereby each party in dispute showed the piece of land which they claimed to own. In the evidence, Zainabu Hemedi Mtengela who each party claim to have bought a suit premise from her, testified as a witness of the 2nd respondent Mohamed Mkwepu. She admitted to have sold the same land twice to the disputing parties. She admitted that, she and her brother Abdallah Mtengela sold the

Adls.

suit premises first to the complainant Mkude Kunambi, and later they sold the same again to Mohamed Mkwepu (double sale).

After hearing parties and their witnesses, the Ward Tribunal found that the land in dispute was sold twice, first to Mkude Kunambi and then to Mohamed Mkwepu. The Ward Tribunal decided that Mohamed Kunambi was the lawful owner of the land in dispute because it was sold first to him and hence the second sale was void. The decision was delivered in 25/2/2020.

Mohamed S. Mkwepu was aggrieved with the Ward Tribunal decision and filed an Appeal No. 22 of 2020 before the District Tribunal, challenging the said decision. After hearing submission from both parties on appeal, the appellate Tribunal, having gone through the Ward Tribunal proceedings, was satisfied that the appellant Mohamed Mkwepu was the second buyer of the land in dispute after the same having been first sold to Mkude Kunambi. The appellate Tribunal found that the suit premise belongs to Mkude Kunambi as the vendors had no longer ownership of the land in dispute when they were selling the same to Mohamed Mkwepu.

After that, one Ashura Mohamed, the wife of Mohamed Mkwepu, suing as guardian of Sabrina Ramadhani, as the 1st applicant and Maulid Mbwana as the 2nd applicant, instituted Misc. Application No. 10/2021 against Mkude Kunambi, Mohamed Mkwepu and Forsters Auctioneers & General Traders.

The application was objection proceeding filed under Order XXL, Rules 24(1), 57 (1) and 59 of the Civil Procedure Code, Cap 35, R.E. 2019. They were seeking for orders of stay of execution of the Order of demolition of suit premises issued by the District Tribunal. *Alle*

In the application, the applicants stated that they were not part of the main suit which is the origin of the order of execution. That, as the owners of the land in dispute they ought to be joined in the main case. The 1st respondent submitted that the sale agreement shows the buyers as Sabrina and Maulidi and not Sabrina Ramadhani and Maulidi Mbwana.

The District Tribunal having seen the sale agreement, which the applicants submitted to prove their ownership, was satisfied that the same does not reveal the applicants as buyers but the buyers are shown to be Sabrina and Maulidi.

The District Tribunal decided that the applicants were not the owners of the land in dispute, and dismissed the application. This decision was delivered on 03/9/2021. The now appellants i.e. Sabrina Ramadhani and Maulid Mbwana then filed Misc. Application No. 628/2021 also on objection proceedings over the same land dispute which is the source of the current appeal.

Having gone through the historical background of this matter, I am inclined to agree with the view of the Chairman of the District Tribunal in Misc. Application No. 628 of 2021 that this dispute involves the same family interest, or as it was put in the 1st ground of appeal, that the whole application was based on the purpose of saving family interest.

It is crystal clear that the land dispute involves the same family. The father Mohamed Mkwepu (2nd respondent), was sued in the Ward Tribunal, Shauri No. A/72/2019. The said father Mohamed Mkwepu, appealed in Appeal No. 22 of 2020. Having lost the appeal, his wife Ashura Mohamed,

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with their child Maulid Mbwana filed the first objection proceedings in Application No. 10 of 2021. It was dismissed. Then the children Sabrina Ramadhani and Maulid Mbwana filed the second objection proceedings i.e. Application No. 628/2021 which was also dismissed. The said children then filed the current appeal.

However, much as I agree that these various applications were filed by members of the same family at different times, it was not wrong for the said family to seek for what they believe it was their right. As the counsel for the appellants have correctly pointed out, the appellants have right to own properties individually. However, they had to prove that the land in dispute indeed belonged to them.

In the 2nd ground of appeal, the appellants through their counsel, submitted that the appellants have filed objection proceedings and stay of execution of demolition of suit premises, one of their grounds being that, the execution was taking effect while the applicants who are the legal owners of the suit premises have never been heard.

On the grounds No. 3 and 4 of the appeal, the appellants stated that, the Chairman of the District Tribunal relied on old case in dispute while the appellants were not party to the said case. They added that, they were denied the right to be heard which is fundamental right.

Order XXI Rule 57 (1) of the CPC provides that:

"Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such



property is not liable to such attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector and in all other respect, as if he was a party to the suit:"

In Application No. 628/2021 which is the subject of this appeal, the District Tribunal, investigated the claims of the applicants that they are lawful owners of the land in dispute and they have never been party to the various land disputes over the premises. The District Tribunal, basing on the submission on both parties, founded that the attached sale agreement which the applicants has attached in their affidavit shows that one Zainabu Hemedi sold the Land (Shamba) to one "SABRINA & MAULIDI. It was signed by parties, SABRINA & MAULIDI signing as a buyer.

*"Jina la Muuzaji ZAINABU HEMEDI, Jina la Mnunuzi
SABRINA & MAULIDI"*

The Chairman was of the view that this "SABRINA & MAULIDI" who are shown in the sale agreement are unknown as the applicants have not proved that they are this buyer. In addition, there is a signature of one person on the part of the buyer in the said sale agreement. The sale agreement shows the buyer as one person contrary to the appellants' claim that they are the buyers.

I have seen a photocopy of the sale agreement which the appellants then the applicants have attached in their affidavit supporting their application before the District Tribunal. I see no reason to depart from the

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views and findings of the Hon. Chairman particularly on ownership of the appellants of the land in dispute.

This is for the reason that, the attached photocopy of sale agreement which the appellants had relied upon to prove their ownership of land in dispute, raise the questions as who is SABRINA & MAULIDI who signed as one person and as buyer. The investigating Tribunal was of the view that it was not made clear by applicants or their father, whether this SABRINA & MAULIDI are the applicants/ appellants.

In his brief submission, the 2nd respondent told this Court that, he is not the owner of the suit premises but was a witness when the appellants were buying the suit property.

I have gone through the proceedings & decision of the Ward Tribunal. The 2nd respondent then as the respondent told the Ward Tribunal that he and his wife Ashura Hemed were the one who bought the land in dispute but they bought it for their children Sablina and Maulidi. He told the Ward Tribunal that he has built a house on the suit premises and he was living peacefully on that land.

At the appeal, the 2nd respondent raised an issue of joining necessary parties to the case. However, during the Ward Tribunal proceedings, the 2nd respondent never raised issue of joining the necessary parties while all along he was aware that, he was not the owner of the suit premises but the same belonged to Sabrina & Maulidi.

The 2nd respondent claim to be a father of the purported lawful owners of the land in dispute. The appellants are children of the 2nd respondent who

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was sued at the Ward Tribunal by the 1st respondent hence all along they were aware of the proceedings so they had an opportunity of seeking to be joined as necessary parties under guardianship or as an adults depending on their age. Therefore, the appellants were all along aware of the dispute over their purported suit premises.

The major issue here is whether the appellants were denied their fundamental rights to be heard as it was put by their counsel. It is my finding that the appellants were never denied their rights to be heard. They knew and were aware of the proceedings over the land dispute since the matter was at the Ward Tribunal. They had opportunity of filing an application or requesting to be joined as parties. The 2nd respondent their father was part of the parties in the proceedings. He had an opportunity of informing the Tribunal about the necessary parties to the suit. However, he told the Tribunal that he was the one who bought the land for his children and had built a house which he lives in. Under these circumstances, I am of the firm belief that the appellants were never denied their right to be heard.

In addition, I agree with the findings of the District Tribunal on ownership of the land in dispute that there was no evidence that this SABRINA & MAULIDI are the appellants, so the appellants have no claim of ownership on the land in dispute.

My findings are based on two reasons, first, the District Tribunal in Application No. 628 of 2021 did investigate the claims of ownership of the appellants and found that there was no evidence to prove that the appellants were the lawful owners of the land in dispute, and second, the appellants

Alb.

were aware of the dispute proceedings and had opportunity to seek to be joined as necessary party in the proceedings at Ward Tribunal either through guardianship or on their own depending on their age. They did not do so, so they cannot claim that they were denied their right to be heard. I find the appeal to have no merit.

I uphold the findings and Ruling of the District Tribunal in Application No. 628 of 2021 and dismiss this appeal with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "A. Msafiri", written over a horizontal dotted line.

A. MSAFIRI

JUDGE

09/8/2022