

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

MISC. LAND CASE APPEAL NO. 56 OF 2022

(Arising from the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in Land Appeal No. 91 of 2021 originating from Land Dispute No. 19 of 2021 at Saranga Ward Tribunal)

ELIZABETH MANDA.....APPELLANT

VERSUS

ASHA SAIDI.....RESPONDENT

J U D G M E N T

Date of Last Order: 30.11.2022

Date of Judgement: 23.01.2023

T. N. MWENEGOHA, J.

At the outset, the appellant has filed a petition of appeal before this Court against the decision of the District Land and Housing Tribunal for Kinondoni at Mwananyamala [Hon. L. R. Rugarabamu-Chairman], in Land Appeal No. 91 of 2021, which ended in favour of the respondent, hence this second appeal.

The appellant's grounds of appeal against the respondent dated 10/08/2022 and filed on 12/08/2022 are:

- 1. That the District Tribunal Chairman erred in law and in fact by upholding the decision of Saranga Ward Tribunal which was unfairly and improperly conducted.**
- 2. That the Tribunal Chairman erred in law and fact by deliberate failure to consider and account for time**

limitation of the (*sic*) to institute a complaint against the appellant.

- 3. That the District Land and Housing Tribunal erred in law and in fact by relying on hearsay evidence which was adduced by the respondent (complainant) during the trial at the Ward Tribunal and at the District Tribunal.**
- 4. That the District Land and Housing Tribunal Chairman erred in law and in fact by wrongly admitting a secondary documentary evidence contrary to the requirement of law.**
- 5. That the Chairman of the District Land and Housing Tribunal erred in fact and law by failure to order and call for sufficient evidence on the subject matter which could cure the mistakes of the trial Tribunal.**

On 3rd day of November, 2022 the matter was scheduled to be disposed by way of written submissions whereby the appellant was ordered to file her submissions in chief on 10/11/2022, reply by the respondent on 17/11/2022, rejoinder if any by 23/11/2022 and Judgment on 30/11/2022; but on the Judgment date, the same was not delivered for reasons put forward by the parties herein which are incorporated in the Court's proceeding and thus necessitated the said Judgment to be fixed on 23/01/2023.

Having scrutinized the grounds of appeal, submissions for and against and the records of the Court, the issue for determination is whether the appeal has merit or not. This Court is persuaded to commence with ground of appeal number five (5) for the sake of clarity as to what transpired before the Ward Tribunal of *Saranga* (Ward Tribunal) and the District Land and

Housing Tribunal for *Kinondoni* at *Mwananyamala* (District Tribunal) as the 1st appellate Tribunal in determining the matter at hand.

As to the submission in chief in support of the appeal, the appellant argued that the District Tribunal had deliberately failed to observe the provisions of **Section 34 (1) (a) (b) (c) of the Land Disputes Courts Act [Cap 216 R. E. 2019]**. It is the appellant's submission that, the same implies that the Chairman was biased and/ or negligent which has consequently resulted to this appeal. Ergo, the appellant prayed for this ground to be considered and the appeal be allowed to that extent.

In reply to the alleged ground, the respondent was of the view that, the appellant has misconceived the meaning of **Section 34 (1) of the Land Disputes Courts Act [Cap 216 R. E. 2019]**. That, it is not true that the District Tribunal is mandatorily obliged to receive additional evidence when it hears an appeal from Ward Tribunals.

She added further that, there was no such move by either the appellant or the respondent to call for additional evidence and thus the trial Tribunal is not obliged to do so *suo motto* under the referred section; hence she prayed for dismissal of such ground for being untenable.

By way of rejoinder, the appellant reiterated her submission in chief and added that, she disputes the story narrated by the respondent at the Ward Tribunal, of her delay to claim for the said piece of land. In addition, she stated that she is astonished to see the learned District Tribunal Chairman jumped into the shoes of the Ward Tribunal.

Being mindful of the decision of **Helmina Nyoni Vs. Yerima Magoti, Civil Appeal No. 61/ 2020, Court Of Appeal of Tanzania**

(Unreported), Hon. Mwandambo, JA had this to say at page 8 and 9 of the Judgment of the Court and I quote:-

"...It is trite law that second appellate courts should be reluctant to interfere with concurrent findings of the two courts below except in cases where it is obvious that the findings are based on misdirection or misapprehension of evidence or violation of some principle of law or procedure, or have occasioned a miscarriage of justice".

See also the case of; **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores v. A.H. Jariwala t/a Zanzibar Hotel [1980] TLR 31 and Neli Manase Foya v. Damian Mlinga [2005] T.L.R 167.** Section 34 (1) of the Land Disputes Courts Act [Cap 216 R. E. 2019] provides that:-

"The District Land and Housing Tribunal shall, in hearing an appeal against any decision of the Ward Tribunal sit with not less than two assessors, and shall

- a) consider the records relevant to the decision;*
- b) receive such additional evidence if any; and*
- c) make such inquiries, as it may deem necessary".*

The word shall as used in provision entails imperative as emphasized in **Section 53 (2) of the Interpretation of Laws Act [Cap 1 R. E. 2019]** and not discretionary. Therefore, the argument by the respondent that, the trial Tribunal is not mandatorily obliged to receive additional evidence when it hears an appeal from the Ward Tribunal is implausible and deceptive one in the circumstance.

I concur with the counsel for the appellant that, if the trial Tribunal Chairman had acted in conformity with the said provision of law prudently, it could have cured the anomalies in the impugned decision of the Ward Tribunal and not otherwise.

Going with the submissions in support and opposition of Land Appeal No. 91/ 2021, on ground of appeal number three to the Petition of Appeal, it is clear that the appellant's father-in-law sold the disputed landed property to the respondent to the tune of Tshs. 625,000/= (Six Hundred Twenty Five Thousand Shillings Only), however the upfront amount paid was Tshs. 500,000/= (Five Hundred Thousand Shillings Only) way back in 2002 and the outstanding balance was Tshs. 125,000/= (One Hundred Twenty Five Thousands Shillings Only) due to date as per the Court's record.

The Ward Tribunal decided that, the respondent (now the appellant) should give the complainant (now the respondent) a piece of land measuring 20 times 25 square metres or to reimburse her with the sum of Tshs. 3,000,000/= (Three Million Shillings Only) as compensation and costs of the suit. In case, the respondent (appellant herein) fails to honour the said decision, the Ward Tribunal advised that then the complainant (respondent herein) should appear before the Chairman of the District Land and Housing Tribunal for further necessary steps.

I am of the view that, if the 1st appellate Tribunal Chairman was akin in evaluating the evidence of the Ward Tribunal, he would have realised that the said decision was erroneously reached as the matter was not a land matter. The land in question did not pass to the buyer from the seller as per the evidence on records from the Ward Tribunal. It is not disputed

that, the respondent entered into a sale agreement with the late Mzee Simon Ikolo, the owner of the disputed land. As per the records at hand, the respondent did not fully perform her contract as she paid part of the agreed purchase price to the tune of Tshs. 500,000/= (Five Hundred Thousand Shillings Only) and she remained with a balance of Tshs. 125,000/= (One Hundred Twenty-Five Thousand Shillings Only) due. To date, the same has not been effected to the deceased or his administrator/ administratrix as the case may be.

That is why I say the sale agreement between the respondent and the late Mzee Simon Ikolo was not fully performed as required under **Section 37 (1) of the Law of Contract Act [Cap 345 R. E. 2019]**. It means that, the ownership of the said land did not pass to her as a buyer.

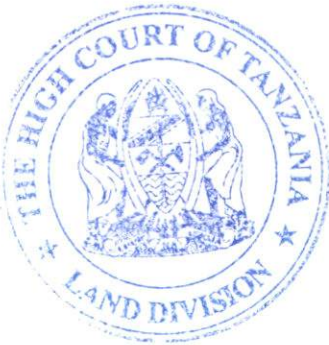
She cannot therefore, come afterwards and claim the same to have been trespassed upon by the appellant. Rather, she has other remedies to pursue and that is outside the jurisdiction of this Court, see **Charles Rick Mulaki versus William Jackson Magero, HC Civil Appeal No. 69 of 2017, High Court of Tanzania at Mwanza (unreported)**.

That being the case, I agree that, the 1st appellate Tribunal's Chairperson made an oversight when scrutinising and conceptualising the evidence of the Ward Tribunal. Hence, I find merit on the fifth ground of appeal that the Tribunal Chairman did not act in conformity with the law and more so failed to examine the evidence of the Ward Tribunal.

With regard to grounds of appeal number one (1), two (2), three (3) and four (4) to the Petition of Appeal, I am of the view that they need not detain this Court in determining them as the fifth ground is sufficient to determine the Appeal.

For the foregoing reasons, the appeal is allowed with costs. Consequently, I quash and set aside the Judgment and Decree of the District Land and Housing Tribunal for Kinondoni at Mwananyamala in respect to Land Appeal No. 91/ 2021 together with the decision of the Land Dispute No. 19/ 2021 at Saranga Ward Tribunal.

It is so ordered.




T. N. MWENEGOHA

JUDGE

23/01/2023