

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND APPEAL NO.37 OF 2023**

(Originating from the District Land and Housing Tribunal for Temeke
at Temeke in Land Application No.113 of 2023)

**MAULID SEIF NGAOLA (Administrator of the
Estate of the late SEIF NGAOLA) APPELLANT**

VERSUS

NURU OMARI MAKUNJA 1ST RESPONDENT

MSOMBO AUCTION MART 2ND RESPONDENT

FOSTERS AND COMPANY LTD 3RD RESPONDENT

JUDGMENT

Date of last Order: 12.05.2023

Date of Judgment: 19.05.2023

A.Z.MGEYEKWA, J

This is the first appeal. At the centre of controversy between the parties to this appeal is a notice of eviction. The decision from which this appeal

stems is the Judgment of the District Land and Housing Tribunal for Temeke in Application No.113 of 2023. The material background facts of the dispute are not difficult to comprehend. They go thus: the appellant was appointed as an administrator of the estate of the late Seif Ngaola. He alleges that the notice of eviction intending to evict him from the suit-landed property of the late Seifu Ngaola for the reasons that the same belongs to the 1st respondent is invalid.

On their sides, the respondents disputed the allegations whereas the 1st respondent claimed that she is the lawful owner of the suit land which she bought in an auction. The tribunal determined the matter and dismissed the application with costs.

Believing the decision of the District Land and Housing Tribunal for Morogoro was not correct, the appellant lodged this appeal on three grounds of complaint seeking to assail the decision of the District Land and Housing Tribunal. The grounds are as follows:-

- 1. That, Honourable Chairperson erred in law and fact by failure to evaluate the evidence adduced by the appellant.*

2. *That, the Honourable Chairperson erred in law and fact to hold that the sale was valid without the existence of the order of attachment and sale issued by the Court.*
3. *That, the Honourable Chairperson erred in law and fact to decide that the 1st respondent lawfully acquired the suit landed property from the sale without considering the legality of the proclamation of sale issued by the Court.*

The parties' contending arguments were, pursuant to the parties' request and Court's consent parties argued the appeal by way of written submissions in conformity with the revised scheduling order drawn on 21st April 2023. The 2nd respondent was absent while the appellant and 1st respondent appeared in persons, unrepresented. The 2nd respondent did not show appearance, hence the matter proceeded *ex parte* against him.

The appellant started his onslaught by abandoning the third ground of appeal. He started to narrate the genesis of the case which I am not going to narrate in this appeal.

On the first ground, the appellant argued that the District Land and Housing Tribunal erred in law and facts to hold that the sale was valid. The appellant contended that the root of the matter shows that the 1st

respondent bought the suit landed property from Seif Ngaola in an auction conducted by Nsombo Auction Mart, the 3rd respondent. He added that the appellant disputed the procedure of auction. He stressed that the whole procedure of the sale of the suit landed property was not followed. To buttress his contention, the appellant referred this Court to Order XXI of the Civil Procedure Code Cap.33 [R.E 2019].

The appellant went on to submit that the matter at the procedure was not observed in auctioning the suit landed property. The appellant contended that in the case at hand, the whole procedure was never complied with as required by the law, however, the tribunal declared the sale was valid despite the contravention of the law in auctioning the suit house. Hence the sale was illegally been conducted.

Submitting on the 2nd ground, the appellant was very brief. He contended that both parties testified, however, the tribunal in its evaluation did not consider the appellant's documentary evidence. He valiantly argued that in case the tribunal could have considered the appellant's exhibit then its decision would be completely different.

In conclusion, the appellant beckoned upon this Court to allow the appeal and quash the District Land and Housing Tribunal's decision with costs.

In reply, on the first ground, the 1st respondent contended that she bought the suit landed property in an auction which involved a matrimonial property in Matrimonial Dispute No.18 of 2008 between Maua Ally and Seif Ngaola (deceased) evidenced by the Proclamation of sale, receipt, and court proceedings tendered at the trial Tribunal.

The 1st respondent continued to argue that it is settled law that he who wants the Court to give a verdict in his favour on a certain right or liability depending on the existence of certain facts must prove that the same does exist. To bolster his submission the 1st respondent referred this Court to section 110 of the Evidence Act, Cap.6 [R.E 2019]. The 1st respondent went on to submit that the irregularity in the sale of the matrimonial home has not been proved since the appellant did not tender any proof.

Submitting on the second ground, the 1st respondent defended the tribunal decision as sound and reasoned. She submitted that the trial tribunal evaluated the evidence properly and reached a fair decision as the sale of the matrimonial house was proper and all the procedure of the law was adhered to.

In conclusion, the 1st respondent stressed that she is the lawful owner of the suit landed property, thus, she urged this Court to dismiss the appeal

and the decision of the District Land and Housing Tribunal for Temeke be upheld.

In his short rejoinder, the appellant had nothing new to rejoin rather he reiterated his submission in chief.

After a careful perusal of the record of the case and the final submissions submitted by the appellant and the 1st respondent. The circumstance of the case will lead this court to determine the matter before it. In determining the appeal, the central issue is *whether the appellant had sufficient advanced reasons to warrant this court to allow the appeal.*

On the first ground of appeal, the appellant's main complaint is concerning the auction. He claims that the sale was invalid. I have perused the District Land and Housing Tribunal records and noted that the appellant is faulting the auction which was conducted on 29th October 2010 and the sale was confirmed by the District Court of Temeke on 5th January 2018.

There was a matter at the District Court of Temeke in Civil Case No. 18 of 2008, the parties were Maua Ally against Seif Ngaola, and Mau Ally bought the suit landed property and emerged as the highest bidder. On his said, Seif Ngaola testified to the effect that his appeal was not heard, while he admitted that there was no any pending appeal before this Court.

The District Court found that the sale was properly been effected, thus, the legal purchaser had the right to occupy the suit landed property. Hence the court issued an eviction order and was given the notice to vacate the suit landed property.

After perusing the records, I have reached a firm finding that the issue of invalid auction was raised after the District Court of Temeke issued an eviction order on 5th January 2018 and the late Seif Ngaola was alive. Therefore, I find no any reason to fault the Tribunal's decision, the Tribunal was not in a position to declare the sale of the suit landed property invalid while the suit landed property was already in the hands of the 1st respondent. In other words, the ownership was already been transferred to the 1st respondent. The same is evident by an eviction order dated 16th March 2022 and a Certificate of Sale of the suit landed property which was issued on 31st August 2022. Therefore, I do not find any reason to differ from the findings and holding of the District Land and Housing Tribunal for Temeke. In case the appellant was dissatisfied then he was required to take proper measures but not faulting the auction process. Thus, the appellant's claims were overtaken by the events. This ground is short of merit.

On the second ground, the appellant is faulting the District Land and Housing Tribunal decision for the main reason that the Tribunal failed to evaluate the evidence on record. From the outset, I find this ground demerit as pointed out in the first ground of appeal, the appellant's claims were not supposed to be raised because the disputed landed property was already placed in the hands of the 1st respondent and the District Court decree was not set aside.

Moreover, the evidence adduced by the appellant was insufficient to convince the Tribunal to decide in his favour. The general rule, therefore, is that the burden of proof lies on the party who asserts the affirmative of the issue or question in dispute. Section 110 of the Evidence Act Cap.6 [R.E 2019] places the burden of proof on the party asserting that partly desires a Court to believe him and pronounce judgment in his favour. For ease of reference, I reproduce section 110 (1) of the Evidence Act, Cap.6 [R.E 2019] hereunder:-

"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."

Similarly, in the case of **Anthony M. Masanga v Penina (Mania Mgesi) & Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014 (CAT) (unreported) where it was further held that:-

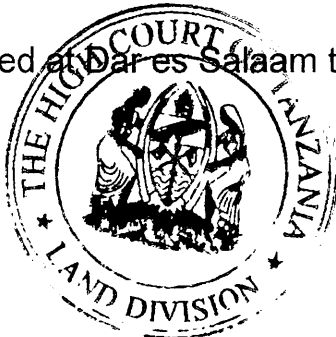
“The party with legal burden also bears the evidential burden on the balance of probabilities.”

Guided by the above authorities, it is obvious that the appellant has failed to prove his case to the standard required by the law.

In the upshot, I proceed to dismiss the appeal with costs.

Order accordingly.

Dated at Dar es Salaam this date 19th May 2023.



A.Z.MGEYEKWA
JUDGE
19.05.2023

Judgment delivered on 19th May 2023 in the presence of the 1st respondent.



A.Z.MGEYEKWA
JUDGE
19.05.2023

Right of Appeal fully explained.