IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 257 OF 2023

(Arising from the Judgment and Decree delivered by Hon. P.I. Chinyele, Chairperson in the District Land and Housing Tribunal for Temeke, at Temeke in Land Application No. 297 of 2015)

DILUNGA ABDUL.....1ST APPELLANT
FREDERICK NYALUKE.....2ND APPELLANT

VERSUS

AMANDUS G.Z MASINDE.....RESPONDENT

JUDGMENT

03rd August 2023 & 15th September, 2023

L. HEMED, J.

At the District Land and Housing Tribunal for Temeke, the Respondent herein, **AMANDUS G.Z. MASINDE** instituted a suit which was registered as Land Application No.297 of 2015. In the said suit, the respondent claimed against the appellants herein, **DILUNGA ABDUL** and **FREDERICK NYALUKE** for having trespassed into his piece of land located at Maweni Mjimwema Kigamboni Temeke Municipality which he claimed to have purchased from the 1st Appellant in 2001.

In their written Statement of defence, the 1st Appellant denied to have sold the suit piece of land to the Respondent. He pleaded to have

sold it to the 2nd Appellant herein. On his part, the 2nd Appellant, apart from disputing the claims, he pleaded to be the lawful owner of the suit piece of land after having purchased the same from the 1st Appellant in 2015.

Having deliberated on the matter, the trial Tribunal found the Respondent herein (the Applicant in the original suit) owner of the disputed piece of land. The appellants herein (the respondents in the original suit) were aggrieved by the decision of the trial Tribunal hence this appeal on the following ground: -

> *"1. That, the Honourable trial tribunal had no jurisdiction to entertain and adjudicate the application.*
>
> *2. That, the Honorable trial tribunal grossly erred both in law and in fact by relying on the testimony of the respondent and disregard the evidential account of the Appellant.*
>
> *3. That, the Honorable trial tribunal grossly erred both in law and in fact for failure to evaluate and consider the evidence adduced by the Appellants."*

The Appellants pray that the appeal be allowed with costs. They also pray for decision of the trial Tribunal be quashed, set aside and the 2nd Appellant be declared owner of the disputed land. At all the material time, Mr. William Yohana Fungo, learned advocate represented the appellants while the Respondent enjoyed the service of Mr. Hendry Polycarp Kimario, learned advocate.

The matter was argued by way of written submissions. The appellants' submissions in chief was filed on 17th August 2023 while reply thereof was presented for filing on the 31st August 2023. The rejoinder submission was lodged on 07th September, 2023.

I have scrupulously read the rival submissions made by the advocates for the parties. Before I get into the determination of the merits of the Appeal, let me state at the outset that the respondent raised a preliminary objection in his reply submission on the time limitation of the instantaneous Appeal. According to the Respondent, the appeal was filed after 77 days from the date of the impugned Judgment contrary to section 41(2) of the Land Disputes Courts Act [Cap.216 RE 2019] which requires that an appeal from the Judgment and Decree of the District Land and

Housing Tribunal to the High Court is to be instituted within 45 days from the delivery of the impugned Judgment and Decree.

Upon perusal of the impugned Decree of the trial Tribunal, I found that it was extracted on 19th May 2023. The present Appeal was presented for filing on 3rd July 2023. If the days are computed from 19th May 2023 from when the decree was extracted then, the 3rd day of July 2023 was the 45th day and thus within time. I thus find the preliminary objection hollow of merits.

Let me turn to determine the merits of the appeal. I have opted to start with the 1st ground that the trial tribunal had no jurisdiction to entertain and adjudicate the application before it. The learned counsel for the appellants asserted that the trial Tribunal had no pecuniary jurisdiction to entertain the application basing on the fact that the applicant, who is the respondent herein testified to have bought the land for Tshs.300,000/= from the 1st Appellant herein. He stated further that there is no valuation report suggesting appreciation of the value over the disputed land to enable the District Land and Housing Tribunal have jurisdiction thereto. He argued that parties are not allowed to assume the jurisdiction of the court. To cement his point, he cited the decision of this Court in **Michael**

Joachim Tumaini Ngalo vs Jitesh Jayantilal Ladwa, Civil Case No. 18 of 2021, that jurisdiction is a creature of statute and as such, it cannot be assumed or exercised based on likes and dislikes of the parties.

In response thereto, the counsel for the respondent argued that the 2nd respondent had testified during trial that the suit property is his property and that he purchased it for Tshs.22,000,000/= and tendered the sale Agreement (exhibit D-1). In his opinion the value of the suit land was within the value which fit the pecuniary jurisdiction of the trial Tribunal.

To assess the merits of the 1st ground of appeal, I opted to revisit the Application as was filed in the trial Tribunal. I realized that, the respondent herein estimated the value of the suit landed property to be Tshs. Forty (40) Million shillings. I have read section 33 of the Land Disputes Courts Act, [Cap.216 RE 2019, it does not require to state the actual value of the suit land property. The law does not require the valuation report to be annexed to the application as proof of the value of the subject matter.

I also deeply perused the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, GN.174 of 2003 and found that Regulation 3(2)(d) provides thus:-

"...An application to the Tribunal shall be made in the form prescribed in the Second Schedule to these Regulations and shall contain:

(a)...

(b)...

(c)...

(d) ***Estimated value of the subject matter of the dispute****;*

(e)...

(f)..."(Emphasis added).

From the above, provision it is sufficient to state the estimated value of the suit property in the application. The stated estimated value in the Application is the one that is used to determine the pecuniary jurisdiction of the court/Tribunal. In the instant matter, the estimated value of the suit property stated in the application was Tshs. 40.Million, thus falling in the pecuniary jurisdiction of the District Land and Housing Tribunal. In the circumstance, I find the 1st ground of Appeal to have no merits at all.

The appellants opted to argue the 2nd and 3rd grounds of appeal jointly. He submitted that it is apparent from the proceeding that the trial Tribunal without justifiable cause disregarded the testimony of the respondent that the land sold by the 1st appellant to the respondent herein is quite different to the land sold by the 1st appellant to the 2nd appellant.

He submitted that the trial Tribunal erroneously applied the rule as per the case of **Patricial Mpangala and Another vs Vicent K.Lyimo (as the Guardian of Emmanuel Lyimo)**, Civil Appeal No.149 of 2020, that the respondent being the first buyer had the right over all the land. He contended that the said decision ought to be applied only if the same land would have been sold twice, something, which according to the learned counsel for the appellants, is not the case in this matter.

The respondent's advocate responded that the testimony and evidence of the Appellants in the trial Tribunal was very contradictory. He contended that in his written statement of defence the 1st defendant stated to have not sold the land to the respondent while in his testimony he adduced to the contrary.

I have read the proceedings, Judgment and the Decree of the trial Tribunal. The records of the trial Tribunal reveal that in his Written Statement of Defence, the 1st Appellant (who was the 1st Respondent at the Tribunal) stated to have not sold any land to the Respondent herein. In his testimony however, he told the trial Tribunal that he sold land to the Respondent measuring 10 X 40 paces in 2001 and later in 2015 he sold to the 2nd Appellant a piece of land measuring 30 X 40 paces. Record shows

further that upon visit of the *locus in quo* it was revealed that the land in question was one and the same not separate as the appellants claimed it.

I must clearly state clearly at the outset that the general rule is that parties are bound by their own pleadings because every litigant is entitled to be informed in advance of the case he has to meet so that he may effectively challenge the same. This was also stated by the Court of Appeal of Tanzania in **Barclays Bank(T)Ltd vs. Jacob Muro**, Civil Appeal No.357 of 2019, that:-

> *"We feel compelled, at this point to restate the time-honored principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at the variance with the pleaded facts must be ignored."*

In the instant matter, the 1st appellant's testimony was contrary to what he pleaded in his Written Statement of Defence. As aforesaid, in his WSD it was been pleaded that he never sold a land to the Respondent while in his testimony during trial he adduced that he sold to the Respondent a piece of land measuring 10 X 40 paces. In **National**

Insurance Corporation vs Sekulu Construction Company,[1986]T.L.R 157, it was stated that, parties to the dispute are not, during trial, allowed to depart from pleadings by adducing evidence which is extraneous to the pleadings.

After having found that the suit piece of land sold to the Respondent and the 2nd Appellant was the same, the tribunal went further to determine the question of ownership between the 2nd appellant and the Respondent. I am convinced by the way the trial Chairperson handled the matter. She rightly applied the **priority principle** in her decision for purposes of determining the question of ownership of the suit property between the 2nd Appellant and the Respondent herein. The said principle was well articulated by the Court of Appeal of Tanzania in **Merchiades John Mwenda v. Gizelle Mbaga (administrator of the Estate of John Joseph Mbaga – deceased) & 2 others**, Civil Appeal No. 57 of 2018, thus:-

> *"In case of double allocation of land, even when it is occasioned by an authority or a person with legal mandate to allocate or transfer the land, the law is that the authority or transferor would have no title to pass to a subsequent grantee or transferee, by*

the application of the priority principle. The priority principle is to the effect that where there are two or more parties competing over the same interest especially in land each claiming to have title over it, ***a party who acquired it earlier in point of time will be deemed to have a better or superior interest over the other****."* (Emphasis added)

Having found that the Respondent purchased the suit piece of land from the 1st Appellant on 5th October 2001. It was right for the trial chairperson to find that he had better and superior title over the 2nd Appellant who purported to have purchased the same property from the 1st Appellant on 31st August 2015. From the foregoing, I find no merits in the 2nd and 3rd grounds of appeal.

In the final analysis, after having found all grounds of appeal to have no merits, the entire appeal has to fail. I do hereby dismiss the entire appeal with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 15th September, 2023

L.HEMED

JUDGE

THE HIGH COURT OF TANZANIA
LAND DIVISION