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

LAND APPEAL NO.243 OF 2023
(Arising from Land Application No.147 of 2022, by the District Land and Housing Tribunal for Kigamboni)

RAUDHA SHABANI SIKUNJEMA..... APPELLANT

VERSUS

ABDALLAH AHMED.....RESPONDENT

J U D G M E N T

Date of Last Order: 03.10.2023
Date of Judgment: 18.10.2023

T. N. MWENEGOHA, J.

The appellant, Raudha Shabani Sikunjema, sued the respondent for trespassing, into her land, located at Mbutu Mchikichini Kigamboni District, in Dar es Salaam Region, measuring 65 by 35 footsteps. That, she inherited the said land from her late father, who died in 1987. The respondent on the other hand, claimed to have been owning the suit land. That, he purchased the same from one Asia Mohamed, in 2008 and the same is measured at 119 by 81 feet.

The case was filed before Kigamboni District Land and Housing Tribunal, herein after called the Trial Tribunal. It ended in favour of the respondent, hence this appeal which was filed on the following grounds:

1. **That, the Honourable District Land and Housing Tribunal erred in law and in facts by pronouncing the judgment in favour of the respondent without considering that, the appellant inherited the suit property from her late father in 1987.**
2. **That, the Honourable District Land and Housing Tribunal erred in law and in facts by pronouncing the judgment in favour of the respondent without taking into account that the respondent purchased the suit property from the seller Asia Mohamed who was not the proper owner of the land in dispute.**
3. **That, That, the Honourable District Land and Housing Tribunal erred in law and in facts by admitting the invalid exhibit D1 tendered by the respondent in the sense that the sale agreement was improper.**
4. **That, That, the Honourable District Land and Housing Tribunal erred in law and in facts by taking into account of the weak and illogical evidence of the respondent.**

The appeal was heard by written submissions and both parties appeared in person.

Submitting in support of the 1st ground, the appellant insisted that, she inherited the suit land from her late father, since 1987. She argued that this fact was supported by the testimony of SM2, but it was totally ignored by the Tial Chairperson, Hon. S. W. Wambili. She went on to argue on the 2nd ground that, the purported seller of the suit land, was also a trespasser. She was not the owner; therefore, she cannot transfer the same to the respondent by way of sale.

On the 3rd ground, it was argued that, the sale agreement (Exhibit D1) was not genuine, it was not supposed to be admitted and used as evidence for the respondent. The Trial Tribunal should have seen that, there was a dispute in size of the land, where the appellant claimed a land, measuring 65 by 35 feet, and the respondent claimed his land to be measuring 119 by 81 feet. The Trial tribunal refused to visit the area in dispute to investigate as to who was a real owner of the said land.

Lastly on the 4th ground, the appellant maintained that, the evidence of the respondent was illogical and weak. The Trial Tribunal ought to have seen that, the appellant managed to prove her case as stated in **Hemed Said versus Mohamed Mbilu (1984) TLR 113.**

In reply, the respondent consolidated the 1st 2nd and 4th grounds and maintained that, the appellant failed to prove that she is the lawful owner of the suit land before the trial Tribunal. Therefore, she did not discharge her legal burden as per **Section 110, of the Evidence Act, Cap 6 of 2022 and also the case of Justine Paul Mukabi & 50 Others versus Coast Auction Mart Co. Ltd & Court Brokers, Land Case No. 128 of 2012 (unreported)**. He insisted that, he is a bonafide purchaser of the suit land, sold to him by one Asia Mohamed, the legal wife of the late Shabani Sikunjema.

As for the 3rd ground, that the admission and use of Exhibit D1 was improper, the respondent insisted that, this ground is baseless. The said Exhibit was necessary in proving that, the respondent purchased the suit land from the wife of the late Sikunjema. The agreement was valid and it the trial Tribunal was right to admit and use it as evidence.

Having heard the submissions of both parties, and also after having perused the records from the trial Tribunal, it is time now, to determine whether the appeal has merits or not.

In my endeavor to answer the issue raised herein above, I will consolidate all four grounds of appeal and discuss them together. I do so in consideration of the fact that, they are all based on improper evaluation or analysis of evidence by the trial Chairman, before arriving at his conclusion in favour of the respondent.

On the 3rd ground of appeal, the appellant when faulted the Trial Tribunal for admitting and using Exhibit D1 arguing that, there was a variation in the description of the suit land. That, the appellant in her claims, described the size of the land, trespassed by the respondent to be measuring, 65 feet by 35. On the other hand, the respondent's land, as per his testimony and Exhibit D1, is 119 by 81 feet. For this reason, the appellant was of the view that, the trial Tribunal could have visited the *locus in quo* for further investigation on the matter.

I read the records from the Trial Tribunal, and found what the appellant has said in her written submissions is true. That, the Trial Tribunal, did not visit the locus in quo in this case. As this is a first appeal, my duty is to rehear the case by subjecting the evidence presented to the trial Tribunal to a fresh and exhaustive scrutiny and re- appraisal before coming to my own conclusion, **see Standard Chartered Bank Tanzania Limited versus National oil Tanzania Limited and Another, Civil Appeal No. 98 of 2008, Court of Appeal of Tanzania, at Dar es Salaam (unreported)** and also the Ugandan case of **Father Nanensio Begumisa and 3 Others vs. Eric Tibarega, SCCA 17 of**

2000; [2004] KALR 236. Having satisfied myself with this fact as explained above, my conclusion is simple. The Trial Tribunal made a mistake by not paying a visit to the disputed land. The particular facts surrounding the case before it made it a necessity to visit the locus in quo to ascertain the dispute.

I am aware that, the rules are settled that it is not mandatory to visit locus in quo, but necessary depending on the circumstances of the case. In the case at hand, we have seen the confusion in terms of the size of the land in dispute, each party, giving his or her own size. Worse enough, even Exhibit D1, seems not to have contained the size of the land sold to the respondent. The same has been handwritten at the bottom of the typed sale agreement.

Therefore, based on the circumstances of this case, visiting the *locus in quo* was necessary and a must, before making any decision. The Trial Tribunal could have seen it wise to visit the locus in quo too. It has been insisted in number of authorities that, the purpose of a visit to locus in quo is to eliminate minor discrepancies as regards to the physical condition of the land in dispute. It is not meant to afford a party an opportunity to make a different case from the one he led in support of his claim, see **Avit Thadeus Massawe versus Isdory Assega, Civil Appeal No. 6 of 2017, Court of Appeal of Tanzania at Arusha, (unreported).**

For this reason alone, I find the decision of the learned trial Chairman to have prejudiced the rights of parties. His decision was based on inadequate information as far as the dispute is concerned. It is based on assumptions and not actual facts. He should have visited the land in

dispute to satisfy himself of the existence of the claims by parties. Then, sit and compose a just and relevant Judgment. His omission to visit the locus in quo under the circumstances surrounding this case has vitiated the whole decision. Hence, this Appeal has merits owing to the reasons I have given herein above. The only remedy is to revise the whole proceedings of the trial Tribunal and order a retrial of the case.

In the upshot, the appeal is allowed with costs. The decision of the Trial Tribunal is quashed and the orders are set aside. Consequently, I order an immediate retrial of the case before a new Chairman and a new set of assessors.

Ordered accordingly.

T. N. MWENEGOHA

JUDGE

18/10/2023