IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 222 OF 2022

(Originating from the Judgment and Decree in Land Application No. 251 of 2018 at the District Land Housing Tribunal Ilala delivered on 5 September 2022, Hon. M. Mgulambwa, Chairman)

BAKARI SALUM.....1ST APPELLANT

SEIF H. CHAMBUSO.....2ND APPELLANT

SALMA SALUM MTAWA.....3RD APPELLANT

MAUA SEIF.....4TH APPELLANT

JUMA CHAMBUSO.....5TH APPELLANT

MARY JOHN.....6TH APPELLANT

ROSE SHIRIMA.....7TH APPELLANT

JUDITH M. CHUMA.....8TH APPELLANT

SARA LAURENT.....9TH APPELLANT

SIKUDHANI ANZINGARA.....10TH APPELLANT

VERSUS

PRAKASH BAGWANJI JIWANI.....1ST RESPONDENT

PRAVIN BAGWANJI JIWANI .....2ND RESPONDENT

DIPESH BAGWANJI JIWANI .....3RD RESPONDENT

JAMES JUMA.....4TH RESPONDENT

MAJALIWA RASHID.....5TH RESPONDENT

J U D G M E N T

Date of last Order:19/12/2022
Date of Judgment:22/02/2023

K. D. MHINA, J.

Prakash Bagwanji Jiwani, Pravin Bagwanji Jiwani, and Dipesh Vagwanji Jiwani, the 1st, 2nd, and 3rd respondents, sued the applicants

before the District Land and Housing Tribunal ("the DLHT") for Ilala sitting at Mwalimu House Ilala for several reliefs.

The respondents' cause of action and the epitome of the dispute was founded on the alleged trespass by the appellants in the parcel of land known as Plot No. 412 Block B. Pugu Mwakanga Area within Ilala Municipality. The respondents claimed for a declaration that they were the lawful owners of Plot No. 412 Block B. Pugu -Mwakanga Area within Ilala Municipality, a permanent injunction restraining the appellants from interfering with their peaceful occupation of the suit land, general damages of TZS 100,000,000/= and costs of the suit.

The brief background leading to this appeal, as gleaned from the record, is as follows; the respondents' father, Bhagwaji Jiwani, owned a house in the Kipawa area in Dar es Salaam. When the Government wanted to expand the Airport, he was among those whose homes were demolished to pave the way for that expansion. As compensation, he was allocated the suit land in 2010. Before the acquisition of the Title, their father passed away. Later, as heirs, they were issued the Title Deed in their names.

PW 3, the surveyor from Ilala District Council, testified that the suit land was allocated to the 1st -3rd respondents. Further, when he went to the suit land to revive the boundaries, he found 11 houses, and three foundations for the houses were constructed in the suit land. PW 4 the Registrar of Title from the Ministry of Land, testified that the respondents were the owners of the suit land as they were allocated it in 2010.

In their defence, the appellants stated that they were lawful owners of the suit land and purchased their portions of land from different sellers between 2013 and 2017. They were bona fide purchasers who were even assured by the local Government leaders of Pugu Kigogo Fresh that the sellers owned the suit land. The 1st appellant purchased from Saleh Muhamad and Awena Kassim, the 3rd,4th, and 8th appellants from Mgaya Selemani Kaniki, the 9th,10th from Merina Felix, the 5th and 6th appellants from Merina Felix on behalf of Allen Yeya and the 7th appellant from Melina Ezbon.

According to the evidence of Marina Felix, who testified as DW 11, and Mgaya Selemani Kaniki, who testified as DW 10, prior to the sale to

the appellants, the suit land belonged to them. Both of them stated that they were given them by their parents.

After hearing, the DLHT was persuaded and satisfied that the respondent proved their claims to the required standard and entered judgment in favour of the respondents by declaring them as the lawful owners of Plot No. 412 Block B. Pugu Mwakanga Area within Ilala Municipality with Title No 15214 with costs. It further declared the appellants were trespassers and ordered them to vacate the suit land and demolish the structures they built therein.

Undaunted, the Appellants preferred this Appeal, predicated on five grounds of appeal: -

1. *That the learned chairperson erred in law and fact in holding that the 1st, 2nd, and 3rd respondents are lawful owners of the suit land while she knew that the appellants are its lawful owners, for they bought the same before it was granted by the government to the said respondents*
2. *That, the learned trial chairperson erred in law and in fact in holding that the 1st, 2nd, and 3rd respondents are lawful owners of the suit land based on the latter of Offer of Rights of Occupancy together with land Rent receipts, the things which are not stated in their joint pleading(the amended application)*

3. *That the learned trial chairperson erred in law and, in fact in not holding that the Appellants are lawful owners of the suit land since they are bonafide purchasers for value*
4. *That the learned trial chairperson erred in law and, in fact for not holding that the 1st, 2nd, and 3rd respondents amended application was null and void for non-joinder of the necessary parties, to wit, the seller who sold the suit land to the appellants*
5. *That the learned trial chairperson erred in law and, in fact for not considering and analyse the final written submission of the parties, thereby reaching a wrong decision.*

The appellants were represented by Dr. Lucas Charles Kamanija Advocate, while the respondents were by Mr. Bakari Juma Advocate. The appeal was argued by way of written submissions.

In supporting the appeal, Dr. Kamanija consolidated the 1st and 3rd grounds and argued them. He submitted that the Trial Tribunal erred in law and fact in holding that the respondents were the lawful owners of the suit land while she knew that the appellants were lawful owners after they bought the land bonafide before the Government granted it to the respondents.

Elaborating further, Dr. Kamanija submitted that according to paragraph 5 of their joint WSD as well as their testimonies and

documentary evidence, the appellants were bonafide purchasers for value and acquired their respective suit plots prior to the year 2016, the year in which the respondents alleged they were granted the suit land. The appellants bought the land in good faith without the knowledge of any dispute on the ownership after being assured by the local Government leaders of Pugu Kigogo Fresh.

To bolster his submission, he cited **Stanley Kalama Masiki vs. Chihiyo Kuisia w/o Nderingo Ngomuo** [1981] TLR 143 and **Suzana S. Waryoba vs. Shija Dalawa**, Civil Appeal No. 44 of 2017 (Tanzlii) where it was settled that the bonafide purchaser for value is protected and is entitled to a declaration that he is the lawful owner of the suit plot.

Applying the above-cited decisions, Dr. Kamanija insisted that the appellants purchased their respective suit plots as bonafide purchasers for value before 2016. After purchasing in good faith, they occupied and developed the suit plots by building the houses therein. When they bought the plots, the respondents were unknown to them.

On the second ground, Dr. Kamanija faulted the learned Trial Chairman for considering the letter of offer of the right of occupancy and Land Rent receipt, the documents which were not stated in the pleadings. In supporting this ground, he cited the decision of the Court of Appeal in **Astrepo Investment Co. Ltd vs. Jawinga Co. Ltd**, Civil Appeal No. 8 of 2015, at pages 17-18, where it was settled that in a civil suit, parties are bound by their own pleadings and that the proceedings and the decision thereof must come from what has been pleaded.

Therefore, he submitted the letter of offer of the right of occupancy and Land Rent receipt [Exh. P4] be expunged from the record, and once expunged, it remained that the appellants had acquired the land prior to 2016.

On the fourth ground of appeal, Dr. Kamanija argued that it was improper and the matter was null and void for a non-joinder of the necessary parties, to wit, the sellers who sold the suit land to the applicants.

He submitted that in their uncontroverted testimonies, the appellants testified that they bought their respective plots from Melina

Felix and Omari Hussein Kigambo, but the respondents did not bother to apply to the Tribunal to join the sellers, and also the Tribunal did not order the joinder of the sellers as necessary parties. To bolster his argument, he cited **Juma B. Kadala vs. Laurent Mnkande** [1983] TLR 103, where it was settled that non-joinder of the necessary party (seller of the suit) is fatal and renders the suit illegal.

On the effect of the failure of not joining a necessary party, he cited **Mussa Chande Jape vs. Moza Mohamed Salim**, Civil Appeal No. 141 of 2018 (Tanzlii), where the Court of Appeal held that failure to join a necessary party is fatal.

On the fifth ground, Dr. Kamanija faulted the learned Trial Chairman for failure to consider and analyze the final written submissions of the parties, thereby reaching a wrong decision.

In response to the 1st and 3rd grounds, Mr. Juma submitted that it was not true that the appellants purchased their plot before granted to the respondents. To support his argument, he referred to Exhibit P3, the letter written on 28 October 2009 by the Tanzania Civil Aviation Authority informing the respondents to vacate their Kipawa plot, which

was acquired for extension of the Airport as they had been paid compensation and offered another plot.

Therefore, the respondents acquired the plot in 2009, while the appellants started to purchase the plot from the year 2013, and the sale was supervised by the local Government authority officer (Mjumbe wa Shina)

Further, Mr. Juma submitted that the appellants were not bonafide purchasers for value because, at the Trial Tribunal, nothing was brought to the attention of the Tribunal on how the appellant's sellers acquired the land. Nothing demonstrated that the sellers had a good title to pass to the appellants, as they failed to tender any documentary evidence. Therefore, in the circumstances, the appellants cannot shield themselves on the status of bona fide purchaser for value as they failed to exercise due care before purchasing the plots and thus did not exercise the principle of caveat emptor.

He further distinguished the cited cases of **Stanley Kalama Masiki** and **Suzana S. Waryoba (Supra)** because, in the matter at hand, the appellants failed to fully narrate how and when the sellers of

the suit acquired good title, which was later passed to them. The appellants purchased the land from individuals who were not the rightful owners, whereas the respondents acquired it five years back from the Government.

On the second ground of appeal, Mr. Juma submitted that after discovering that there were documents material to the case, the respondents applied to the Tribunal the leave to file a list of additional documents. They were granted that leave and properly served the appellants with the additional documents. Therefore, they complied with Regulation 10 (2) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003, which reads;

> *"Notwithstanding sub-regulation (1), the Tribunal, may, at any stage of the proceedings before the conclusion of hearing allow any party to the proceeding to produce any material document which were not annexed or produced earlier at the first hearing".*

Mr. Juma submitted then that the admission of Exhibit P4 was correctly in accordance with the cited provision of law.

In this ground, he concluded by submitting that the cited case of **Asterpo (Supra),** is distinguishable because, in this case, after filling the list of additional documents, Exhibit P4 was regarded as pleaded by the respondents.

On the fourth ground, Mr. Juma submitted that the non-joinder of sellers of the suit premise by any means could not defeat the suit in accordance with Order 1 Rule 9 of the Civil Procedure Code, Cap 33 R: E 2019.

Responding to the fifth ground, Mr. Juma submitted that no law requires courts of quasi-judicial bodies to consider and analyze the parties' final submissions at the conclusion of the case. To fortify his assertion, he cited Regulation 20 (1) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003, which reads that;

> *"The Judgment of the Tribunal shall always be short, written in a simple language and shall consist of;*
>
> *a. a brief statement of facts*
> *b. finding on the issues*
> *c. a decision, and*

d. reasons for the decision."

He concluded by submitting that the Tribunal decision was proper since there is no such requirement of the law to consider and analyze the final submissions in the decision.

In a rejoinder, Dr. Kamanija reiterated his submission in chief and submitted that the argument that the respondents were granted the suit land prior to 2016 was unfounded because PW1 Prakash Bagwaji Jiwani stated that they were granted the Title on 29 July 2016 but did not remember well when they were given the suit land. Further, PW2 Dipesh Bagwaji Jiwani indicated that they were granted the suit land in 2010 through a letter of an offer, but the same was not pleaded in the application.

He also submitted that PW 3 does not mention that the TCAA granted the suit land to the respondents and that there was no documentary evidence or witness from TCAA that the suit land was owned the suit land before.

Therefore, since the Government did not compulsorily acquire the appellants' land, then the appellants are protected under Article 24 of

the Constitution as elaborated in **Attorney General vs. Lohay Akonaay and Joseph Lohay** [1995] TLR 80.

Further, he reiterated that the appellants were bona fide purchasers for value.

On the second ground, he reiterated the position cited in **Asterpo (Supra),** that exhibit P4 was not pleaded. Further, Regulation 10 (2) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003 is applicable when the production of a material document which were not annexed to the pleading or produced earlier at the first hearing, the documents which are related to the pleadings and not otherwise.

On the fourth ground, he cited **Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman and another**, Civil Revision No. 6 of 2017 (Tanzlii), and submitted that in the cited case, the Court of Appeal held that the non-joinder of the non-necessary party is curable under Order 1 Rule 9 of the CPC but the non-joinder of a necessary party is fatal and is not curable.

On the fifth ground, he rejoined that though the submissions are not among the component of the judgment, but since the Trial Chairman allowed the parties to file their final submissions in accordance with Regulation 14 of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003, she was duty bound to consider and analyze the same before reaching her decision.

Having considered the written submissions made by both learned counsel for the parties, I will start with the fifth ground of appeal, where the appellants faulted the learned Trial Chairman for failure to consider and analyze the final written submissions of the parties, thereby reaching a wrong decision.

Having gone through the records, there is no dispute that nowhere in the judgment was it indicated that the Trial Chairman consider and analyze the final written submissions filed by the parties. The Trial Chairman only acknowledged that the parties filed their final submission. Therefore, the issue is whether that was fatal.

In the determination of this ground, the entry point is the decision of the Court of Appeal in **Sunlon General Building Contractors Ltd**

and two others vs. KCB Bank (T) Ltd, Civil Appeal No. 253 of 2017 (Tanzlii), where it was held that;

> *"It is a trite position that final submissions are not evidence."*

The rationale of the final submission is elaborated in cited case of **Sunlon** (Supra) while quoting **Southern Tanganyika Game Safaris and another vs. Ministry of Natural Resources and Tourism and another** [2004] 2. E.A 271, where the Court held that;

> *"Final submissions are only intended to provide a guide to the court in resolving the framed issues."*

The International Criminal Court ("the ICC") in the case of the **Prosecutor vs. Jean-Pierre Bemba Gombo**, ICC-01/05-01/08 3/17 dated 19 January 2018, also elaborated the rationale of filing final submissions when it held;

> *"At the conclusion of the recent appeal hearing, the Appeals Chamber invited the Parties and participants to make additional written observations, not exceeding 15 pages, if, in their view those additional observations would help in a better understanding or clearer refutation of a point already before the Chamber, or if there was*

lingering concern that a point may not clearly have been understood".

Flowing from above by looking at the cited cases, it is quite clear that the final submissions are;

One, is not evidence at all,

Two, intends to provide a guide to the court in resolving the framed issues and,

Three, it intends to create a better understanding or clearer refutation of a point already before the Court.

Therefore, in anyway failure to consider or analyze the final submission in the Judgment in any way cannot invalidate that decision. The Court of Appeal in the cited case **Sunlon** (Supra) held that;

"Notwithstanding the foregoing, the issue is whether the appellants were prejudiced by the trial's courts' act of determining the issue without having regard to their final submissions. Our answer to that issue is readily in the negative."

Therefore, as rightly submitted by Mr. Juma Advocate for the respondents that the judgment writing has its own "canons," and as far as the land disputes before the District Land and Housing Tribunals, the

relevant provision is Regulation 20 (1) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003 which reads that;

> *"The Judgment of the Tribunal shall always be short, written in a simple language and shall consist of;*
>
> *a. a brief statement of facts*
> *b. finding on the issues*
> *c. a decision, and*
> *d. reasons for the decision."*

Further, in cited case of **Sunlon** (Supra), while quoting **Morandi Rutakyamirwa vs. Petro Joseph** [1990] TLR 49, it held that filing of closing submission is not a mandatory requirement, meaning that a decision in a case can be effectively rendered without the parties' final submissions.

It is from the above elaborations; the fifth ground of appeal is without merits as failure to consider and analyze final submissions is not fatal and cannot in any way affect the decision in a case. I dismiss it.

Coming on the fourth ground of appeal, the rival arguments for and against were whether it was improper and whether the matter was

null and void for a non-joinder of the necessary parties. The necessary parties referred are the sellers of the suit plots to the appellants.

Having canvassed through the records and as I indicated earlier in my judgment, the sellers of the suit plots to the appellants were Merina Felix and Mgaya Selemani Kaniki.

This ground should not detain me long because those two witnesses (the vendors) featured in the District Land and Housing Tribunal to testify in favour of the appellants. Mgaya Selemani Kaniki was featured as DW 10, and Merina Felix was featured as DW 11. Their testimonies that the land they sold to the appellants belonged to them as their parents gave the same were considered and scrutinized by the Trial Tribunal.

Therefore, as long as they featured and testified at the Tribunal and their testimonies were considered, that means the Tribunal considered the interests of the sellers. Therefore, no prejudice was occasioned for failure to join the sellers because they testified as witnesses for the appellants. See **Abdi M. Kipoto vs. Chief Arthur Mtoi**, Civil Appeal No. 75 of 2017 (Tanzlii).

Apart from that, the case **Juma B. Kadala** (Supra), cited by Dr. Kamanija, is distinguishable because, in this matter at hand, the sellers testified as defence witnesses; therefore, they participated in the suit.

In view of the above analysis, I find the fourth ground of appeal wanting of merits, and I dismiss it.

On the second ground, that the Trial Chairman erred in considering the letter of offer of the right of occupancy and Land Rent receipt (Exh.P4), the documents not stated in the pleadings also should not detain me long.

The records reveal that on 22 August 2019, the respondents filed a list of additional documents to which the appellants did not object. On 13 March 2020, PW 1 prayed to tender the documents listed. The counsel for the appellants did not oppose the admission of those documents. That is what happened when Exhibit P2- Exhibit P7 when admitted.

The question is whether the procedure was properly observed. To answer this question, I visit the **Land Disputes Courts (The Land and Housing District Tribunal) Regulations 2003** ("the

Regulations"), the law which governs and regulates the procedures of the District Land and Housing Tribunal when exercising its powers. The relevant provision is Regulation 10, which reads;

> *"10 (1) The Tribunal may at first hearing receive documents which were not annexed to the pleadings without necessarily following the practice and procedure under the CPC or Evidence Act as regards document.*
>
> *(2) Notwithstanding sub-regulation 1, the Tribunal may at any stage of proceedings before the conclusion of hearing allows any party to the proceedings to produce any material documents which were not annexed or produced earlier at the first hearing.*
>
> *(3) The Tribunal shall before admit any document under Sub-regulation (2)*
>
> *(a) ensure a copy of the documents is served to the other party*
>
> *(b) have regard to the authenticity of the document*

It is from the above-cited provision of law; therefore, the law allows a party to present and tender any material document before the conclusion of the hearing.

Mr. Kamanija complained that the documents, especially Exhibit P4, were not pleaded, and it is settled that parties are bound by their own pleadings in a civil suit and that the proceedings and the decision thereof must come from what has been pleaded.

Having gone through the record and admitted exhibits P3, P4, and P4, I find the same to be material documents to this matter. They are connected with paragraphs 1 and 2 of the amended application. The documents revealed the respondents' evidence of ownership and how they acquired the Title Deed in 2016.

For instance, Exhibit P3 is the notification dated 28 October 2010 from Tanzania Civil Aviation Authority to Prakash Bhagwaji, informing him to vacate from Kipawa area to pave the way for the extension of Mwalimu Julius Nyerere International Airport after being paid monetary compensation and allocated another plot. Exhibit P3 is a letter of offer issued to the respondents dated 9 June 2010 and the land rent receipt dated 6 July 2010. Exhibit P5 collectively are the land rent receipts for the years 2011,2013, 2016, and 2018.

Therefore, these are material documents that were not objected to by the appellants and their counsel either when the list of additional documents was submitted to the court or when PW 1 prayed to tender the documents when he testified.

Flowing from above, I, therefore, hold that;

One, the documents were properly tendered and admitted by the Trial Tribunal.

Two, the documents admitted were material documents to the determination of the matter before the Trial Tribunal.

Three, the law is clear that in the absence of any objection to the admission of the documents but later complaints at the appellate level, the complaint becomes an afterthought. This is because the absence of objection causes the trial tribunal failure to hold an inquiry on the admissibility of the document. See **Sabas Kalua @ Majawala vs. The DPP**, Criminal Appeal No. 183 of 2017 (Tanzlii).

Four, the appellants and their counsel did not raise the issue of the authenticity of those documents which granted land ownership to a person. Therefore, the documents cannot be ignored lightly.

In conclusion, the cited case of **Astrepo Investment** is distinguishable from the matter at hand because in the cited case, the court arrived at a decision based on the facts which were not pleaded while in this matter, the documents not only were material evidence but as per the pleadings the facts contained in the documents are found in paragraph 1 and 2 of the amended application.

It is from the above discussions; the second ground of appeal is without merits, and I dismiss it.

Regarding grounds one and three, which were consolidated and argued together. The gist of the argument is that the appellants purchased the land between 2013 -2017 prior to the grant of a certificate of Title to the Respondents in 2016. Furthermore, they were bona fide purchasers for value as they bought the land in good faith without knowledge of any dispute on the ownership after being assured by the local Government leaders (Mjumbe wa Shina) of Pugu Kigogo Fresh.

On this, first, it should be noted that according to Exhibit P4, the letter of offer issued to the respondents dated 9 June 2010 granted the

ownership of the suit property to the respondents who started to pay land rent in the same year 2010 as per the land rent receipt (Exhibit P4 and P5 collectively). Therefore, the respondents' ownership commenced in 2010 and not 2016, as alleged and submitted by the counsel for the appellants.

Further, that is when the process of preparing the Title deed (Exhibit P 1) commenced. I said so because of the stamp duty in the Title deed dated 6 July 2010.

Having given due consideration to the submissions made by parties' advocates on these grounds, I agree with the decision of the trial Tribunal and that the principle of bona fide purchaser for value does not apply. My reasons are;

One, the appellants did not take sufficient precautions, including conducting an official search at the proper authority regarding land ownership to ascertain the lawful owner of the suit land before purchasing it. If they could do so before they started to buy land in 2013, taking into consideration that the land was already surveyed, they

could know the status of the suit land. See **Acer Petroleum (T) Ltd vs. BP (T) Ltd**, Civil Application No. 60/17 of 2020 (Tanzlii)

Two, the local Government leader (Mjumbe wa Shina) was not a proper authority for the official search of land issues.

Three, the sellers of the land to the appellants, DW10 and DW11, failed to prove that they were the owners of the land. They tendered no document to demonstrate and establish how they acquired the land apart from mere words that their parents allocated them that land.

Therefore, as I alluded to earlier, the principle of bona fide purchaser for value cannot apply in the circumstances of this matter. The appellants acquired land from the persons with no good title to pass, while the respondents had a good title since 2010 for plot No 412 Block B, Pugu Mwakanga, within Ilala Area.

The law under S.2 of Land Registration Act Cap 334 is evident as it defines the term owner to mean

> *"In relation to any estate or interest, the person for the time being in whole name that estate or interest is registered."*

Further, the Court of Appeal in **James Makundi Vs. Permanent Secretary, Ministry of Lands Housing and Human Settlements and two others,** Civil Appeal No. 181 of 2021 (Tanzlii) it held that;

> *"In our considered view, when two persons have competing interest in a landed property, the person with a certificate thereof will always be taken to be a lawful owner unless it is proved that the certificate was not lawfully obtained."*

From above, it is, therefore, grounds no 1 and 3 of the appeal were also not proved as well.

In view of what I have demonstrated above, I am satisfied that the Trial Chairman properly analyzed the evidence availed before her and reached an appropriate conclusion. There is no justification to interfere with her decision.

In the upshot, for the reasons elaborated above, the appeal lacks merit. It is consequently dismissed with costs.

DATED at **DAR ES SALAAM** this 22/02/2023.

K. D. MHINA

JUDGE