

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

LAND APPEAL NO. 395 OF 2023

(Appeal from Judgment and Decree of Application No. 391 of 2019
of the District Land and Housing Tribunal of Kinondoni)

ROBERT ODUNGA.....1ST APPELLANT
REGINA NCHIMBI.....2ND APPELLANT

VERSUS

TAALUMA WOMEN GROUPRESPONDENT

JUDGMENT

22/11/2023 to 09/02/2024

E.B. LUVANDA, J

Robert Odunga (First Appellant) and Regina Nchimbi (Second Appellant) are appealing against the decision of the District Land and Housing Tribunal which decreed in favour of the Respondent above mentioned as the rightful owner of the suit farm. The impugned judgment and decree was pronounced in favour of the Respondent after the Appellants failed to tender their defence to controvert the documentary evidence for allocation of land exhibit P1, including testimony and story of five witnesses paraded by the Respondent.

In the memorandum of appeal, the Appellants raised the following grounds: One, the Chairperson erred in law and facts by entering the judgment and decree without availing the Respondent's (sic, Appellants) right to be heard and present their defence; Two, the Chairperson misdirected itself by holding that the Respondents are the rightful owner of the suit land without having thorough evaluation of evidence presented by the Respondent; Three, the judgment and decree delivered by the Tribunal is bad in law due to the apparent errors on the face of the record. Mr. Stanley Nyamle learned Counsel for Appellants abandoned the third ground of appeal. He submitted for ground number one that the proceedings show that immediately after the closure of the Applicants' case, Advocate Aristariko who was representing the Appellants, terminated the instructions to represent the Appellants on 20/01/2022. He submitted that the Tribunal never issued summons or notice to call the Appellants in person to attend their case and bring their witnesses. He submitted that on 27/04/2022 another Advocate one Levy Mushi appeared for the Appellants, on 21/06/2022 advocate Mmasi appeared for the Appellant on behalf of Edwin Mushi Advocate who never appeared before, then on 06/12/2022 another Advocate Ms. Fatuma Abdul appeared to hold brief for Mr. Edwin Mushi. He complained that in all these occasion, the Tribunal never issued any summons or notice to call

the Appellant, instead ended on closing the defence case on 14/04/2023 without hearing Appellants witnesses. He submitted that the proceedings reflect exchange of brief from one advocate to another without proof or confirmation of instructions from the Appellant. He submitted that it is settled that one advocate cannot instruct another advocate, arguing that the last three advocates had no mandate to instruct each other. He cited the case of **NIC Bank Tanzania Limited vs. Princess Shabaha Company & Two Others**, Civil Appeal No. 248/2017 CAT DSM. He also **National Housing Corporation vs. Tanzania Shoe Company Limited and 2 Others** (1995) TLR 251, regarding a cardinal principle of the right to be heard.

On the second ground, the learned Counsel submitted that exhibit P1 is not a village document contrary to what was contemplated by the Tribunal, save for the rubber stamp of the village chairman. He submitted that exhibit P1 was not witnessed by Tatu Bakar as contended by the Tribunal. He submitted that it is confusing whether the Respondent obtained land from the village as institution or from the village chairman (Mr. Mafao) as the person, he queried as to whether the name of the village is Juma Mafao or Bunju. He submitted that the Tribunal declared the Respondent the rightful owner of the property without satisfying itself on the capacity of the Respondent to sue and own land in absence of

registration documents and certainty as to whether is a corporate body and whether her registration is still valid.

In reply, Ms. Bertha Marco learned Counsel for Respondents submitted that the Tribunal made a right decision to proceed to enter judgment and decree, because the Appellants did not furnish cause as to why should be granted more time to produce their defence. She submitted that on 20/01/2022 the Appellants were present in person, when their Advocate terminated the instructions, arguing there was no need of issuing summons to call the Appellants to attend personally. She submitted that after two adjournments which the First Appellant was present in person, on 13/09/2022 Advocate Edwin Mushi appeared along with the First Appellant and asked for an adjournment, then a case was fixed for hearing on 06/12/2022 where the First Appellant appeared together with Advocate Fatuma Abdul who was holding brief for Advocate Edwin Mushi. She submitted that the Appellants neglected their rights to be heard without sufficient cause, arguing the Tribunal correctly closed their case.

Regarding the second ground, the learned Advocate submitted that the Respondent rightful acquired the said land through exhibit P1, which was issued and signed by the village chairman on behalf of the village as an institution which was witnessed by Tatu (PW4) who was the village secretary (by then CCM was the only political party ruling the country).

She submitted that the issue of the validity of document and the consistence of names were to be raised and argued during the trial and not at appellate level, citing **Mahaba Nyamhanga vs. Masara Chacha Matiko**, Land Appeal No. 48/2019. She submitted that the issue of capacity to sue, own land by the respondent, the Appellant did not object to the said fact as per paragraph one of the joint written statement of defence, neither cross examined on it during trial, arguing cannot question it at this stage, citing **Hassan Bundala Swaga vs. Republic**, Criminal Appeal No. 416/2014. She submitted that since the issue of capacity to sue is a new ground was never raised on the trial, hence cannot be entertained at this stage, for want of jurisdiction. Citing **Halfani Charles vs. Halima S. Makupa & Another**, Misc Land Appeal No. 85/2021. She attached registration certificates of the Respondent indicating formerly before 2021 was registered as Taaluma Women Group, then changed to Taaluma Women Foundation.

On my part, I find no merit on the ground number one, the reasons being after withdrawal of Benjamin Mtwanga Advocate on 04/01/2021 who was the first counsel for Appellant, the Tribunal directed for summons to be issued to the Appellants. And after Ms. Aristides Msongela Advocate had withdraw to represent the Appellants the records reflect on 27/04/2022 the First Appellant appeared along with Mr. Levy Mushi Advocate. In that

regard, a complaint by the learned Counsel for Appellant, that no summons were issued, is untenable. To my respective view, the Tribunal had no obligation to issue summons to a litigant who has appeared before it. Indeed in a letter of termination of representation by Advocate (Benjamin Mtwanga) indicated categorically that his previous client will be under obligation to retain and hire another counsel, likewise Advocate Aristides Msongela made the same reservation that her client will look for another lawyer to represent them. Neither Ms. Aristides Msongela Advocate nor Mr. Levy Mushi Advocate indicated to have been retained or instructed by a fellow or former Advocate. Therefore a call for proof and confirmation of instructions, is invalid. Indeed it is an illusion idea to say the Tribunal ought to confirm instructions of newly engaged advocates, while the records reflect Advocate Levy Mushi appeared along with the First Appellant. In that way, the case of **NIC Bank** (supra) is distinguishable, because therein the trial Judge endorsed appearance and representation of advocates who were under arrangements not approved by the client, unlike herein where the First Appellant made appearance along with Mr. Levy Mushi. As such if there was any concern regarding instructions to representation ought to have been raised before the Tribunal at the earliest opportune.

Ground number two, to my view the learned Counsel for Appellant failed to comprehend with the obiter dictum, of the Tribunal. In the judgment of the Tribunal, nowhere indicated that Said Tatu Bakari (sic, Tatu Said Bakari) witnessed exhibit P1. At page 5, second paragraph of the Tribunal's judgment, the learned Chairman said, I quote,

"Ushahidi wa Suzan Maurice Ngahyoma ni ushahidi muhimu sana kutokana na kwamba ni shahidi ambaye anamiliki eneo jirani na eneo bishaniwa, lakini pia ushahidi wa Tatu Said Bakari ambaye alikuwa Kiongozi wa chama cha CCM mwaka 1993 amethibitisha mleta maombi kushuhudia kama kiongozi wakiomba lakini pia wakigawiwa eneo lenye mgogoro na alitambua kielelezo P1 kama hati ya serikali ya Kijiji kumgawia mleta maombi eneo bishaniwa".

To my respective view, exhibit P1, for all purpose and intent, is a valid document which was issued by the village chairman on behalf of Bunju Village, allocating the suit land to the Respondent. Indeed exhibit P1 was admitted without objection or reservation, and no question was cross examined on it, regarding its legality, validity, confusion or inconsistent. This render the argument of the learned Counsel for Appellant to be an after thought. Similarly, the argument regarding capacity and locus standi of the Respondent to sue, or whether is having registrations documents

or whether is a corporate body, or else whether her registration is still valid. Although the learned Counsel for Respondent attached to her submissions registration certificates for the Respondent, which of course is unprocedural. But still the argument staged by the Counsel for Appellant, a misconceive one. As alluded by the learned Counsel for Respondent at paragraph one of the joint written statement of defence, the Appellants raised this concern by passing, did not plead it as a serious point of law, by way of objection. Above all, it was not prosecuted or cross examined to any of the Respondent's witness. More importantly it was not raised as among the ground of appeal. Hence, it cannot be entertained. Therefore, the appeal is devoid of merit.

The appeal is dismissed with costs.



E. B. LUVANDA
JUDGE
09/02/2024

Judgment delivered virtually, attended by Mr. Stanley Nyamle Advocate for and Appellant and Ms. Bertha Marco Advocate for Respondent.



E. B. LUVANDA
JUDGE
09/02/2024