IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 431 OF 2023

(Originating from Land Application No. 152 of 2013, Kinondoni District Land and Housing Tribunal)

ALBERT DAYSON BUKUKU..APPELLANT

VERSUS

JUMA HUSSEIN KILLAGHAI..1ST RESPONDENT

TAUSI MTUNDA...2ND RESPONDENT

KINONDONI MUNICIPAL DIRECTOR CHAIRMAN,

MTAA WA BASIHAYA, BUNJU WARD...3RD RESPONDENT

JUDGMENT

26/01/2024 to 15/03/2024

E.B. LUVANDA, J

This is one of uncommon dispute where facts on the face of it suggest the purchaser did not purchase the land, rather actually was forcefully plunging himself to unnecessary litigation and inconvenience to innocent holder of a title. The facts herein as put by one Frednand Jopseph Mushi (testified as Plaintiff's witness number four at the Tribunal), who is a neutral man to the saga by virtue of having two title as a cell member and neighborhood to the suit land, stated that he was approached by the Appellant as a matter of compliance to the

caveat emptor rule, where the latter informed PW4 of his desire and intention to purchase the suit land. PW4 alerted the Appellant that the land was already sold to another person and the vendor is dead. PW4 went on to advise the Appellant to make a further inquiry before proceeding on with the transaction of purchasing it. It was the testimony of PW4 that the next morning the Appellant visited him and informed PW4 that he formed an opinion to proceed to purchase the suit land. PW4 still advised him to involve the deceased's children and PW4 made it categoricity that will not participate as a witness in the intended transaction of sale. Four days later PW4 heard that the Appellant had purchased the suit land under supervision of a different cell leader.

Mairi Richard who testified as PW3 who is a son and sole administrator of the estate of the deceased Richard Mairi who was a retired soldier TPDF, (as per a ruling of Probate and Administration Cause No. Kawe Primary Court dated 21/6/2009), PW3 asserted that he informed the Appellant that the land intending to purchase, it belong to the First Respondent and not the second wife of the deceased that is the Second Respondent herein.

The Appellant ignored the advice, warning, alert, and went on purchasing the suit land from the widow of the deceased to wit the Second Respondent, via a sale agreement dated 24/11/2009 exhibit D1, which was attested by Kudra Ally who testified as DW3, and stamped a rubber stamp reading *"MCHANGO WA*

KAMATI YA MAENDELEO CHASIMBA BOKO". In his testimony in chief DW3 was recorded to have said, "We created our stamp as identity to disposition of land" On cross examination, DW3 stated that *"Kamati ya maendeleo"* is not a legal entity but they created their organization to defend themselves. He went on to say, the *kamati* is dissolved but members are still alive.

At the end of the trial, the Tribunal blessed the purchase by the First Respondent contracted with the late Richard N. Maira dated 14/05/2004 exhibit P1, and declared the First Respondent as the lawful owner of the piece of suit land located at Boko cha Simba, Bunju Ward in Kinondoni. The Tribunal nullified a second sale agreement exhibit D1, for being void ab initio.

The Appellant is aggrieved by the verdict of the Tribunal, and preferred this appeal on the following grounds: One, the learned Chairman of the Tribunal erred in law and fact in admitting Respondent's witness evidence without considering the weight of the Appellant's evidence produced during hearing; Two, the learned Chairman of the Tribunal erred in law and fact for not analyzing Appellant's evidence; Three, the learned Chairman of the Tribunal grossly erred in law and fact in concluding his decision by his beliefs and not facts that have been presented by witness; Four, the learned Chairman of the Tribunal erred in law and fact by reaching a decision merely on opinion and not by properly analyzing the evidence produced in court (sic, Tribunal).

Mr. Stephen Ally Mwakibolwa learned Counsel for Appellant abandoned ground number one, and argued collectively the remained grounds. The learned Counsel submitted that while the Tribunal was awarding the disputed property to the First Respondent, there was no reasons put forward that justifies the decision that was reached. He cited page four of the impugned judgment, arguing the Chairman simply formed an opinion of his decision by persuasion of the statement by the tribunal's assessors. He submitted that the Chairman did not analyze the entire evidence adduced by the parties but rather he choose that which support his pre conceived decision, citing page five of the impugned judgment. He cited Order XX rule 4 and 5 of the Civil Procedure Code, Cap 33 R.E. 2019 which is all about contents of the judgment. He submitted that while determining the ownership of the disputed property, the Tribunal did not analyze any evidence rather went ahead to question how the Appellant bought the disputed property and not the evidence on records as to how purchase was done, citing pages five and six of the impugned judgment. He submitted that the Chairman failed to adhere to the rules of writing judgment. He submitted that the First Respondent did not prove any of his claims before the Tribunal, arguing was not entitled to the disputed property. He cited the provisions of section 110(1) and (5) of the Law of Evidence Act, Cap 6 R.E. 2022, on the

standard and onus of proof, also the case of **Registered Trustees of Joy in the Harvest vs Hamza K. Sungura**, Civil Appeal No. 149 of 2017, CAT.

In reply, Ms Meglya Attorneys for the Appellant opposed the appeal, and submitted that the Tribunal while awarding the disputed property to the First Respondent there were reasons put forward that justifies the decision that was reached by the Tribunal, arguing the reasons were as follows: One, the executor of the estate of the deceased witnessed that the disputed property was already sold by the deceased and it was not in the distribution of the deceased properties, citing page five of the impugned judgment; Two, the property was not in possession by the deceased person since 14/05/2004, the deceased himself, his family or any other person did not have any right to sell the property to anyone, citing page six of the impugned judgement; Three, the disputed property belongs to the First Respondent since he bought the suit property from the deceased at a consideration of Tsh. 600,000 on 14/05/2004, citing page five of the impugned judgment. He cited the case of **Abubakarii H. Kilongo and Another vs The Republic**, Criminal Appeal No. 230 of 2021 CAT, regarding contents of a judgment.

Ground number two, the learned Counsel submitted that the Tribunal in determining ownership of the disputed property analyzed very well the evidence of both parties, citing the evidence adduced by Bi. Janeth Yesaya citing page

five paragraph one of the impugned judgment; PW4 Mr. Ferdinand Joseph Mushi, citing page five paragraph two of the impugned judgment; evidence of executor, citing page five of the impugned judgment. He cited the case of **Said Ally Mtinda vs The Republic**, Criminal Appeal No. 55 of 2012.

Ground number three, the learned Counsel submitted that the First Respondent proved his claim before the Tribunal that he bought the suit land from the deceased on 14/5/2004 for consideration of Tsh 600,000, arguing he is entitled to the disputed property, citing section 110(1) of Cap 6 (supra).

On my part I will kick start by tackling a complaint that the Chairman failed to adhere to the rules of writing judgment. It is elementary knowledge that judgment writing is not a rocket science with much complicated procedures of logarithm with systematic procedure on take off, landing and so forth, rather it is an art depending on the path taken by the author. There is no hard and fast rule as to the style of judging, or where the author should start. Nor does it entail reproduction or long narration of each and every fact thrown in during trial, rather is a matter of sampling (although not by way of cherry picking) relevant materials, evidence and facts which will enable the adjudicator land smoothly to his/her intended destination or verdict. What matters is brevity of the judgment.

In the case of **Abubakari Kilongo** (supra), at page nine, the apex Court cited the case of **Amir Mohamed vs The Republic** [1994] T.L.R. 138, I quote,

> *"Every Magistrate or judge has got his or her style of composing a judgment and what virtually matters is that essential ingredients should be there, and these include critical analysis of both the prosecution and defence cases"*

It would appear the learned Counsel for the Appellant is unhappy with the style of the learned Chairman who commenced by recapitulating directives by this Court including what was complained at this Court during the hearing of the appeal, made observation on what this Court did not fault on his previous judgment, explained on his compliance to the directives issued by this Court, noted what was cured in the proceedings, then chipped in on what assessors had opined, including deliberating the role of assessors and the law as regard to the opinion of assessors vis-à-vis his decision. In his reasoning the learned Chairman started by posing that the dispute before the Tribunal pertain to ownership. Thereafter in between the learned Chairman went by way and style of mixed grill or cocktail by mixing both summary of facts or narration of evidence adduced and giving reasons for his decision at the same time. Finally made a decision as aforesaid. In that way all elements for judgment writing were complied with and abided to the letter. May be if the learned Counsel wished to see those convention method and style or skills of writing in sequence

to what is provided for under Order XX rule 4 and 5 Cap 33 (supra), to wit he was interested to see conspicuously and vivid the so called: a concise statement of the case; followed by points for determination; next the decision thereon, finally reasons for such decision, to my view this is an old style and we cannot embrace all judicial officers to embark writing like poetry verse. What matters is compliance to the law. May be, I should add that in assessing compliance to the law, a judgment must be taken by way of wholistic approach in gleaning compliance on essentials in judgment writing and not by way of sampling as to where such point conventionally lies or ought to be placed.

To me, there is no problem with the style of judging adopted by the learned Chairman because all essential elements were included as I have hinted above. Regarding a complaint that there were no reasons put forward that justifies the decision that was reached. To my view the Tribunal is faulted for nothing, as alluded by the learned Counsel for the First Respondent, reasons for the decision were availed at pages five and six, some were recapped in the submission reply by the learned Counsel for First Respondent, I cannot repeat the same. Suffices to say reasons were made by the Tribunal.

The Appellant also complained that the Chairman did not analyze the entire evidence adduced by the parties but rather he choose that which support his pre conceived decision. As per my adumbration above, there is no rule that the

judging officer should carry forward and say on each fact and word spoken by parties or witnesses. Rather the judgment will depend on material and relevant facts, evidence and exhibits tendered if any, depending on the issues framed for adjudication. Indeed, the Appellant was unable to single out even a one relevant fact which was ignored or not considered by the Tribunal. Rather the Appellant faulted the tribunal for questioning as to how the Appellant purchased the land. In fact, what the learned Counsel is complaining is in semblance to what I have endeavored to recap at the outset of this manuscript as to why the Appellant took such huge risk for purchasing the piece of land which he was warned forehead that is encumbered for reason that it was disposed by the deceased to the First Respondent. Including a warning from the administrator of the deceased's estate that the farm does not fall under the deceased estate and therefore cannot be inherited by or pass to the heir that is widow (Second Respondent). But the Appellant went on ignoring all the advice and warning given, including a fact that the neighbor who is also a cell leader refused to participate on the transaction. But still the Appellant took some one (DW3) who is not a leader even a member of hamlet, including one Samuel Amen Lubaga to attest the sale agreement by a rubber stamp reading *"Mchango wa Kamati ya Maendeleo Chasimba Boko"* But still it did not click on his mind that he was about to be conned by the widow (Second Respondent). I think that is what

attracted the attention of the learned Chairman to see it as unusual gutsy and unexpected conduct on the part of the Appellant.

Regarding the argument that the First Respondent did not prove any of his claims before the Tribunal, or that was not entitled to the disputed property. This complain is without substance whatsoever. The First Respondent had presented well his case and claim that he purchased the suit land on 14/05/2004 from Richard N. Mairi for consideration of Tsh 600,000, as per a sale agreement exhibit P2. The evidence of the First Respondent who testified as PW1 was supported by Janeth Yesaya (PW2) who is the first wife of the late Richard N. Maira, PW3 who is the senior son and administrator of the estate of the deceased, PW4 who is the neighbor and cell member at the suit land.

Above all, PW2 stated that the deceased disposed the suit land to the First Respondent in 2004 prior marrying the Second Respondent. As such the evidence by the Second Respondent who testified as DW2, that she was given a suit land by the deceased in 2000, is a concocted fact. This is because, a fact by PW2 that a suit land was disposed prior the Second Respondent married the late Richard N. Mairi, was not contested or cross examined. Meaning concession on her part. For another, DW2 confessed that the Senior wife (PW2) was not involved when allegedly the deceased handed over the suit farm to DW2. DW2

did not mention any witness to the alleged handover purported to have been done in 2000.

With this ample evidence adduced and tendered by the First Respondent in weighing with the evidence of the Appellant, that of the former for all purpose and intend outweigh that of the latter. Therefore, the Tribunal was justified to rule that the First Respondent proved his claim and is the lawful owner of the suit land, including an order for the Appellant to give vacant possession of the suit land, with costs. This verdict and reliefs are upheld without any reservation. The appeal is dismissed. The Appellant is ordered to foot all costs for his appeal.

E. B. LUVANDA
JUDGE
15/03/2024

Judgment delivered in the presence the Respondent and in the absence of the Appellant.

E. B. LUVANDA
JUDGE
15/03/2024