

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT TANGA

LAND CASE APPEAL NO. 26 OF 2007

*(From the Decision of the District Land and Housing
Tribunal of Tanga District at Tanga in Land Case No. 5 of
2007)*

RAJABU IDDI MDUGWA APPELLANT
VERSUS
STEPHANO DEVIS OMARI RESPONDENT

J U D G M E N T

FIKIRINI, J:

Rajabu Iddi Mdugwa being aggrieved by the decision of Tanga District Land and Housing Tribunal in Application No. 5 of 2007, appealed to this court. The appellant had 3 grounds of appeal. Both parties entered appearance on the date set for hearing of this appeal and informed the court that they had nothing to say to court. This court then set a date for judgment.

The appellant in his first ground of appeal, challenged the chairman's decision when it was concluded that the appellant did not bring evidence to back up his case. On examination of the tribunal record, I without a doubt concur to the chairman's decision as truly there was no evidence supporting the appellant's case. The appellant denied that this application was not heard, that is not correct, as my perusal of the record indicated there was a hearing conducted on 28th March 2007. The hearing was conducted *ex parte*. This is I believe because the respondent did not enter appearance and no good cause was shown for that. The chairman's decision was correctly arrived at when he concluded for the matter to proceed *ex parte*. Pursuant to Order 39 Rule 17(2) of the Civil Procedure Code, Cap 33 R.E. 2002, the matter could proceed *ex parte*. This is what the rule says:

Where the appellant appears and the respondent does not appear, the appeal shall be heard ex parte."

Apart from the chairman's order that the matter to proceed *ex parte* the record does not say much. But it is not correct that the appellant was not heard before the tribunal. Despite the application not being contested, yet the appellant failed to prove his case.

The appellant in his second ground of appeal, faulted the chairman's decision for concluding that the respondent bought the house without more proof from the respondent. Again, it is my position that the chairman was correct arriving at his decision in spite of the respondent's none appearance in court. This is because, first, it is a principle of law that the one who alleges must prove. It is the appellant who filed a complaint, so he must know better what would be the evidence. In this case he failed to prove the house belonged to him. He alleged that his house was sold when he was in prison, but could not go beyond that. The chairman failed to enter decision in his favour therefore automatically the house remained with the respondent. Second, the burden of proof does not easily shift from the one who alleges to go to the respondent. In the absence of credible evidence that

the house was his and that he has not sold it to the respondent or any one or allowed any one to sell it on his behalf, the chairman could therefore not decided otherwise.

Going through the members' opinion, who opined that the appellant had failed to prove his case that he was the lawful owner of the suit premises. They challenged his inability to produce even a police report showing that upon his return from prison he found his documents related to the suit premises had been tampered with.

I concur with the members that the appellant has failed to move this court to warrant allowing of this appeal. In the up short I conclude that this appeal has no merit and consequently proceed to dismiss it with costs. It is so ordered.

Judgment Delivered this 2nd day of November, 2012 in
the presence of the Appellant.

P.S. FIKIRINI

J U D G E

2nd November, 2012

Right of Appeal Explained.



A handwritten signature in black ink, appearing to read "P.S. FIKIRINI".

P.S. FIKIRINI

J U D G E

2nd NOVEMBER, 2012