

IN THE HIGH COURT ZANZIBAR

HOLDER AT CHAKE CHAKE PEMBA

CIV.APPEAL No.31 of 2011

From land tribunal Case No.99/09 Machomanne

3. MWIKAI FAKI MAALIM } APPELLANTS
4. SAUMU HAMAD BAKAR }

V/S

SALUM SAID SULEIMAN - RESPONDANT

JUDGMENT.

This appeal arises from the decision of the Deputy Chairman of the Land Tribunal, Salum H. Bakar (Rm) in Civil case No. 99 of 2009 at Machomanne, Pemba. The back ground to the case is that the Respondent, Salum Said Suleiman filed a suit against Mwikai Faki Maalim, the present appellant and Saumu Hamad Bakar, Ali Ameir Juma and Azan Hamad Nassor. The Respondent is claiming a shamba which is situated at Taifu Mchungwa wa Kizungu, Wete, Pemba and bounded as follows:-

North	-	by the shamba of Sada Salum
South	-	by the shamba of Sada Salum
East	-	by Rajab Bahar
West	-	by Omar Ahmad.

This shamba was purchased by late Abdalla bin Salim from Juma Ali Mbarouk in 1960. The Respondent is the administrator of the estate of late Abdalla bin Salim and is claiming that the Appellant had trespassed and took possession of the large part of the said shamba. On the other hand the Appellant claims that the shamba in dispute belonged to him as he purchased the same from Saumu Hamad Bakr and

Azan Hamad Nassor through their attorney Ali Ameir Juma. Saumu and Azan had inherited the same from their mother Sada Salum. He produced a Sale Deed signed by Saumu Hamad in 1991 and the shamba had 150 clove trees and 2 coconut trees. The shamba is bounded as follows:-

North - by the shamba of Binti Bakar

South - by the shamba of Makame Khatib

East - by the shamba of Kae Faki Maalim

West - by the shamba of Binti Bakar.

This shamba is situated at Kwakitabu Kwale. He also produced “karatasi ya Mauzo” dated 18.1.1990 where the Appellant is shown to have purchased a plot of land from Saumu Hamadi Bakar and Azani Hamad Nassor situated at Kwale Gongo Njia kali.

Saumu Hamad Bakar, Azan Hamad Nassor and Ali Ameir Juma all were defendants in the trial court and they testified to the affect that they only sold a small plot of land containing 7 clove trees situated at Kwale Gongo Njia Kali to the Appellant. The plot they sold belonged to late Suda Salum and is very small and they denied to have sold the Appellant the plot he is claiming and they affirmed that the plot in dispute belonged to the respondent. In addition Saumu denied to have signed a Sale Deed which was produced in Court as exhibit of the Appellant and denied even knowing where the office of Registrar Documents is situated. But they confirm a handwritten “karasi ya mauzo” which was produced also by the Appellant.

The learned Deputy chairman delivered his decision in favour of Respondent on 21.2.2011. The Appellant being aggrieved filed his appeal to this court. The memorandum of appeal contains four ground of appeal as follows:-

1. That the learned Deputy Chairman erred in not considering that the land claimed by Respondent is situated at Mchungwa wa Kizungu and the land claimed by Appellant is at Kitabu Kwale.
2. That the learned Deputy Chairman did not consider that the Defendants No.2,3 and 4 sold to the Appellant tree plots of land at different times and has 150 clove trees and not 7 clove trees.
3. That the learned Deputy Chairman put more weight on the exhibit of the Respondent which shows the plot is situated at Mchungwa wa Kizungu and not Kitabu Kwale.
4. That the learned Deputy Chairman did not consider that Defendants No.2,3 and 4 were the one who sold plots to him, but now they have turned and join hands with Respondent to take away the right of the Appellant.

The appellant adopted his grounds of appeal and added that the plot in dispute belonged to him and has been there for 27 years. The Respondent's plot of land is situated somewhere/se. The Respondent replied in writing to the effect that the plot in dispute is the same occupied by Appellant and this was confirmed by the visit of the locus in quo. The difference is the name used everyone used different names. With respect to the testimonies of Defendants No.2,3 and 4 he responded that the learned Deputy chairman did consider their testimonies which confirmed that they sold a plot to the Appellant but that plot is somewhere/se, not it is not in the plot of the Respondent.

Starting with the first and third ground of appeal. It is very clear that the Sale – Deed of the Respondent which is registered in 1960 mentioned that the shamba is situated at Mchungwa wa Kizungu Fujangavu Bopwe in the District of Wete,

while the Sale Deed of the Appellant which is registered in 1991 shows the shamba is situated at Kwa Kitabu Kwale in the District of Michaweni. But the visit of the locus in quo confirmed that it is the same land which is claimed by both parties. The Respondent was able to prove his case by production of that sale deed and he called three witness, who one Sheha of Taifu and her assistant and one of the elders of Taifu who all confirmed about the Respondent plot of land. On the other hand, the Defendants No.2, 3 and 4 also confirmed about the existence of the plot of land belonged to the Respondent which is adjacent to their plot of land which they sold to the Appellant, but their plot is small and had only 7 clove trees. On the other hand the Appellant prove his case by producing the Sale Deed and “Karatasi ya Mauzo”, but failed to call any witness. The “Karatasi ya Mauzo” was confirmed by Defendant No.2,3 and 4. But the Sale Deed was challenged by the person who is purported to have signed it. She testified that she has not signed that document even gone near the office of Register of Document. This put this deed in question regarding its validity and how it is obtained. But all in all case two grounds of appeal reached merits and are dismissed.

Regarding the second and fourth ground of appeal, it is very clear that the records do not show that the Defendants No.2,3 and 4 sold the Appellant three plots of land at different times and together they have 150 clove trees. What is on record and testified by Defendants No.2, 3 and 4 is that they sold a small plot of land situated at Kwale Gongo Njia Kali which they inherited from Sada Salum. That plot contained 7 clove trees. These testimonies confirmed the boundary of the Respondent’s plot which is bounded by Sada Salum in the north and East. Further, the testimonies of Defendants No.2 3 and 4 were believed by the trial court, and this court found no reason to doubt about the truth of their testimonies.

Hence the second and fourth ground of appeal also facts. The decision of the deputy chairman of the land tribunal is upheld and this appeal is dismissed with cost. It is so ordered.

SGD: ABDUL;-HAKIM A.ISSA,J

19/8/2013

Date: 19/08/2013

Coram: Khamis R. Abdalla D/R

Appellant: Present

Respondent: Present

C/C: Ms. Zaina


Court: Judgment delivered before parties in open court, today 19/08/2013.

Right of appeal is explained to the aggrieved party.

SGD: KHAMIS R. ABDALLA (D/R)

19/08/2013

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 KHAMIS R. ABDALLA (D/R)
 MRAJIS WA JIMBO
 MAHAKAMA KUU
PEMBA