

TANZANIA / JUDGMENT

Land Appeal No

COURT
TANZLIIDECIDED
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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND APPEAL NO. 371 OF 2023 (Originating from Land Application No. 153 of 2017, Kinondoni District Land and Housing Tribunal) ALLY ABDALLAH KIMBIZI (Administrator of the Estate of the Late Ally Kimbizi)..... 1st APPELLANT JUMA ABDALLAH KIMBIZI..... 2nd APPELLANT CHARLES MASEBO & SIHABA HARUNA HABIBU.....3rd APPELLANT ABDALLAH SONDI..... 4th APPELLANT VERSUS ALEX MARANDU..... RESPONDENT

JUDGMENT

29/02/2024 to 21/03/2024 E.B. LU VAN DA, J The First, Second, Third and Fourth Appellants named above are appealing against the decision of the Tribunal which decided in favour of the Respondent being the lawful owner of a piece of land measuring sixty by sixty meters located at King'azi Kinondoni, for reason that the Respondent purchased it legally from the late Ally Kimbizi on 23/05/2005 as per sale agreement, exhibit Pl. The Tribunal ordered the Appellants to give vacant possession. i The Appellants' aggrieved by the verdict of the Tribunal, preferred this appeal on the following grounds: One, the Honorable Chairman erred in law and fact by ignoring the evidence adduced by the Appellant (sic, Appellants) that they have a good title on the suit land hence arriving at erroneous conclusion; Two, the Honorable Chairman erred in law and fact by relying on inconsistent and insufficient evidence adduced by the Respondent on proving ownership of the suit land. Mr. Daudi Mzeri learned Counsel for Appellants submitted that the Chairperson ignored the testimony of DW1 Ally Abdallah Kimbizi who testified that the disputed area had been reserved for their own use and their late father was unable to do anything without consulting them including selling of the disputed land. He submitted that DW1 strongly objected the sale agreement in respect of the dimension of sixty-by-sixty meters, arguing its twenty-eight by thirty- eight by thirty-seven by sixty-one by twenty-eight, he submitted that the respondent tendered another sale agreement dated 23/05/2005 which was stamped by the hamlet leader on 25/06/2006, arguing is a reason for DW1 and DW2 Juma Abadallah Kimbizi to object that there was no sale agreement over the disputed land. He submitted that the Respondent tendered sale agreement bearing Mbezi Mwisho hamlet council while the suit land is located at King'azi "A" Kwembe Street by then. He submitted that all this evidence were ignored. 2 He submitted that the Chairman disregarded the evidence of DW4 Abilai Sondi who testified that he purchased the

suit land from the First and Second Appellant. He submitted that the Chairman ignored the testimony of DW5 Sofia Idd Mananga who is a local leader, who stated that the Fourth Appellant purchased legally from the First and Second Appellant. He cited the case of Amiri Mohamed vs Republic [1994] T.L.R. 138; Leonard Mwanashoka vs Republic, Criminal Appeal No. 226 of 2014 CAT, for a proposition that considering both the prosecution and defence case is an implied essential ingredient in any suit Ground number two, the learned Counsel submitted that the evidence of the Respondent that he bought the suit land from the late Ally Kimbizi on 23/05/2005 and paid the first instalment in June 2005 under the witness of PW2 Amon Thomas Nkwenjele, argued this testimony contradict with PW2 who at page five disowned witnessing payment of the purchase price. He submitted that the first sale agreement dated 12/05/2005 indicate the purchase price was effected in two instalments, argued it does not show the exact amount and the manner they were settled. He submitted that the second sale agreement dated 23/05/2005 does not show the amount paid as consideration in purchase of the suit land, arguing the Chairman proceeded to admit and rely on it despite a fact that did not prove the Respondent's claim. He cited the case of Dicksort Elias 3 Nsmba Shapurata & Another vs Republic, Criminal Appeal No. 92 of 2007 CAT; Sahoba Benjuda vs R, Criminal Appeal No. 96 of 1989 CAT, on discrepancy and contradictory testimony. He submitted that the testimony of PW1, PW2, PW3, was not complimentary of each other rather contradictory. In reply, Mr. Walter Goodluck learned Counsel for the Respondent submitted that at page fifteen of the decision, DW1 and DW2 on their own words said that the Respondent started to use the land in dispute since 2005 and the dispute arose in 2015 after the death of the Appellant father (sic, First and Second Appellants' grandfather) one Ally Kimbizi who is the owner and seller of the suit land. He submitted that the son of the late Ally Kimbizi, that is Nasibu Ally Kimbizi is still alive, argued his evidence could hold more water to the evidence of the Appellants. He submitted that ignoring the evidence given does not amount to make the Tribunal's decision bad. He cited the case of Amiri Ismael vs Regina, TLR 370; Lutter Symphorian Nelson vs The Honorable Attorney General and Another [2000] T.L.R. 419, on the essential requirements of the judgment. Ground number two, the learned Counsel submitted that the Respondent (sic, Appellants) referred to the sale agreement dated 12/05/2005, argued have never been tendered in court (sic, Tribunal) by either of the parties and have not been referred anywhere in the judgment. He cited the case of Paulina 4 Samson Ndawavya vs Theresia Thomas Madaha, Civil Appeal No. 45 of 2017; Sarkar's Law of Evidence, 18P* Edition, on the question of burden of proof never shift to the adverse party. He submitted that the law is very clear that the weight of annexures which were not tendered and received as exhibits during trial, should not be treated as evidence, citing Sabry Hafidh Khalfan vs Zanzibar Telecom Ltd (ZANTEL) Zanzibar, Civil Appeal No 47 of 2009 CAT; Shemsa Khalfa & Others vs Suleiman Hamed Abdallah, Civil Appeal No. 82 of 2012. He submitted that the issue of inconsistency of PW1 is unfounded, arguing the Tribunal is not expected to have a flashlight memory that is copy and paste of every point of his witness, arguing credibility of a witness to the contract was enough to prove a point. He submitted that the argument that whether a witness was present during payment or signing the sale agreement does not hold water, arguing the Respondent existed at the suit land even before the demise of Ally Kimbizi. On rejoinder, the learned Counsel for Appellant submitted that the Respondent Counsel abandoned his duty to respond on the argument that the Chairman ignored

the evidence adduced by the Appellant, instead dragged in irrelevant and useless principles. He reiterated on the evidence adduced by DW1, DW2, DW3, DW4, DW5 that altogether was ignored and disregarded by the Chairman 5 as per the submission in chief. He cited Amiri Mohamed (supra) and Leonard Mwanashoka (supra). On the second ground, the learned Counsel reiterated the discrepancies on the sale agreement and inconsistency of the testimony of PW1, PW2, citing page five and seven of the impugned judgment. He cited Discksort (supra) and Sarkar's (supra), Shohoba (supra) Regarding ground number, I will start on a complaint that the Chairperson ignored the testimony of DW1 Ally Abdallah Kimbizi who testified that the disputed area had been reserved for their own use and their late father was unable to do anything without consulting them including selling of the disputed land. It is true that this fact was not considered by the Tribunal. However, even if it could have been considered as I hereby do, the same cannot change the line of findings towards landing to the conclusion reached by the Tribunal. This is because there are ample evidence including from the mouth of DW1 himself that the Respondent has been in occupancy of the suit land since 2005. Indeed, PW1 asserted there was an attempt to interfere with his lawful ownership, which was intercepted by the deceased and warned his grandchildren not to repeat it again. If at all the same was reserved for that purpose as alleged by the learned Counsel for Appellants, DW1 and sibling could 6 not wait the demise of their grandfather then come up with this illusion argument. The learned Counsel for Appellant submitted regarding size of the suit land, arguing DW1 strongly objected the sale agreement in respect of the dimensions of sixty-by-sixty meters as put by PW1, vis-a-vis DW1 who asserted its twenty- eight by thirty-eight by thirty-seven by sixty-one by twenty-eight. Admittedly the Tribunal did not consider this aspect. However, PW1 was explaining on what he purchased vide exhibit Pl. It is wrong to infer what was asserted by DW1 in regard to the size of the land purported to have been reserved for their own use with the suit land purchased by PW1. Indeed, exhibit Pl is vivid that the piece of land subject for disposition was sixty-by-sixty meters not more. Therefore, this argument is unmerited. Regarding an argument by the Appellant that the Respondent tendered a sale agreement bearing Mbezi Mwisho hamlet council while the suit land is located at King'azi "A" Kwembe Street by then. This argument is unfounded, exhibit Pl reflect it was attested by the cell member one Siri Omari with a rubber stamp reading Mlezi wa Shina CCM No. 2 Tawi la King'azi. Indeed, the suit land is located at King'azi Area, as conceded by the Appellant in his submission. Therefore, this argument is misconceived and misplaced. 7 There was an argument by the learned Counsel for Appellants that the chairman disregarded the evidence of DW4 Abilai Sondi who testified that he purchased the suit land from the First and Second Appellant. He also submitted that the Chairman ignored the testimony of DW5 Sofia Idd Mananga who is a local leader, who stated that the Fourth Appellant purchased legally from the First and Second Appellant. Actually, the Chairman is faulted for nothing. It is element that the title of Abilahi Kasimu Sondi (DW4) and Sihaba Haruna Habibu (DW3) who alleged to have purchased plots from the First and Second Appellant, their title depended wholly on the question as to whether the latter had a good title to pass to the former. But as transpired during trial, there was ample evidence that the Respondent purchased the suit land from the late Ally Kambi on 23/05/2005 as per exhibit Pl. There was no any dispute until the demise of the vendor in 2015, it is when the First and Second Respondent trespassed and disposed to DW3 and DW4. Both the First and

Second Appellant conceded a fact that the Respondent have been in occupation since 2005. The First and Second Appellant are mere grandchildren of the late Ally Kambi. DW1 asserted that the son of the late Ally Kambi one Nasibu Ally Kimbizi is still alive. DW1 concede that they don't have a title over the suit land. DW1 on cross examination by Mr. Walter stated that he is an administrator of the estate of his biological father one Ally Rajabu Kimbizi 8 who is not the owner. With these facts, the First and Second Appellant had no title to pass to DW3 and DW4. Therefore, the Tribunal was justified to rule that the First and Second Appellant had no mandate to dispose that suit land to the DW3 and DW4. On ground number two the Appellant complained that the evidence of the Respondent that he bought the suit land from the late Ally Kimbizi on 23/05/2005 and paid the first instalment in June 2005 under the witness of PW2 Amon Thomas Nkwenjele, argued this testimony contradict with PW2 who at page five disowned witnessing payment of the purchase price. He submitted that the first sale agreement dated 12/05/2005 indicate the purchase price was effected in two instalments, argued it does not show the exact amount and the manner they were settled. It is true that the Respondent asserted to have paid the last instalment in the presence of Ndugu Amoni Thomas Nkwenjele who appeared to testify as PW2. Admittedly PW2 disowned a seeing or witnessing payment of money. However, PW2 was firm and cling to the same fact that he witnessed when exhibit P1 was executed. To my view if at all there was no payment of money or that the Respondent did not furnish enough consideration, that could be expected to be heard from the late Ally Kimbizi who stayed alive for ten solid years counting from when sale was executed in 2005 to 20215 when he met his demise. To 9 my view had been any balance or unsettled amount, the late Ally Kimbizi would have complained. Indeed, neither the First or Second Appellant asserted to have heard the late Ally Kimbizi complaining over unpaid amount. More important the son of the late Ally Kimbizi one Nasibu Ally Kimbizi is still alive, and is not complaining. Another argument on this ground was that the second sale agreement dated 23/05/2005 does not show the amount paid as consideration in purchase of the suit land, arguing the Chairman proceeded to admit and rely on it despite a fact that did not prove the Respondents claim. As allude by the learned Counsel that the sale agreement dated 23/05/2005, referred by the Appellants was not tendered before the Tribunal by either of the parties. Even during cross examination to the Respondent, the alleged sale agreement was not exhibited for the Tribunal appraisal. With this ample evidence adduced and tendered by the Respondent in weighing with the evidence of the Appellants, that of the former on the balance outweigh that of the latter. Therefore, the Tribunal was justified to rule that the 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. 10 The appeal is dismissed. The Appellants are ordered to foot all costs for his aPPeal^imr>,_ ---- ... :he First, Second, Appellant, Mr. Walter Goodluck learned Counsel for the Respondent and the absence of the Third and Fourth Appellant. x LUVA UDGt 11

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