

TANZANIA / JUDGMENT

aloyce peter vs alex sadat 2 others

2022 tzhc 13507 30 september 2022

COURT
TZHCDECIDED
30 September 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MWANZA AT MWANZA LAND APPEAL N0.07 OF 2022 (Arising from the decision of the District
Land and Housing Tribunal of Geita in Land Case 54 of 2015) ALOYCE
PETER..... APPELLANT Versus ALEX
SADAT..... 1st RESPONDENT YUSUPH
MSETI..... 2nd RESPONDENT SINGA
SAMWEL..... 3rd RESPONDENT

JUDGMENT

Sept. 22nd & 3CT, 2022 Morris, J Mr. Aloyce Peter - the appellant, having been aggrieved by the decision of the District Land and Housing Tribunal for Geita District (DLHT) appeals to this court. He filed three grounds of appeal. During hearing he opted to abandon the third and retain two grounds only. Through separated, both grounds are challenging the trial DLHT's evaluation if evidence adduced by parties. Through the first ground, the appellant is faulting the trial Tribunal that it arrived at a wrong conclusion by holding that the suit land belongs to the 1st respondent. Ground two is to the effect that the trial Tribunal erred in holding that the auction via which i the appellant purchased the suit property had been quashed and set aside at the time of purchase through auction. The brief facts of the matter may be useful. Allegedly, the appellant bought the suit land through court-ordered auction on September, 9th

2014. The suit land was auctioned following the 3rd Respondent's failure to repay the loan he had taken from the 2nd respondent. It was alleged further that property in question was the security (mortgage) for the loan between 2nd and 3rd respondents. The trial DLHT decided in favour of the 1st respondent. Hence, this appeal. The appeal was pursued by the appellant in person, unrepresented; and Mr. Erick Lutehanga, learned advocate, had the first respondent's instructions to challenge the appeal. Parties obtained the Court's leave to argue the appeal by written submissions. Submitting in support of the 1st ground of appeal, the appellant narrated, in details, what transpired between his purchase of land and the proceedings at DLHT. He reiterated that his side proved the case on the scale of balance of probability enough to justify the court to rule in his favour. He insisted, DLHT was wrong in dismissing the application after he had mobilized and tendered adequate evidence. The

appellant's arguments were buttressed by courts pronouncements in *Jeremaih Shemeta v R* (1985) TLR 228; *Masenga 2 Ntandu v Shabani Munjori*, HC -Dodoma, Land Appeal No. 2018 (unreported); and *Hamisi Rajabu Dibagula v R* (2004) TLR 181; to mention some. The respondents, however, passionately resisted the appeal. The counsel submitted that the trial DLHT should not be faulted for it paid adequate attention to every detail prior to reaching the verdict. He argued that the appellant's title to the suit land was derived from an illegitimate transaction. Detailing such argument, the counsel submitted that the auction resulted from execution processes of Nyakumbu Primary Court decision in case number 38/2014. However, he argued further that the subject execution was later quashed and set aside thereby giving no title to whoever purported to have it. In other words, the respondent's counsel is that the appellant simply bought the non-existing title. It was prayed by the respondents' side that this appeal should be dismissed with costs. Going through the above submissions and circumstances surrounding this appeal, this Court is being invited to determine one issue: whether or not the trial DLHT adequately evaluated the evidence before it enough to justify the decision in favour of the 1st respondent. In answering this issue, I have gone through the evidence from the trial tribunal. It is evident that the 1st respondent summoned and relied on 3 testimonies of four (4) witnesses who managed to prove his title over the land in dispute. However, the appellant whose title could be discernible from the set aside court order he had the onus of proving two critical aspects. One, that the auction was and remained to be effectual enough for the title to move from previous owner. Two, it was imperative for him to prove that the person from whom the land was being auctioned from had a better title. That is why due diligence is necessary before such kind of transactions. In the case of *Pendo Fulgence Nkwenge v Dr. Wahda Shangal*, CAT Civ. Appeal No. 368 of 2020 (unreported); it was held, I quote: 'Our starting point will be consideration of a settled principle when considering ownership of property, that no one can give a title that he does not have to another person (*Nemo dat quod non habet* rule). In the case of *Faraha Mohamed v Fatuma Abdallah* (1992) TLR 205, the Court held: He who does not have legal title to the land cannot pass a good title over the same to another' (bolding rendered for emphasis). Relating the quoted excerpt to the present matter, the evidence from the 1st respondent is sufficiently probative towards establishing that 4 he owned the suit premises. The appellant-applicant side did not establish how the said house belonged to the 3rd respondent. Thus, if the latter had no title to land, in the first place, he cannot pass title to another either voluntarily/contractually or compulsorily/by operation of law. In this regard, the submissions of the appellant, with respect, is less convincing; if at all. The submissions in support of the appeal, in the Court's view, are that the appellant greatly banks his arguments on the contradictions and supportive elements apparent in the 1st respondent's witness to prove his case. That is, instead of procuring witnesses or mobilizing evidence which would prove that he not only actually bought the suit land but also that land was obtained from a person capable of passing the title to him. The appellant in its place relied on the opposite party's set of evidence. This is, in law, not correct. I elucidate this point further below. Firstly, the standard of proof in civil cases is balance/preponderance of probability not beyond reasonable doubt, See, for example, *Jasson*

Samson Rweikiza v Novatus Rwechungura Nkwama, CAT (Bukoba) Civ. Appeal No. 305 of 2020 (unreported). It would have made a great difference if the appellant's side of the proof/evidence corroborated the respondent's evidence in his favour. 5 Secondly, the cardinal principle in this regard is that the alleging party should not shift the burden to the opposite side. See for instance, Barelia Karangirangi v Ateria Nyakwambwa, Civ. Appeal No. 237 Of 2007, CAT- Mwanza (unreported); AG & Others v Eligi Edward Massawe & Others, Civ. Appeal No. 86 of 2002, CAT (unreported); and Ikizu Secondary School v Sarawe Village Council, Civ. Appeal No. 163 of 2016 CAT (unreported). In Habiba Ahmadi Nangulukuta {supra}, the Court of Appeal is categorical thus: 'It is trite law and indeed elementary that he who alleges has a burden of proof as per section 110 of the Evidence Act, [Cap. 6 R.E. 2019]. It is equally elementary that the standard of proof, in cases of this nature, is on balance of probabilities which simply means that the court will sustain such evidence which is more credible than the other on a particular fact to be proved. It is again trite that the burden of proof never shifts to the adverse party until the party on whom the onus lies discharges his/hers and the said burden is not diluted on account of the weakness of the opposite party's case.' So, the appellant's submissions which tend to drag the respondent to the negative side of the scale of justice by using part of evidence from the 1st respondent witnesses fail from the shortfalls inherent in the scheme. It is on such basis that this court finds, as it hereby does, that the trial DLHT 6 was justified in holding that the appellant's evidence did not sufficiently establish his title to the suit land. All matters discussed above and reasons given being put in perspectives, this appeal stands dismissed. Parties shall, as I hereby order 7

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