

TANZANIA / JUDGMENT

DANKEY JUDGMENT Final

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA MBEYA
SUB - REGISTRY AT MBEYA LAND APPEAL NO. 5241 OF 2024 (Originates from Land Application
No. 13 of 2016 from the District Land and Housing Tribunal of Rungwe at Tukuyu) DANKEY
ASEGELILE.....APPELLANT VERSUS IBRAHIMU
MWANDAMBO.....1ST RESPONDENT RAFAEL
KAMILO.....2ND RESPONDENT

JUDGMENT

Date: 4 November 2024 & 17 February 2025 SINDA, J.: The appellant is aggrieved and wishes to challenge the decision of the District Land and Housing Tribunal for Rungwe at Tukuyu (the DLHT). The brief facts of the case are that the first respondent claimed that in 2014 the appellant herein trespassed into his land measured at two and a half acres, located at Lukule hamlet, Ibililo village, Nkunga ward within Rungwe 1 district and Mbeya region (the Disputed Property). That, he purchased the Disputed Property on 10 August 2008 from the second respondent. That, neighbors to the land are Batalwisye Mwang’ombe to the North, Rafael Kamilo to the South, Angolile Mwanyumba to the East and Sinogi Sanga to the west. The second respondent explained that he legally sold the Disputed Property to the first respondent. Thus, the appellant herein is a trespasser. The appellant disputed the allegations and stated that the Disputed Property was given to him by his parent in 1985. That his uncle sold the Disputed Property when he moved to Sumbawanga in 2007. The first respondent then successfully sued the appellant and the second respondent at the DLHT. Dissatisfied with the decision of the DLHT, the appellant brought this appeal on the following grounds:

1. THAT, the trial tribunal erred both in law and facts to deliver the decision in favour of the first respondent as a lawful owner of the suit land meanwhile the vendor did not have capacity to transfer the title over the land. 2
2. THAT, the trial tribunal erred both in law and in fact whereas the evidence on the appellant indicates that the appellant used the suit land long time.
3. THAT, the trial tribunal erred both in point of law and facts as there was irregularities into the whole proceedings of the case.

4. THAT, the trial tribunal erred both in point of law and facts as there for failure to analyze the evidence henceforth reached biased decision.
5. THAT, the trial tribunal erred both in law and facts for considers the respondents evidence which was contrary to the pleadings.
6. THAT, the trial tribunal erred both in law and in facts for declared that first respondents as a lawful owner of the suit land while his evidence contradictory and the sales was not proved. Hearing of the appeal was by way of written submissions. The appellant was represented by Mr. Joseph Mwainyekule, learned counsel. The respondents were represented by Ms. Jenifa Joely Silomba, learned counsel. Submitting on the first ground of appeal, Mr. Mwainyekule argued that no good title was passed from the second respondent to the first respondent. That, it was not mentioned in the pleadings or evidence on record 3 indicating the second respondent's authority to sale the Disputed Land which belonged to his father. The counsel added that the second respondent did not submit letters of administration in court. For that reason, Mr. Mwainyekule opined that the first respondent has no rights over the Disputed Land. Supporting his argument, he cited section 99 of the Probate Act, Cap 353 R.E 2019 and the case of Gloria Irira vs. Sudi Mrisho Ngwambi, Civil Appeal No. 27 of 2021. Concerning the second and fourth grounds, the counsel submitted that the evidence by the appellant indicates that he acquired the Disputed Property in 1985 by way of gift from his parents. Meanwhile, the first respondent claimed to have bought the Disputed Property in 2008 without having any written sale agreement to substantiate it. Therefore, he argued that the appellant owned the Disputed Property first before the first respondent, in accordance to the priority principle. He cited the case of Ombeni Kimaro vs. Joseph Mishili t/a Cathoric Charismatic Renewal, Civil Appeal No. 33 of 2017. With regards to the third ground, it was Mr. Mwainyekule's submission that the irregularities in this case are due to non-joinder and misjoinder of the necessary parties to the case. That, according to the written statement of 4 defence (WSD) of the second respondent, his family members were supposed to be joined as necessary parties to the suit. On the fifth ground, the counsel submitted that the respondents' evidence contradicts their pleadings on who disposed the Disputed Property. That, in the WSD of the second respondent, it was mentioned that the family sold the Disputed Property to the first respondent. While the first respondent during trial testified that the vendors were five in number, but he only joined the second respondent and left four others. Mr. Mwainyekule was of the view that parties are bound by their pleadings. He cited the case of Gloria Irira vs. Sudi Mrisho Ngwambi (supra). Arguing on the sixth ground, he submitted that the first respondent was unjustly declared as a lawful owner of the Disputed Property while the sale agreement was not proved in law and his evidence was contradictory. That the evidence of the first respondent did not substantiate who the vendor was. Such anomaly could be solved by a written sale agreement. He referred to section 64 (1) (a) of the Land Act, Cap 113 R.E 2019. In her reply submission, on the first ground Ms. Silomba argued that the second respondent maintains that he is the lawful owner of the Disputed Property and he acquired it by way of inheritance from his parents. That 5 his ownership emanates from the authority given to him by his family to take control after his

father's death as evidenced before the DLHT. To prove the same, the counsel referred to pages 22, 26, 32, 33, 34, 37 and 38 of the DLHT proceedings (the Proceedings). She added that the evidence adduced by the appellant was very weak and contradictory compared to that of the respondents because the appellant failed to prove when he acquired the Disputed Property. That, it is cardinal principle in civil suit, a party with strong evidence must win the case. She cited the case of Hemed Said vs. Mohamed Mbilu [1984] TLR 113. Arguing on the second ground, the counsel submitted that the allegations by the appellant have no basis as there is no evidence adduced by the appellant to prove that he used the Disputed Property for a long time compared to the respondents. On the third ground, Ms. Silomba contended that it was not necessary for other family members to be joined as parties to the suit because the second respondent was given authority by his family and they all consented to the sale of the Disputed Property to the first respondent. That, some of the family members witnessed the sale, therefore their interests were not infringed. The counsel referred to page 34 of the Proceedings. 6 She cited the case of Abdullatif Mohamed vs. Mahboob Yusuf Othman and Another, Civil Revision No. 6 of 2017. In relation to the fourth ground, the counsel submitted that the contradictions put forth by the appellant counsel are not strong to procure the decision in favour of the appellant. That, the matter for determination at the DLHT was who was the rightful owner of the Disputed Property. She added that the second respondent managed to prove ownership by bringing his family members including his mother as witnesses to show that they consented to the sale. That, the family members proved that they inherited the Disputed Property from the second respondent's father as rightful heirs. Submitting on the fifth ground, Ms. Silomba maintained that the first respondent is the lawful owner of the Disputed Property, based on strong evidence adduced by the second respondent. The counsel was of the view that after the plaintiff has led evidence the burden of proof shifts to the respondent. She cited the case of Yusuph Seleman Kimaro vs. Administrator General & 2 Others. No rejoinder submission was filed by the appellant. 7 After going through the submissions from both sides and records of the DLHT, I believe the pertinent issue for determination is whether I find this appeal with merit. On his first ground, the appellant argued that the DLHT erred both in law and facts to deliver the decision in favour of the first respondent as a lawful owner of the Disputed Property while the second respondent had no capacity to dispose of the Disputed Property. He argued that the second respondent did not bring evidence before this court or any document to prove he sold the Disputed Property under his capacity as an administrator of his deceased's father estate. He was therefore of the view that, since the vendor's capacity was not well established, then the buyer, that is the first respondent, does not have a good title over the Disputed Property. In order to decide on this issue, it is important to first determine who was the lawful owner of the Disputed Property between the appellant and the second respondent. As the first appellate court, I evaluated the evidence on record. The appellant at the DLHT stated that he was given the Disputed Property by his parents Asegelile Kamilo and his wife Faines Katapa in 1985. The appellant did not brought Faines Katapa as a witness or explained about 8 her whereabouts. He did not also bring the written evidence that he was given the Disputed Property by Asegelile Kamilo. As, such the appellant failed to prove

when he did acquire the Disputed Land. The second respondent however claimed that the Disputed Property belonged to his father and he acquired it by way of inheritance and he was given authority by his family to take control of the Disputed Land after the death of his father. He brought witnesses including the village chairman at page 22 of the Proceedings to such effect to prove the same. Later, after the death of his father as a family, they decided to sell the Disputed Property to the first respondent. Therefore, the evidence of the second respondent is heavier than that of the appellant. It is clear the Disputed Property belonged to the second respondent family. Further, this being a dispute that involves clan members (with exception of the first respondent), I believe details of disposition are of great value. The second respondent at page 34 and 35 of the Proceedings claimed that they convened a clan meeting after the death of their father in 1990 where he was chosen as an administrator of his father's estate and was later confirmed by the court. After that, they proceeded to divide the land 9 amongst themselves as lawful heirs. Then, the Disputed Property was sold to the first respondent. As I went through the records of the DLHT, I came across form No. IV from Mbeya Urban Primary Court that appointed the second respondent as the administrator of his father's estate on 14 June 2016 while the sale of the Disputed Property took place on 10 August 2008. This implies, the sale was conducted before the second respondent was confirmed as an administrator of his father's estate by the court. It is a settled principle of law, that the one with no good title cannot pass a good title to another person. This was discussed in the case of Splendors (T) Limited vs. David Raymond D'souza (Under Irrevocable Special Power of Attorney by Mary Mushi & Jerry John as the Administrators of Christina S. Mugamba Deceased). That provided: "In the same vein, Christina Mugamba could not pass good title to the appellant as it is trite that no one can give a title that he does not have to another person (see: Furaha Mohamed v. Fatuma Abdallah [1992] T. L. R. 205)." Also see: Gloria Irida vs. Sudi Mrisho Ngwambi & Others, Civil Appeal No. 27 of 2021. 10 Be that as it may, seeing the sale was consented and witnessed by the second respondent's family members in 2008. Also considering that the family members in 1990 appointed the second respondent as the administrator of his father estate and was confirmed by the court later in

2016. In my opinion, the capacity of the second respondent as a seller, as argued by the appellant becomes immaterial. For reasons that until now there is no dispute among family members concerning the disposition of the Disputed Property or the capacity of the second respondent in relation to his father's estate. Thus, based on the evidence adduced, I believe that the second respondent had good title to the Disputed Property and had capacity to transfer the title over the Disputed Property to the first respondent. With that, I find the first ground of appeal with no merit. Moving to the second and fourth grounds, the appellant argued that he has been in occupation of the Disputed Property longer than the first respondent. This argument appears to be baseless for a mere fact that the first respondent only purchased the Disputed Property. This could have made sense if the appellant brought the argument against the second respondent. 11 It follows that no matter the occupation period by the appellant, so long as he failed to prove ownership he is

considered a trespasser. As such, the evidence before the DLHT was properly analyzed in reaching its decision. See: Hemed Said vs. Mohamed Mbilu (Supra). Regarding the third ground, I find myself agreeing with Ms. Silomba that it was not mandatory for family members to be joined as necessary parties to the case. The evidence, particularly that of SU4, the mother of the second respondent, shows that the family agreed to the sale. Therefore, their non – joinder and misjoinder, did not affect the substance matter of the suit in any way. This spirit was underscored by the CAT in Stanslaus Kalokola vs. Tanzania Building Agency and Another, Civil Appeal No. 45 of 2018 (unreported) that: "...there are non-joinders that may render a suit unmaintainable and those that do not affect the substance of the matter, therefore inconsequential." Critically observing to the above decisions, it is without difficult to adjudge that the necessity of the party or otherwise depends on the facts and circumstances available in each case. Also see: Godfrey Nzowa vs. Selemani Kova & Others, Civil Appeal No. 183 of 2019 CAT at Arusha. 12 As for the fifth and sixth grounds, in the pleadings the second respondent stated that his family, himself included, willfully sold the Disputed Property to the first respondent. Further, during the first respondent's testimony before the DLHT, he explained that the Disputed Property was sold to him by five people but the second respondent was the main seller. From the Proceedings, I noted that the sale agreement was tendered and not admitted before the DLHT. Nonetheless, I am of a firm view that the sale did take place. That being the case, I do not see the contradiction as stated by Mr. Mwainyekule. Since in both scenarios the second respondent was mentioned as a seller. Moreover, it does not escape me that the first respondent is a bonafide purchaser, whose rights must be protected. The same was discussed in the case of Tom Morio vs. Athumani Hassan (Suing as the Administrator of the Estate of the Late Hassan Mohamed Siara) & two Others, Civil Appeal No. 179 of 2019. That provides: "Furthermore, the law in our country protects the bonafide purchaser for value who purchased the property in good faith and without any notice of encumbrance, as it occurred to the appellant." 13 Consequently, I see no need to depart from the findings of the DLHT. I hereby find the entire appeal devoid of merit. The appeal is dismissed. No order as to costs because parties are family members. It is so ordered. Right of appeal is explained. DATED at MBEYA on this 17 day of February 2025. A. A. SINDA JUDGE 14

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