

DECIDED  
25 November 2021

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## JUDGMENT

1. That the trial tribunal erred in law and fact by holding that the suit property is owned jointly while the sale agreement shows that the respondent purchased the same on behalf of the appellant.
2. That the trial tribunal erred in law and fact by admitting the sale agreement which did not comply with Stamp Duty Act.
3. That the trial tribunai erred in law and fact by failure to grant to the appellant portion of the proceeds obtained from the suit property for the past four years. purchased by both the appellant and the respondent jointly. The same reads as follows:- "0/75/ hii imeshuhudia Ndugu Richard Kandaya was S.LP... Akiuza Kibanda Cha Biashara kwa ndugu Deusidedit T Dati na Mariamu Juma..." If the sale agreement reads as above, In my opinion the arguments by the appellant that the trial tribunal erred in declaring the suit land to have joint ownership by both parties is misconceived. Based on the said exhibit, it is obvious that- thje; appellant and the npspQndent bought the land together with the intention to use and own it jointly. Therefore, the trial tribunal was correct in its findings. The ground of appeal is baseless. It is dismissed. On the 2<sup>nd</sup> grbund it was stated by the appellant that, the trial tribunal erred in law and fact by admitting the sale agreement which did not comply with Stamp Duty Act. I made a perusal of the records and saw the faulted documents to have been executed before the street Chairperson signif/ing joint purchase, Above all, the appellant also tendered the same document as exhibit PI. Like exhibit DI, it was not also stamped. Therefore, he cannot fault the tribunal for wrongly admitting exhibit DI constituting the same document which he tendered as exhibit PI. As an applicant he was the 1<sup>st</sup> to produce

the said document alleged to be unstamped. He cannot be heard to challenge his own deed. This reduces his ground to a mere afterthought worth this court's consideration. The obvious thing here is the fact that his evidence was lighter compared to that of the respondent. Since both cannot tie in a case, the respondent won the battie.and was given what he prayed for;;s HEMED SAID vs MOHAMED MBILU (1984), TLR, 114. Therefore, the 2"^ ground of appeal also is devoid of merits. In view of the above analysis, I uphold the decision of the triai tribunal and dismiss the appeal accordingly. No order as to costs. t • • ■ • ; I M. P. OPIYO, \ "-WS- JUDGE 25/11/2021

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