

TANZANIA / JUDGMENT

FATUMA LAZARO

COURT
TANZLIIDECIDED
11 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB- REGISTRY OF
MANYARA AT BABATI LAND APPEAL NO. 11160 OF 2024 (Originating from Land Application No.
12 of 2023, District Land and Housing Tribunal for Babati at Babati) FATUMA
LAZARO..... APPELLANT VERSUS JOSEPH ELDAD
RUTAGOMBA..... RESPONDENT

JUDGMENT

25th July & 11th September, 2024 KAMUZORA, J. Before the District Land and Housing Tribunal for Babati (hereinafter referred to as the trial tribunal), the Appellant sued the Respondent claiming for a piece of land measuring about 3A acre situated at Boay village within Babati district (hereinafter referred to as the suit land). According to the Appellant's pleadings and evidence, she acquired the suit land from Boay village council sometimes in 1987 and later she and her husband constructed a house and cattle kraal thereon. On one hand, the Appellant claimed that the Respondent trespassed into the suit land in 2020 and demolished the house constructed after he had illegally Page 1 of 7 purchased the suit land from her husband (SM2) without the Appellant's consent. On the other hand, the Respondent disputed the Appellant's claims and contended that he legally purchased the suit land from the Appellant's husband one Mohamed Shabani on 03/06/2020. The Appellant referred the matter for mediation before Gijedaboshka ward tribunal but in vain and the certificate to that effect was issued. She then instituted Land Application No. 12 of 2023 before the trial tribunal. After hearing the parties' evidence, the trial tribunal decided that the suit land was wrongly sold to the Appellant since the latter did not participate in the sale. The trial tribunal further ordered the Appellant and her husband to refund the purchase money paid by the Respondent, the sum of TZS 1,300,000/= and pay the sum of TZS 500,000/- as compensation for the improvements done by the Respondent on the suit land. The Appellant was aggrieved with the trial tribunal's decision and she preferred the instant appeal. One of the grounds referred the competency of the decree and this court being satisfied that the decree contravened the law for not being compatible with the judgment, it ordered for rectification of the same before proceeding with the hearing of the appeal. After compliance to such legal requirement, only one ground remains undetermined; Page 2 of 7 That, learned chairman o f the trial tribunal relied on extraneous matters contrary to the pleadings for making orders o f refund and compensation without according parties'opportunity to address the same. When the appeal was called for hearing, both parties appeared in person. In her

submission in support of appeal, the Appellant submitted generally that the order for compensation is unjustified since she is the one who constructed a house on the suit land and the same was demolished by the Respondent. To her the order for compensation was wrongly issued against her for she was not involved in the sale of the suit land. For her, the Respondent has no right over the suit land. She insisted that, an order for compensation was unjustified because there was no development done by the Respondent on the suit land. She therefore prayed for this court to allow the appeal. In reply, the Respondent submitted that the decision of the trial tribunal is correct since the Appellant admitted that the Respondent purchased the suit land. He was of the view that the Appellant ought to have sued her husband who sold the suit land to him but instead, the husband appeared as a witness and that is why the trial tribunal ordered compensation against them. Page 3 of 7 The Respondent further submitted that the Appellant's husband was prosecuted in a criminal case and convicted for obtaining money by false pretense from the Respondent. To him, the Appellant and her husband planned to take his money and at the same time to reclaim the suit land which they sold to him. On the argument that the Appellant was not aware of the sale, the Respondent submitted that, such argument is not correct since there was a meeting in which they agreed that to compensate him to reclaim back their land. That, the Appellant's husband never filed a case after he was released from the prison but the Appellant who is the wife decided to file a case against the Respondent. He prayed for this court to dismiss the appeal and order the Appellant to refund the purchase money. In a brief rejoinder, the Appellant added that she initially complained against her husband but nothing was done. She maintained that she never consented to the sale of the suit land thus, an order for her to compensate the Respondent was unjustifiable. Having gone through the parties' rival submissions and the record of the trial tribunal, there are two issues for determination, the first issue is whether the trial tribunal was justified to order the Appellant and her husband to refund to the Respondent the sum of TZS 1,300,000/= being the purchase price paid by the Respondent. The second issue is whether Page 4 of 7 I the trial tribunal was justified to award the Respondent the sum of TZS 500,000/= as compensation. Starting with the first issue on the order for refund of the purchase price to the Respondent, it is on record that the trial tribunal ruled out that the sale of the suit land done by the Appellant's husband to the Respondent was illegal for it was done without the Appellant's consent. It ordered the suit land be handed over to the Appellant. I find no good reason to fault the trial tribunal on this finding. Equally since there was no cross appeal by the Respondent regarding the issue of ownership of the suit land, then the finding by the trial tribunal remains undisturbed. It is on record that, after the Appellant's husband (SM2) sold the suit land to the Respondent, SM2 was prosecuted for obtaining money by false pretence. The Respondent tendered the judgment of the district court of Babati in Criminal Case No. 187 of 2020 (exhibit S2). In the said judgment, the Appellant's husband was found guilty for obtaining the money by false pretence as he fraudulently sold the suit land to the Respondent knowing that he had no right to do so. He was sentenced to serve one year imprisonment and further ordered to refund the sum of TZS 1,300,000/= to the Respondent. Such evidence proves that it was the Appellant's husband (SM2) who received the money from the Page 5 of 7 Respondent, thus, it was improper for the trial tribunal to order the Appellant to refund the money to the Respondent. In his submission, the Respondent argued that he was entitled for compensation and refund

because the Appellant is married to the man who sold the suit land to him. Such argument is unmaintainable because the circumstance of this case does not establish joint liability between the Appellant and her husband. An order for refund was already made against the Appellant's husband after he was found criminally liable in Criminal Case No. 187 of 2020. Such liability could not be transferred to the Appellant. It was upon the Respondent to execute such order against the Appellant's husband. Therefore, the trial tribunal's order for refund of TZS 1,300,000/= is unjustifiable henceforth, quashed and set aside. As to the 2nd issue regarding an order for compensation, the trial tribunal held that there is evidence that the Respondent developed the suit land thus, he was entitled to compensation for such improvements. I have carefully gone through the record and specifically the Respondent's written statement of defence and his defence evidence. There is no record showing that the Respondent claimed to have carried out any improvements on the suit land or claimed for compensation for any improvement on the suit land. An order for compensation was therefore made on assumption that the Respondent carried out some improvements Page 6 of 7 on the suit land while there is no such evidence on record. The trial tribunal chairman introduced his own evidence and used it to make decision. Therefore, the order for compensation by the trial tribunal was not justified and the same is hereby quashed and set aside. Basing on the above discussion, I find that the appeal has merits and, I allow it. An order for refund of the purchase money the amount of TZS. 1,300,0000/= and an order for compensation of TZS. 500,000/= are hereby quashed and set aside. In considering the circumstance of this case in which the Respondent seems to be the victim of the circumstance, I will not make an order as to costs. DATED at BABATI this day of 11th September, 2024. Page 7 of 7

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