

TANZANIA / JUDGMENT

registered trustees of the roman catholic diocese of morogoro vs sabiha suleiman

2020 tzhclandd 151 18 may 2020

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18 May 2020

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND APPEAL NO. 230 OF 2017 (Originating from the decision of Morogoro District Land and Housing Tribunal in Land Application No. 30 of 2014 and Misc. Land Application No 101 of 2017 (Hon. P J. Makwandi, Chairman) THE REGISTERED TRUSTEES OF ROMAN CATHOLIC DIOCESE OF MOROGORO..... APPLICANT VERSUS SABIHA SULEIMAN..... ..RESPONDENT Date of Last Order: 11.03.2020 Date of Ruling: 18.05.2020

RULING

V.L. MAKANI. J. The appellant is the REGISTERED TRUSTEES OF ROMAN CATHOLIC DIOCESE OF MOROGORO. She is appealing against the decisions of Morogoro District Land and Housing Tribunal in Land Application No. 30 of 2014 and Misc. Land Application No. 101 of 2017 (Hon. PJ. Makwandi, Chairman). At the Tribunal in Land Application No. 30 of 2014 the dispute was in respect of a parcel of land measuring 10 acres situated in Mtaa wa Mgulu was Ndege, Mkundi Ward, Morogoro Municipality. The respondent was claiming 4 acres out of the 10 acres whereas she stated that she bought the said land from the original owner one Thadei Boniphace Nasaka. The suit land was therefore 4 acres which the respondent claimed to be her own. The application was partly allowed in that the respondent was declared the lawful purchaser of the suit land and therefore the applicant's remedy available was to refund the purchase price with interest at NMB Commercial rate from the date of purchase to date of full payment. The respondent was also entitled to costs. However, the applicant filed Misc. Land Application No. 101 of 2017 praying for rectification of the decree to state the purchase price in figures and the NMB Commercial rate in figures. The Tribunal in rectifying the decree stated:

- "The application is partly allowed.
- The respondent is the lawful purchaser of the land therefore the applicant's remedy available is to refund the purchaser.

- Therefore, the applicant is thus entitled to refund the purchaser upon be assessed by the valuer from the Morogoro Municipal Council as per terms and condition applicable while acquiring land.
- The respondent is entitled to costs in main application. There is no order as to costs for this Misc. Application." The applicant was not satisfied with the latter decision of the Tribunal hence this appeal with the following grounds:
 1. That having declared that the respondent the lawful purchaser o f the suit premise and having ordered that, the respondent to be refunded her purchase price o f the suit premise; the Honourable District Land and Housing Tribunal erred in law and in facts in rejecting to take the documentary evidence as a purchase price. 2
 2. That the Morogoro District Land and Housing Tribunal misdirected itself in not considering and granting the prayers sought in the Misc. Application No. 101 o f 2017 by the Applicant/ Appellant and resorted into issuing orders suo moto (sic!)
 3. That the Morogoro District Land and Housing Tribunal misdirected itself in holding in Misc. Application No. 101 o f 2017 that "the applicant is thus entitled to refund the purchaser upon obtaining the proper amount o f compensation as per marked value to be assessed by the valuer from the Morogoro Municipal Council as per the terms as conditions applicable while acquiring land". The appellant prayed for the decision in Misc. Application No. 101 of 2017 to be declared a nullity and be quashed and be ordered that the documentary evidence of purchase and sale agreement be taken as evidence in the purchase price and the appellant to have her costs. The appeal was argued by Mr. Tarimo, Advocate for the appellant and Mr. Burhani, Advocate for the respondent. In arguing the appeal Mr. Tarimo consolidated the first and third grounds. He said the respondent was declared the lawful purchaser and she was supposed to be refunded the purchase price but the Sale Agreement Exhibit R1 did not state the proper amount of the purchase price and the interest from the NMB rates neither did the decree mention the document it referred to. He said the appellant 3 applied to the Tribunal for specific amount for refund to be mentioned but the Tribunal in Misc. Land Application No. 101 of 2017 did not make the correction to state the specific amount to be refunded. He said Order XX Rule 6(1) of the Civil Procedure Code CAP 33 RE 2002 (the CPC) explains the content of the decree. Mr. Tarimo went further to state that the Order in Misc. Land Application No 101 of 2017 did not rectify the decree which was not specific. He said the court has the powers under section 42 of the Land Disputes Court Act CAP 216 RE 2002 to confirm, reverse or amend any order appealed against. As for the second ground, Mr. Tarimo submitted that when the Chairman was asked to rectify the decree, he acted suo mottu and came with an order which was not prayed for that is for valuation while purchase price is not valuation. He prayed for the appeal to be allowed so that the decree could be executed. He also prayed for costs of the appeal. Mr. Burhani countered the submissions by starting with the second ground of appeal. He said the prayers by the appellant made it possible for the Tribunal to go to the extent of what it did. That is the Chairman granted what he was asked. As for the first and third grounds, he submitted that since the Tribunal

had declared the respondent the lawful purchaser it was not proper in the eyes of the law for the respondent to be refunded the purchase amount. He said the wisdom of the Chairman was that the value of the suit land increases and so in the eyes of the law valuation at the 4 market price as ordered by the Chairman was proper. He said since the respondent was the lawful purchaser, then valuation and refund at the market price was proper. He prayed for the appeal to be dismissed with costs. In rejoinder Mr. Tarimo said the order of conducting valuation as to the acquiring of land means the purchase price according to the Sale Agreement D1 which was TZS 1,000,000/= and interest of NMB at commercial rate. The issue of valuation now and market price is not what was stated in the main judgment of Land Application No. 30 of

2014. He reiterated his submissions in chief and the prayers therein. I have gone through the record of the Tribunal, the grounds of appeal and the submissions by the Counsel on appeal. The issue here is whether the appeal has merit. It is not disputed that the appeal is in respect of Misc. Land Application No. 101 of 2017 which was supposed to rectify the decree in Land Application No. 30 of 2017. The rectification prayed by the appellant (then applicant) at the Tribunal was basically for the Tribunal to rectify its decree and give specifics as to the amount of refund and the rate of interest. The decree in Land Application 30 of 2014 was very clear that the respondent was the lawful purchaser of the suit land (the 4 acres of land) and the Tribunal relied on Exhibit D1 which showed TZS 2,000,000/= as the purchase price which ought to have been refunded to the respondent with interest at NMB commercial rates from the date of the purchase to full payment. 5 Certainly, from the ruling and drawn order in Misc. Land Application No. 101 of 2017 the Tribunal was extraneous to order valuation by Morogoro Municipal Council who were not even parties to the application. What the Tribunal ought to have rectified was to state the amount of the purchase price and the rate of interest. Mr. Burhani claimed that it was wrong for the Tribunal to declare the respondent the lawful owner of the piece of land and then order a remedy of refund. But with due respect to Mr. Burhani, if the respondent was dissatisfied with this decision, she would have, at the earliest possible time, filed an appeal against the said decision. Since no appeal has been preferred then the respondent acquiesced to the said decision and this argument cannot be raised at this stage. In that respect the order in Misc. Land Application No. 101 of 2017 is hereby set aside. Since Misc. Land Application was intended to rectify the decree, the court in exercise of its powers under section 43(b) of the Land Disputes Courts Act hereby varies the original order in Land Application No. 30 of 2014 and the said order should now read as follows:

1. The application is partly allowed.
2. The respondent is the lawful purchaser of the land therefore the applicant's remedy availed is to refund the purchase price of TZS 2,000,000/= with the interest at NMB's prevailing commercial rates from the date of the purchase to date of full payment. 6

3. The respondent is entitled to costs. The appeal is allowed to the extent stated above. There shall be no order as to costs. It is so ordered. \j V.L. MAKANI JUDGE 18/05/2020 7
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