

TANZANIA / JUDGMENT

Gabriel

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT PAR ES
SALAAM LAND APPEAL NO.9328 OF 2024 (Arising from Land Application No. 174 of 2022, of the
District Land and Housing Tribunal for Ubungo) TATU YUSTAS
GABRIEL..... APPELLANT VERSUS HADIJA SALUMU
MSUNGI..... RESPONDENT

JUDGMENT

Date of Last Order: 30.07.2024 Date of Judgment: 22.07.2024 T.N. MWENEGOHA, J: The Appeal has its roots from the Decision of District Land and Housing Tribunal for Ilala, vide Land Application No. 174 of 2022. The parties have locked horns over a land, located at Goba Kibululu, Goba Ward, Ubungo District and Dar es Salaam, with Certificate of Title No. DSMT1019109, comprising of 1,044.15 square meters. After a full Trial, the Trial Tribunal rendered its Decision in favour of the respondent; hence the appellant preferred the instant Appeal based on the following grounds; -

1. The Trial Tribunal erred in law and fact for declaring the respondent as the owner of the suit land, without considering that the right of Occupancy was obtained by the respondent while there is a dispute. i
2. That, the Trial Tribunal erred in law facts to rely on the exhibit which was not admitted or filed in Court.
3. That, the Trial Tribunal erred in law facts for denying the appellant the right to be heard when failed to summon the appellant's witnesses to appear and testify.
4. That, the Trial Tribunal erred in law facts by denying the appellant the right to be heard when it denied the appellant to call an expert witness to give opinion on the fingerprints of the witness. The Appeal was heard through written submissions. Advocate Eliezer Eliakunda Kileo appeared for the appellant, while the respondent enjoyed the legal services of Advocate Wilson Moses Mafie. Submitting on the 1st ground, Mr. Eliakunda maintained that, the land in dispute has two different owners and plots. The appellant was given the suit land by the owner who is the respondent as a gift as seen at paragraph 2 of Exhibit DI. This fact was well narrated by DW1 in her testimony. That, the Trial Tribunal made a Decision in respect of the whole area. That, the respondent registered the said land which was not in dispute, together with the appellant's land, therefore the registration was illegal. On the 2nd

ground it was argued that, the Trial Tribunal reached its Decision by relying on the testimonies and document which was neither given nor admitted in Court which is Exhibit P2. This document was not annexed in the Application. Arguing on the 3rd and 4th grounds together, the counsel for the appellant maintained that, the Court did not summon the appellants witnesses which are her relatives regardless of the prayer 2 to summon them from the appellant. Above all, the appellant asked the Tribunal to call an expert witness after she failed to procure her intended witnesses. This prayer also was disregarded by the Court. This was against the mandatory provisions of Order XV Rule 10(2) and (3) of the Civil Procedure Code, Cap 33 R.E 2019. In reply, Mr. Mafie for the respondent insisted on the 1st ground that, obtaining a Certificate of Title is not a single day work rather a process from seeking approval from different authorities and neighbors. If the appellant was serious and had interest in the suit land, she could have filed a case and applied Injunction to restrain the respondent from demarcating the land when the process of registration was going on. As for the 2nd ground, it was the submissions of Mr. Mafie that, the Trial Tribunal correctly evaluated the evidence on record and reached to a just Decision, as there is nothing that can prove ownership of land other than the Certificate of Title as stated in Tanzania National Roads Agency and Another versus Abdallah Mgembe and Another, Civil Appeal No. 307 of 2021, Court of Appeal of Tanzania. Lastly on the 3rd and 4th grounds, it was submitted that, there is nothing on record suggesting that the appellant applied to the Trial Tribunal to call her intended witnesses to come and either give evidence or produce evidence. Since there was no any application made, the appellant cannot blame the Trial Tribunal as the rule is well settled that the Court is not your mother to grant what was not pleaded or asked for as stated in Eckson Mtafya versus Michael Mtafya, Appeal No. 06 of 2020, High Court of Tanzania. 3 I have considered the submissions of the appellant and the respondent respectively, together with the records the case from the Trial Tribunal, the issue in need of determination is whether the Appeal has merits or not. ' I will start my discussion of the issue above by consolidating the 1st and 2nd grounds and answer them together as both are on evaluation and analysis of evidence by the Trial Tribunal. Indeed, as argued by Mr. Mafie, in proving the ownership of land, as it is well settled, we rely on a Certificate of Title, especially when the land in question is a surveyed one, see Tanzania National Roads Agency and Another versus Abdallah Mgembe and Another, (supra). In this case we have on record Exhibit P1 which is a Certificate of Title, bearing the name of the respondent and bearing the description of the suit land as given in the pleadings (Application), in terms of the size and location of the suit land. With this piece of evidence, the appellant can do nothing to deny the respondent the right to own the suit land, unless it is proved that the said Certificate of Title is not genuine. It is immaterial when the same was obtained, provided its legality was left intact, it remains a proper document capable of being used in evidence. Even if Exhibit P2 is expunged as needed by the appellant as she claims it did not form part of the pleadings and the same was never admitted, still Exhibit P1 favours the respondent as far as ownership of the suit land is concerned. Therefore, the Trial Tribunal was right to rule in favour of the respondent, as her evidence was heavier than that of the appellant, as stated in Hemed Said v. Mohamed Mbilu [1984] TLR 113. Therefore, the first and second grounds are rejected for

lacking merits. 4 Coming to the third and fourth issues, again, I find them to be baseless. It is the duty of the party to a case to bring the witnesses to help him or her in the case before the Court. The appellant has admitted in her submissions that, she wanted to call her relatives especially her sister to give evidence for her but she refused. Therefore, she wanted the Tribunal to compel them to testify in her favour. This to me sounds strange, as such witnesses were supposed to come on their own will and not through Court summons. They were not Court witnesses, rather the appellant's witnesses. She had the duty to ensure they appear and testify instead of relying from the Trial Tribunal to call them. As for a need of an expert witness, this Court found nothing on record, warranting an expert to be called, let alone an Application for the same which was made by the appellant. Hence, the third and fourth grounds are rejected too. In the end the Appeal is dismissed with costs. The Decision of the Trial Tribunal is upheld accordingly. 22/08/2024 5

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