

**IN THE HIGH COURT OF TANZANIA
(MTWARA DISTRICT REGISTRY)**

AT MTWARA

LAND APPEAL NO. 31 OF 2019

**(An appeal from the Judgment and Decree of the District Land and
Housing Tribunal at Lindi in Land Application No. 20 of 2017)**

CLIFF JIWAN GODHU NARRAN

**(Administrator of the Estates of the late JIWAN GODHU
NARRAN).....APPELLANT**

VERSUS

JOHN THOMAS MALKUS.....1ST RESPONDENT

DICKSON GERMANUS NDAMBALILO.....2ND RESPONDENT

JUDGMENT

17 & 27 November, 2020

DYANSOBERA, J.:

The appellant herein, in the capacity of administrator of the estate of the late Jiwan Godhu Narran who passed away on 27th day of June, 1992, is

appealing against the judgment and decree of the District Land and Housing Tribunal at Lindi delivered on 6th day of August, 2019 in Land Application No. 20 of 2017. The respondents, namely John Thomas Malkus and Dickson Germanus Ndambalilo, in this judgment referred to, respectively, the 1st and 2nd respondents, have resisted the appeal. Before the said Tribunal, the parties were locking horns over a suit land located at Mahiwa village, Nyangao Ward in Mtama Division within the District and Region of Lindi estimated to be valued at five million shillings or Tshs. (5,000,000/=)

It is not disputed that the suit land was sold by the 1st respondent to the 2nd respondent in the presence of the Kitongoji Chairman one George Francis Ndumbaro (DW 4) who authored the sale agreement. The main issues for determination were and still are as to who the lawful owner of the suit land is and whether the sale of the same by the 1st respondent to the 2nd respondent was lawful.

The appellant's case at the District Land and Housing Tribunal was that in 2013 the 1st respondent without any colour of right and justification trespassed into the suit land and sold it to the 2nd respondent who put blocks hence preventing the appellant from developing it. According to the appellant's evidence which was supported by that of his sister Jackline Jamila,

they were beneficiaries of the said suit land which was amongst the estates of their late father Jiwan Godhu Narran who had built a house on it and that after the death of their late father, the house was placed in the hands of the late Cosmas Thomas Marcus to take care of it and that after the house fell down, the 1st respondent trespassed and sold it to the 2nd respondent.

The 1st respondent version was that the suit land formerly belonged to his parents and then after the demise of their father, the 1st respondent owned it jointly with his two sisters namely Regina Thomas (DW 5) and Tekla Thomas. As to how their parents acquired it, the 1st respondent testified that the suit land was allocated to them by the village government during operation vijij in 1974. The 1st respondent's parents lived there up to their death. This version was supported by Amandus Jacob Mrope (DW 3) who by then, was the village government secretary. DW 3 elaborated that the suit land was owned by the late Thomas Marcus Nawei during Ujamaa Villagisation which established the Mahiwa village. The said Thomas Marcus Nawei had three plots allocated to him and the suit land was the fourth plot from his house and there was a coconut tree. The deceased Thomas Marcus Nawei erected a house on that suit land until when it became old. Then a mother of Jiwani went to the late Thomas Marcus Nawei and was given a house for residence purposes. In 1990 floods occurred causing the house

which had been renovated by Jiwani for his mother to fall down. Thereafter, the suit land was given back to the owner, the late Thomas Marcus Nawei.

The two assessors who sat with the Hon. Chairman were of the unanimous opinion that the house belonged to the late Jiwani Godhu Narran and that the 1st respondent was a trespasser and his selling it to the 2nd respondent was not lawful. On his part, Mr. Jumaa said that the 1st respondent sold the land to the 2nd respondent without holding a letter of administration of their late father. He was of the opinion that the suit land belonged to Jiwani Godhu Narran who had left it to Cosmas Thomas Marcus, the brother of John Thomas Marcus. This assessor further opined that the 1st respondent had no right to sell it to the 2nd respondent as it did not belong to him. Joining hands with the 1st assessor, the 2nd assessor Mr. Chembera held the view that up to 2017 when the application was filed there was no complaint. He said that the suit land was in the list of the estates of the late Jiwani Godhan Narran and therefore, the 1st respondent had no right to sell it to the 2nd respondent as he was not an administrator of the estate of his late father.

The Hon. Chairman in his finding, however, differed with the two assessors. After evaluating the evidence, he was satisfied that the evidence of

the two respondents was weightier than that of the appellant. He reasoned that the appellant and his sister were not eyewitnesses to the allocation of the suit land to their late father; neither did they profess to have witnessed their father being given the suit land. The Hon. Chairman believed the evidence of DW 2, DW 3, DW 4 and DW 5 as being correct and that it had not been shaken. The said Chairman found that the 1st respondent had established ownership of the suit land under section 15 (1) of the Village Land Act [Cap 114 R.E.2002] and supported his finding with the case of **Samson Elikana v. Oyanga Kaliba**, Misc. Land Case Appeal No. 74 of 2008. He also found that the 1st respondent had proved and established his customary title through succession. He relied on the case of **Constantino Mhaluka v. Pius Lupala**, PC Appeal No. 1 of 1999.

After making these findings, he found that there was no trespass on part of the 1st respondent and the sale of the suit land to the 2nd respondent was lawful. The suit was, consequently, dismissed with costs.

This appeal is against the said decision. According to the memorandum of appeal, the appellant's complaints are the following:

1. That the land chairman erred in law and facts in declaring that the land in dispute belongs to the 2nd respondent

2. That the District Land and Housing Tribunal erred in law and fact in considering that the suit land was obtained during Operation Vijiji
3. That the tribunal erred in law and fact in hearing and deciding the matter basing the evidence of DW 2 who has no locus stand (a letter of administration of his late father's estate)
4. That the District Land and Housing Tribunal erred in law and fact in not considering the number of years the appellant's late father has possessed and enjoyed the land without any disturbance from any person and the development he made over the disputed land.
5. That, as a whole the decision of the District Land and Housing Tribunal is against the evidence on record and contrary to the laws of Tanzania
6. That the land tribunal chairman erred in law and fact in entertaining the contradictory evidence of the respondents which lacked credibility.

On 17th November, 2020 when this appeal was called on for hearing, parties appeared in person and each had nothing to add to the filed documents.

I have perused the record of the District Land and Housing Tribunal and considered the grounds of appeal.

As indicated above, the main issues for determination were and still are as to who the lawful owner of the suit land is and whether the sale of the same by the 1st respondent to the 2nd respondent was lawful.

Going by the evidence which the Hon. Chairman believed and found to be credible, the suit land legally belonged to the late Cosmas Thomas Marcus after it had allocated to him by the village government during the Ujamaa Villagisation in 1974 as evidenced by the 1st respondent, DW 4 one Amandus Jacob Mrope, then village government secretary and Regina Thomas (DW 5), the 1st respondent's sister. The late Thomas Marcus Nawei then erected a house and lived therein until it became old. A mother of Jiwani went to the deceased and asked for a house for her residence. The deceased gave the house to her. As the house was old, the Jiwani renovated it for her mother but later floods occurred and caused the house to fall down. The suit land reverted to the former owner Thomas Marcus Nawei. After his death, the 1st respondent and his two sisters inherited it and it became their property. The sale by the 1st respondent to the 2nd respondent was lawful and there was no trespass. The appellant's version which was supported by the two assessors

that the suit land formed the estates of the late Jiwan Godhu Narran was not supported as there was no decision of the Probate and Administration Cause which proved that assertion. Besides, it was not stated how the appellant's father came into possession of the suit land. In other words, there was no evidence how the suit land was allocated to the late Jiwan Godhu Narran and who did the allocation. I have no doubt that the decision was based on the assessment and credibility of the witnesses and as the evidence reveals, the appellant failed to prove his claims on balance of probabilities. The decision arrived at by the Chairman took into consideration the admissible evidence and the applicable law as well the case laws as cited by the Chairman.

I now come to the grounds of appeal. With respect to the 1st , 5th and 6th grounds of appeal, my firm but considered view is that the decision was based on the credibility of the witnesses. The Hon. Chairman found the evidence of DW 2 to DW 5 credible and he believed it. He was satisfied that the appellant had failed to discharge his burden of proving the case on balance of probabilities. I find nothing material to fault this sound finding.

As regards the 2nd ground of appeal, it was a fact according to the evidence of the 1st respondent, DW 3 and DW 5 which evidence was not controverted that the suit land was obtained during the operation vijiji.

It is not correct to assert that the finding and decision of the Hon. Chairman was based on the evidence of DW 2 only. The Hon. Chairman considered the evidence of other witnesses as well, including that of DW 3, DW 4, DW 5 as well as that of the appellant and his sister. The issue of whether or not DW 2 had letters of administration could not arise as he was the one who instituted the suit but was just dragged in the Tribunal by the appellant and in such a situation he had legal right to enter his defence both orally and in writing.

As to the number of years the appellant's father is alleged to have been in possession of the suit land which is the 4th ground of appeal, the record does not state the period the said Jivan Godhu Narran has been in possession of the suit land. Besides, that number is immaterial in the circumstances of the case. What was crucial was the establishment of how the late Jivan Godhu Narran was given that suit land, when and by whom. This evidence was lacking, instead, it was amply proved that the late Thomas Marcus Nawai was given the suit land by the village government in 1974 and occupied the area throughout his life though Jiwani's mother had occupied the house for residence but after the house fell down due to floods, the suit land reverted back to the late Thomas Marcus Nawai.

With the available evidence, I am satisfied and hereby find that the decision of the Hon. Chairman was justified according to the law and case law authorities. Besides, the decision was based on appreciation of the evidence unfurled before him. I find nothing to fault it.

This appeal lacks legal merit and is, accordingly, dismissed with costs to the respondents.

Order accordingly.

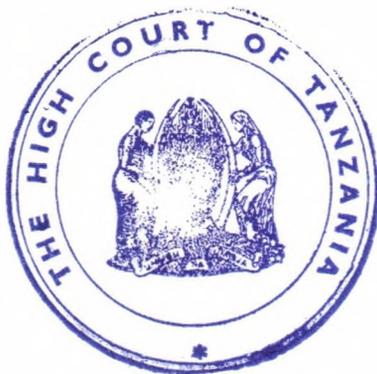



W. P. Dyansobera

Judge

27.11.2020

This judgment is delivered under my hand and the seal of this Court on 27th day of November, 2020 in the presence of the appellant and 1st respondent.




W.P. Dyansobera

Judge