

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT ARUSHA

MISC. LAND APPEAL NO. 51 OF 2018

(C/f the District Land and housing tribunal for Manyara in Land Appeal No. 32 of 2017, Originating from Gehandu Ward Tribunal in Application No. 46 of 2016)

YAMAI MATLE APPELLANT

Versus

ELIZABETH AQWESSO RESPONDENT

JUDGMENT

8th June & 25th June, 2021

MZUNA, J.

Yamai Matle, the appellant herein, has lodged this second appeal against the decision of the District Land and Housing Tribunal for Manyara (the first Appellate Tribunal), which enhanced the award in favour of **Elizabeth Aqwesso**, the respondent herein. The said respondent instituted a claim for trespass at Gehandu Ward Tribunal (the trial Tribunal) vide Application No. 46 of 2016. She alleged that the appellant trespassed six acres (the suit land) which she bought from the appellant's father. Both the Trial Tribunal and the first appeal Tribunal decided in favour of the respondent save that the respondent had the view that she ought to have been declared as the lawful owner instead of being paid compensation. She therefore filed the first appeal vide Land Appeal No. 32 of 2017, where she lost.

The appellant instituted the instant appeal. The background story, though briefly, shows that sometimes in 2001, the respondent bought 2 acres of land

from one Matle Qwaang' Niima, the appellant's father for Tshs 70,000/=. The said Matle Qwaang' had divorced his first wife (the appellant's mother), since 1995. By then, the appellant and his other sibling were living with their mother while his father was living with his junior wife. In 2012, Mr. Matle Qwaang' also sold 4 acres of land to the respondent for Tshs 2,000,000/=. The respondent continued using the two pieces of land undisturbed until 13/12/2016, when the appellant trespassed and cultivated the disputed land. When asked, he claimed that the suit land is their family land and the same was sold to the respondent by his father clandestinely without their involvement. The respondent instituted the aforementioned case in the trial Tribunal, claiming to be declared the lawful owner of the suit land.

In the trial Tribunal, the appellant's family was ordered to compensate the respondent the purchase price Tshs 2,070,000/- while in the first Appellate Tribunal the compensation was enhanced to Tshs 4,000,000/= to suit the current value of the suit land. The appellant felt aggrieved. He is challenging (among others) the enhanced compensation.

He has preferred this appeal on the following grounds of appeal, *verbatim*:

- (1) *That, the District Land and Housing tribunal erred in law and in fact by deciding in favour of the respondent by failing to consider the fact that on the commencement of this case the respondent sued a person who had no locus standi (sic);*

- (2) *That, the District Land and Housing tribunal for Manyara at Babati erred in law and in fact by failing to consider that the land in dispute is a matrimonial property of the seller whereby his wife ordered the appellant for cultivation (sic) to that farm knowing that it is her matrimonial property undivided;*
- (3) *That, the District Land and housing Tribunal for Manyara at Babati erred in law and fact by failing to consider the value of the land without approval of the registered valuer;*
- (4) *That, the District Land and Housing Tribunal by deciding that the appellant is supposed to refund the purchase money while the proper and necessary party was not sued to the tribunal (sic); and*
- (5) *That, the District Land and Housing tribunal erred in law and in fact by failing to consider that the sale agreement was illegal.*

At the hearing of the appeal, both parties appeared in person, unrepresented. The appeal was heard orally. When he was given room to address the court and elaborate the grounds of appeal, the appellant had nothing new to add rather than reiterating his grounds of appeal. I find no reason to reproduce what he said because in so doing it will be to reproduce the grounds of appeal. He insisted that the appeal be allowed with costs.

On her part, the respondent was brief. She maintained that she bought the suit land from the appellant's father. She added that she was ordered to be paid Tshs 4,000,000/=, therefore the appellant should compensate him so that she finds another shamba. She emphatically implored the court to confirm the decision of the first Appellate Tribunal.

In his rejoinder submission, the appellant insisted that he should pay the respondent the actual purchase price and not the TZS 4 million as ordered by the first Appellate Tribunal.

I have strenuously scrutinized the grounds of appeal and oral submissions of both parties. The following issues are subject for determination:-

First, whether the suit was preferred against a wrong party, relevant for the first ground of appeal. Second, whether the sale was valid in law, relevant for the 2nd and 5th grounds of appeal. Third, whether the awarded enhanced compensation was valid in law in the absence of valuation report, relevant for the 3rd ground of appeal. Fourth, what is the proper amount of money to be awarded, relevant for the 4th ground of appeal.

In the first ground, the appellant complained that the respondent had no *locus standi* in suing him, therefore she sued a wrong party. This complaint was also raised by the respondent before the District Ward tribunal as ground No. 6. However, during hearing which was through written submissions, her advocate one Paschal Peter from Paschal & Company Advocates, dropped it. I doubt if it is proper to reintroduce issue which was not conversed at the first Appeal Tribunal. Assuming the point is worth consideration at this stage, for arguments sake, I would say that the appellant was found cultivating in the two pieces of land which were alleged to have been bought by the respondent. The respondent coloured him as a trespasser because his father one Matle Qwaang'

Nihima (aged 86) admitted to have sold it after he was not looked after by his children during hunger. That the said shamba was allocated to him by the village Council of Ming'enyi. He further said there was another 10 acres farm left to his children (the appellant inclusive). The appellant's mother Monica Matle Qwaang' said that the shamba was to the best of her knowledge leased not that it was sold. The appellant's father sold it in order to get bride price for the second wife. She did not bless the sale.

The appellant's argument is that he cannot be sued while his parents are still alive, a point which nevertheless was not raised before. However, looking at the evidence, since the appellant's father did not deny selling the suit land, the allegation that the appellant was sued illegally is not true because he is the one who trespassed it. The mere fact that the seller was not joined with the appellant, cannot deny the respondent her rights. I say so because he testified in court. This ground is bound to fail.

This takes me to the second issue (second ground and fifth grounds of appeal) on the validity of the sale agreement. The basis of this complaint is that the sale was done without involving the family (especially wife) while it was a matrimonial property. From the record of the lower Tribunals, it is discernible that the sale agreement was found ineffectual, that is why the suit land reverted back to the appellant's family. Despite the fact that the sale agreement was found illegal, yet the respondent entered in the sale agreement with honest belief that the sale was valid considering the fact that the seller was the owner

of the said land. Second, it was done before the hamlet Chairman, who executed the sale agreement. The only defect that makes the sale ineffectual is the fact that the seller's family, and specifically the wife of the seller was not involved in the sale. Considering the above reasons, the respondent could not be left empty handed, that is why both lower Tribunals found it just to order a refund of the purchase price.

This takes me to the third and fourth issues (grounds No. 3 and 4). The appellant is challenging enhanced compensation without approval of the registered land valuer. The question is, in the absence of the valuation report, could this court agree with the awarded Tshs 4,000,000/- instead of the sale/purchase price Tshs 2,070,000/-.

The appellant says he should compensate her the sale/purchase price as ordered by the Trial tribunal. On her part, the respondent said that she should be paid Tshs 4,000,000/- so that she can find another plot.

The question is, what is the appropriate amount that the respondent deserves to be paid. The trial Tribunal ordered that the respondent be paid the purchase price. According to the evidence on record, the first 2 acres were sold at Tshs 70,000/=. The 4 acres were sold at TZS 2,000,000/=. According to the trial Tribunal order, the respondent was to be paid Tshs 2,070,000/=. However, the first Appellate Tribunal adjusted the compensation to Tshs 4,000,000/= for the reason that the transaction took place some years back, due to inflation it

would not be fair to be compensated the same purchase price. It is true that was done without valuation report.

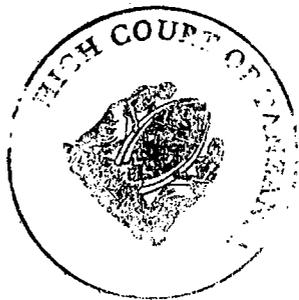
The mere fact that there is no valuation report, it cannot deny a Tribunal and or court to award the amount which is fair in the circumstance provided that there are sufficient reasons to find so. The respondent was a bona fide purchaser for value of the two pieces of land because there was no fraud. She knew and was made to believe so by the hamlet chairman who witnessed the sale agreement that the suit land belonged to the seller. Further, she was relaxed upon noticing that the seller was not living with the appellant's mother. The law protects bona fide purchaser in the absence of fraud. It was held in the case of **Suzana S. Waryoba v. Shija Dalawa**, Civil Appeal No. 44 of 2017, CAT (unreported), that:

"We find nowhere to fault the finding of the second appellate court. The respondent was certainly a bona fide purchaser for value; that is, one who received the land in good faith and without knowledge of any fraud."

In the light of the above position of the law, I associate myself with the decision of the first Appellate Tribunal that the respondent deserves to be compensated the amount higher than the purchase price due to depreciation of our currency/money. That position, notwithstanding, the award of Tshs 4,000,000/- is too high. I would reduce it to Tshs 3,000,000/- which would also fall within the pecuniary jurisdiction of the Ward tribunal (by then) where the complaint was instituted.

Therefore, the appellant's family should make an arrangement and compensate the respondent a total of Tshs 3,000,000/= (say three million), to cover her purchase price and devaluation costs and income that might have been earned.

Appeal is partly allowed to that extent with no order for costs.



M. G. MZUNA,

JUDGE.

June, 25, 2021