

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO.77 OF 2020

(Arising from the District Land and Housing Tribunal for Morogoro at
Morogoro in Application No.29 of 2017 dated 14th May, 2018)

AHMED SALMIN BIN TAHER APPELLANT

VERSUS

**LATIFA SAID GANZEL (as a
Legal Attorney of RAMADHANI**

MOHAMED NGEDERE RESPONDENT

JUDGMENT

Date of Last order: 08.07.2021

Date of Judgment: 08.07.2021

A.Z.MGEYEKWA, J

This is the first appeal. At the centre of controversy between the parties to this appeal ownership of a parcel of land is described as Plot No. 4 Block 'Q1' Mjimpya, Morogoro. The decision from which this appeal stems is the Judgment of the District Land and Housing Tribunal in

Application No.29 of 2017. The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate them, albeit briefly, in a bid to appreciate the present appeal. They go thus: the appellant and the respondent are disputing over a piece of land in respect to Plot No. 4 Block 'Q1' Mji mpya, Morogoro. The appellant instituted a case before the District Land and Housing Tribunal applying for a declaration that the appellant is the lawful owner of the disputed house, declaration that the transfer from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere is illegal. The appellant also prayed for eviction of the 2nd respondent from the suit premises.

The appellant also urged the District Land and Housing Tribunal to order the respondent to return the disputed house to the lawful owner one Ramadhani Mohamed Ngedere. The 2nd respondent claimed that he bought the disputed land back in 2010 from the 1st respondent who was the lawful owner of the disputed land. The record reveals that in 2006, Ramadhani Mohamed Ngedere bought the house from Ramadhani Mohamed, the first respondent who is the administrator of the estate of the late Nyagatwa Ramadhani Mkwazu. It is alleged that the 1st respondent (the Appellant) forged the Deed of Gift purposing that

Ramdhani Mohamed Ngedere bequeathed the disputed land to the 1st respondent who transferred the same to the 2nd respondent fraudulently. On 24th June, 1974 Ramdhani Abdallah offered a plot on natural love and affection to Mnyagatwa Ramadhani. Thereafter, Mnyagatwa passed away and on 20th December, 2017, the title was transferred to Ramadhani Mohamed Ngedere. The Land Officer approved the same on 27th February, 2017 and a letter of offer was issued. Then it is alleged that Ramadhani Ngedere offered the property as a gift to Abdallah Mohamed Ngedere. The District Land and Housing Tribunal for Morogoro at Morogoro decided the matter in favour of the respondent.

Believing the decision of the District Land and Housing Tribunal for Morogoro was not correct, the appellant lodged this appeal on twelve grounds of complaint seeking to assail the decision of the District Land and Housing Tribunal. The appellant filed an amended grounds of appeal and the grounds are as follows:-

- 1. That the Honourable District Land and Housing Tribunal erred in law and in fact by holding that the transfer from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere is illegal and void only*

because since 1996 Ramadhan Mohamed Ngedere has been residing outside the country and without proof to such effect.

- 2. That the Honorable District Land and Housing tribunal erred in law and fact by holding that Ramadhani Mohamed Ngedere did not transfer title by way of Deed of Gift to Abdallah Ramddhani Ngedere without stating reasons for that conclusion.*
- 3. That the Honorable District Land and Housing Tribunal erred in law and fact by holding that the sale between Abdallah Mohamed Ngedere and Ahmed Salim Bin Taher is null and void without stating reason for nullifying the sale.*
- 4. That, the trial Distract Land and Housing Tribunal, erred in law and in fact in grounding its decision on hearsay evidence.*
- 5. That the trial district Land and Housing Tribunal erred in law and in fact in not giving effect to the principle of parole evidence rule.*
- 6. That, the Trial District Land and Housing Tribunal erred in law and in fact as it took into account extraneous and irrelevant matters in arriving at its conclusion.*
- 7. That, the trial District Land and Housing Tribunals decisions against he weight of evidence on record.*

8. *The learned trial Chairman erred in law and fact by failing to hold that the Appellant was a bona fide purchaser of the property in dispute without notice of any defect of the seller's title.*
9. *The learned trial Chairman erred in law by failing to hold that fraud was not proved in the circumstance.*
10. *There is no judgment in accordance to the law.*
11. *The learned trial Chairman erred in law and fact by failing to take into account the fact that the Appellant had been in possession of the house for 7 years to the knowledge of the respondent and the respondent never protested.*
12. *The learned trial Chairman erred in law and fact by failing to hold that the suit was time barred.*

When the matter was called for hearing before this court on 16th March, 2021, the applicant had the legal service of Mr. Gabriel Mnyele, learned counsel in absence of the respondent. By the court order, the appeal was argued by way of written submissions whereas, the appellant's Advocate filed his submission in chief on 09th April, 2021 and the respondent Advocate filed his reply on 30th April, 2021 and the appellant's Advocate waived the option to file a rejoinder.

Mr. Mnyele started his onslaught by seeking to consolidate the first second, third and seventh grounds and argued them together. In his longwinded submission, the learned counsel for the appellant claimed that the District Land and Housing Tribunal misapprehended the substance, the nature and the quality of the evidence. He urged this court to evaluate the evidence. To bolster his position he cited the cases of **Deemay Daati & 2 others v Republic** (2005) TLR 132 and the **Registered Trustees of Holly Spirit Sisters Tanzania v January Kamili Shayo & 136 Others**, Civil Case No. 193 of 2016.

Mr. Mnyele referred this court to the holding of the District Land and Housing Tribunal specifically the last pages whereas the tribunal found that the testimony of AW1 (the appellant's Legal Attorney) and that of the Principal Land Officer (AW2) proved that the said Ramadhani Mohamed Ngedere never at any time disposed the suit property to the 1st respondent since from the year 1996 Ramadhani Mohamed Ngedere is residing outside the country. It thus clear that the sale transaction between Abdallah Mohamed Ngedere and Ahmed Sakimin Bin Taher is declared null and void.

The learned counsel for the appellant lamented that the tribunal relied on mere words of the respondent. To support his submission he referred this court section 110 and 111 of the Evidence Act, Cap.6 [R.E 2019] and the cases of **Attorney General and others v Eligi Edward Massawe and 104 others**, Civil Appeal No.06 of 2002 (unreported) and **Lamshore Limited and J.S Kinyanjui v Bizanje K.U.D.K** (1999) TLR 330. He continued to complain that the respondent did not produce a copy of a passport and visa Ramadhani. He went on to argue that there was no any confirmation from the immigration Office and from witnesses who were called to testify that Ramadhani Mohamed Ngedere was staying in Italy. It was his submission that the respondent failed to prove his case.

The learned counsel for the appellant went on to state that the evidence was contradicting. He argued that the document which the respondent relied on to raise his claims of ownership annexure LGS4 was signed at Morogoro by Ramadhani Mohamed Ngedere and Form No. 35 (annexure LGS4) was executed at Morogoro and Ramadhani Mohamed Ngedere signed the documents on 20th December, 2006. He lamented that exhibit P5 was signed by Ramadhani Mohamed Ngedere and the same signature which acquired the title is the same signature that

transferred the title. Ramadhani Mohamed Ngedere. He referred this court to section 75 (1) of the Evidence Act, Cap.6Thus, he faulted the tribunal for reaching a wrong decision.

Mr. Mnyele continued to submit that the evidence on record shows that the Deed of Transfer by way of gift (Exh.P5) is a valid document and was properly signed by Ramadhani Mohamed Ngedere. Repetitively, Mr. Mnyele argued that there is nowhere the said Ramadhani Mohamed Ngedere disputed to have transferred the disputed property to his brother by way of Deed of Gift nor claimed for ownership of the disputed property. Mr. Mnyele did not end there, he continued to argue that the offer issued by Ramadhani Mohamed Ngedere was cancelled then, another offer (Exh.P7) was issued. He added that the transfer of ownership was effected from Abdallah Mohamed Ngedere to Ahmed.

Insisting, the learned counsel for the appellant contended that from the above evidence the tribunal was wrong to hold that the transfer from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere was illegal and void. Mr. Mnyele pounded that the Power of Attorney (Exh.P1) is a forged document. He went on arguing that Form No.35, annexure LSG-4, and exhibit P6 were signed by Ramadhani Mohamed Ngedere.

He lamented that Ramadhani Mohamed Ngedere did not authorize the learned counsel for the respondent to claim the disputed plot.

Regarding the issue of composing a proper Judgment. He contended that the tribunal framed 6 issues, and the Chairman was required to resolve all the six issues that have been raised. He went on to state that the Chairman raised another issue which was a complete departure from the agreed issues. To fortify his submission he referred this court to pages 2 and 5 of the tribunal judgment. Mr. Mnyele went on to argue that the Chairman did not give reasons for his decision contrary to the requirement of the law as stipulated under Rule 20 (1) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2002 GN No. 174 of 2002. The appellant's Advocate cited the case of **Ali Abdallah Amour and Abdallah Ali Abdallah v Al Hussein Sefudin** (2004) TLR 313 to support the proposition that the tribunal was supposed to state reasons for its decision.

Submitting on the last ground that the trial Chairman erred in law by failing to hold that the appellant was a bona fide purchaser of the legal estate without notice of any defect of title of the vendor of the property. He referred this court to DW1 testimony that he purchased the plot after

having been satisfied that the seller (2nd respondent) had a good title on the said property. He went on to state that the appellant was not misinformed of any misgiving between the two relatives.

The learned counsel for the appellant did not end there, he state that upon payment of all statutory due, the appellant moved into the house and stayed therein for 7 years without being disturbed. Mr. Mnyele continued to state that the appellant is not supposed to suffer for anything, he urged this court to protect the purchaser. Fortifying his submission he referred this court to the case of **Mire Artan Ismail and Another v Sofia Njati**, Civil Appeal No. 75 of 2008. Ending his submission he urged this court to declare the appellant a lawful owner of the said property.

On the strength of the above submission, the appellant's Advocate beckoned upon this court to quash the decision of the trial tribunal and allow the appeal, and direct the matter to be determined before a different Chairman for the composition of another judgment

Opposing the appeal, Mr. Haji Mlosi, learned counsel for the respondent started by complaining that the appellant's Advocate was beating around the bush by flip lopping facts of the case. He lamented that

the learned counsel for the appellant has raised new issues to mislead the court. He valiantly contended that Mr. Mnyele deliberate delays the end of justice since his grounds are baseless. He distinguished the cited cases of **Deemay Datti** (supra) and the **Registered Trustees of Holly Spirit of Holly Sisters Tanzania v Januray Kamili Shayo & 136 others**, Civil Case No. 193 of 2016 which relates to evaluate evidence on record. In his view, these cases are inapplicable in the instant appeal he stated that the court can exercise these jurisdiction with great caution, where there is no evidence to support a particular conclusion; or if it is shown that the trial Magistrate or Judge failed to appreciate the weight or bearing of the circumstances admitted.

He went on arguing that the dispute revolved around six framed issues which are cantered on the validity of Deed of Gift alleged to have been donated by Ramadhani Mohamed Ngedere. He went on to state that it was alleged that the first respondent in the original application legally was transferred from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere as the sale transfer from Abdallah Mohamed Ngedere to Ahmed Salmin Bin Taher (the 2nd respondent in the original application).

The respondent combined the first, second, third, and seventh grounds and opted to argue them together and he opted to argue the 10th and 11th grounds separately. He argued that the exhibits were wrongly recorded; exhibit P2 was a letter written by Ramadhani Mohamed Ngedere proving that he was living in Italy since 1999 and the offer of Plot No.4 Block Q1 is marked as exhibit P3. He went on to submit that it is indisputable fact that Ramadhani Mohamed Ngedere when suing his Advocate he was residing in Italy. To support his submission he referred this court to the Power of Attorney and exhibit P2 which was endorsed by the Embassy of Tanzania, Rome Italy, and the same was not forged. He claimed that the appellant raised a new issue while he was supposed to raise the same at an earlier stage.

The learned counsel for the respondent continued to argue that Ramadhani tendered a fake Deed of Gift, the same was fraudulently obtained. To bolster his submission he cited the case of **Hotel Travertine Ltd and two others v National Bank of Commerce Ltd** (2006) TLR 133.

He strongly submitted that this allegation is misconceived and should be dismissed since it contravenes the requirements of law and procedure. Thus, he denied that Ramadhani did not donate a Deed of gift to his young

brother one Abdallah Mohamed Ngedere, who sold the suit land to the appellant. He claimed that the issue of alleged forged signature appearing on the Power of Attorney (Exh.P1), the offer letter (Exh.P2) and the Deed of Gift (Exh.P7) was settled by the tribunal by way of cross examination and the tribunal was satisfied. He valiantly argued that this allegation is misconceived thus he urged this court to dismiss it.

The learned counsel for the respondent went on to submit that Abdallah Mohamed Ngedere was the one who was involved in buying and transferring the disputed house and he is the one who signed the letter on behalf of the respondent. He went on to argue that for that reason Abdallah Mohamed signed used the same signature forged the Deed of Gift and wanted to transfer the property on his name and fraudulently sold the property on his name without a title or Power of Attorney to the appellant.

As to the tenth ground, the learned counsel for the respondent stated that the Judgment of the tribunal was prepared in accordance with the law. It contains facts of the case, cause of action, framed issue, and reasons for the decision. To support his submission he referred this court

to pages 6, 7, and 8 of the tribunal judgment. He refuted that the Chairman has raised a new issue. He claimed that this ground is demerit.

With respect to the eleventh ground, the respondent complained that the appellant cannot be a bona fide purchaser of the suit property, since the whole transaction which he made with Abdallah Mohamed was *void ab initio*. He went on to argue that the appellant was required to conduct an official search before purchasing the suit property. He added that the appellant did not inquire about a valuation report thus he bought the suit property at his own risk. The learned counsel for the respondent further complained that the appellant cannot shift the blame to the respondent while knowing that the Land Officer since 2010 did not issue any land transfer. The respondent went on to state that in accordance to Item 22 Part I of the Law of Limitation Act Cap.89 [R.E 2019] the appellant instituted his claims within time. He urged this court to disregard this ground of appeal.

On the strength of the above submission, the respondent urged this court to dismiss the appeal with costs.

In his rejoinder, the appellant's Advocate had nothing new to rejoined. He reiterated his submission in chief.

After a careful perusal of the record of the case and the final submissions submitted by both parties. In determining the appeal, the central issue is *whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Geita*. In my determination, I will consolidate the first, second, third, fourth and seventh grounds because they are intertwined and the tenth ground will be addressed separately. The circumstance of the case, facts, and evidence will lead this court to determine the matter before it. It is in the record that the dispute between the parties originated from the District Land and Housing Tribunal Ward Tribunal where both parties had an opportunity to summon witnesses to testify before the trial tribunal.

Submitting on the first, second, third, fourth and seventh grounds, the matter is centered on the transfer of disputed plot from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere. The records reveal that Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere are brothers and the appellant is the one who bought the disputed plot from Abdallah Mohamed Ngedere. The appellant claimed that the disputed plot No. 4 Q1 is located at Mji mpya in Morogoro. He claimed that Ramadhani

Ngedere transferred the said plot to Abdallah Ngedere as a gift. On his side, Ramadhani Ngedere denied the allegations.

During trial, Ramdahani Ngedere was able to tender the following documents to prove that he is the lawful owner; a letter of offer, transfer of right of occupancy from Ramadhani Ngdere to Abdallah Ngedere in respect to Plot No. 4 Block Q1 located at Mji mpya dates 22nd November, 2017, the Deed of Gift dated 22nd November, 2017, transfer of Right of Occupancy in regard to Plot No. 4 Block No. Q1 located at Mji mpya Morogoro from Abdallah Ngedere to Ahmed Salmin Bin Taher dated 22nd November, 2017. All these documents were tendered at the trial Tribunal to prove that the transfer of title from Abdallah Ngedere to Ahmed Salmin Bin Taher took place.

AW2 testified to the effect that Ramadhani Ngedere was residing in Italy since 1995. In my view, the evidence that saying that Ramadhani Ngedere was residing in Italy is not a sufficient reason to believe AW2 story, because the same does not mean that Ramadhani Ngedere could not transfer the title to Abdallah Ngedere. In my respectful view, I find that the District Land and Housing Tribunal faulted itself for failure to collect further evidence to ascertain whether the transfer of the title and the Deed

of Gift were forged or not. The District Land and Housing Tribunal was supposed to call an expert to ascertain whether Ramadhani Ngedere signed transfer documents or not. It is not easy to declare the transfer null and void without scrutinizing the signatures of Ramadhani Ngedere. Therefore these grounds are answered in the affirmative.

Regarding the ground that Chairman did not determine all framed issues. I entirely subscribe to the appellant's contention on this ground. My scrupulous review of the judgment takes me to page 2, six issues are listed as having been framed to lead the trial proceedings. While analysis the chairman determined the issue whether Ramadhani Mohamed Ngedere transferred the title by way of Deed of Gift to Abdallah Mohamed Ngedere, the same are covered under the second and third issues framed by the trial tribunal. The rest of the issues collapsed, during the trial Chairman's analysis, no analysis or discussion in respect thereof was made.

What comes immediately after the conclusion of the said issues, the tribunal concluded by stating that transactions of transfer from Ramadhani Mohamed Ngedere to Abdallah Mohamed Ngedere are incomplete, the legal lawful owner to date is Ramadhani Mohamed Ngedere. Without

analysing each issue after another. Clearly, this violated the principles that govern the composition of judgments and I find a lot of plausibility in the appellant's argument and reliance on the authorities cited in this respect.

The District Land and Housing Tribunal framed six issues. The record reveals that the Chairman in his judgment listed all six framed issues as follows:-

1. *Who is the rightful owner of the suit property.*
2. *Whether the applicant disposed of the suit property by way of Deed of Gift.*
3. *Whether the alleged transfer of the right of occupancy of the suit property from the applicant to the 1st respondent was tainted with forgery of documents.*
4. *Whether there is any evidence that the disposition of the suit property to the 2nd respondent was unlawful and or illegal.*
5. *Whether this application is properly before this tribunal.*
6. *To what relief (s) are parties entitled to.*

In the light of the learned counsels' submissions, I had to peruse the trial tribunal judgment and noted that the trial Magistrate proceeded to determine the matter without being guided by the framed issues. I am in

accord with the appellant's Advocate that failure for the trial tribunal to consider the framed issues rendered the trial tribunal to determine the case on the matter which was not pleaded by parties.

I am aware that every Chairman, Magistrate, or Judge has his style of composing a Judgment and I know that no Judgment lacks errors as articulated in the case of **Chandrakant Josubhai Patel v R**, Criminal Appeal No.8 of 2002. However, the court is required to observe and abide by the format of writing a Judgment. As it was set under Order XXXIX Rule 31 which provides that:-

"31 The Judgment of the Court shall be in writing and shall state:-

- (a) The points for determination;*
- (b) The decision thereon;*
- (c) The reasons for the decision; and*
- (d) Where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.*

Reading the trial tribunal judgment, I have noted that the important ingredients of Judgment are missing; the trial tribunal did not analysed all the framed issues. He ought to analyse all framed issues and state reasons for his decision. Otherwise, the Judgment is as good as no

Judgment. Failure to consider material issues in a Judgment is not a mere slip. It is an intolerable omission which is a serious travesty of a Judgment that borders on an epic miscarriage of justice. In ***Stanislaus Rugaba Kasusura and the Attorney General v Phares Kabuye*** [1982] TLR 338, the Court of Appeal had the following observation:-

"The Judgment is fatally defective; it leaves contested material issues of fact unresolved. It is not a Judgment because it decided nothing in so far as material facts are concerned... It is in fact a travesty of a Judgment.... The trial judge should have evaluated the evidence of each of the witnesses, assessed their credibility, and made a finding on the contended facts in issue. He did not do so." [Emphasis added].

Similarly, this firm position of the law was restated in ***Kukal Properties Development Ltd v Maloo and Others*** (1990 - 1994) EA 281, the Court of Appeal of Kenya had an opportunity to discuss the effect of failure to decide on issues framed. It held that:-

"A judge is obliged to decide on each and every issue framed. Failure to do so constituted a serious breach of procedure" The holding in the Kukal case was stated with approval in Alnoor Sharif Jamal V. Bahadur Ebrahim Shamji, Civil Appeal No. 25 of 2006

(unreported) wherein the Court of Appeal held: "With due respect to the learned Judge, we think that he abandoned what was before him and embarked on something that had not, as yet, been asked of him. In the light of the above considerations, we find that the trial judge made a fatal error in failing to make a specific order relating to the petition that was before him... "

This firm stance of the Courts emphasizes what was restated in **Lutter Symporian Nelson v. Attorney General and Ibrahim Said Msabaha**, Civil Appeal No. 24 of 1999 (unreported), and the following finding was made:

"A Judgment must convey some indication that the judge or magistrate has applied his mind to the evidence on the record. Though it may be reduced to minimum, it must show that no material portion of the evidence laid before the court has been ignored..."

Applying the above authorities, I find nothing in the impugned Judgment that comes anywhere close to what the Court of Appeal put as a threshold of a good Judgment in the just cited decision. The trial Chairman ignored, with impunity, framed issues that would drive him to a

conclusion on whether the applicant's claim has any semblance of merit and make an appropriate finding that takes into consideration evidence adduced by the parties.

From the above findings and analysis, it is my view that the defects in the Judgment of the District Land and Housing Tribunal in Civil Case No.13 of 2018 are incurable and goes to the root of the appeal at hand. Therefore, for the interest of justice, I invoke the provision of section 43 of the Land Dispute Courts Act, Cap.216 [R.E 2019] which vests revisional powers to this court and proceed to revise the proceedings of the District Land and Housing Tribunal in Application No. 29 of 2017 in the following manner:-

- (i) The Judgment, in Application No. 29 of 2017 and the Decree and Order made thereof are hereby quashed.
- (ii) The case file is remitted back to the District Land and Housing Tribunal for Morogoro at Morogoro to be determined by another Chairman.
- (iii) The Chairman to determine the framed issues.
- (iv) The Chairman to determine whether the signature appearing on the transfer of title document is the respondent's signature and to compose a new judgment.

(v) The appeal is partly allowed.

(vi) No order as to costs.

Order accordingly.

Dated at Dar es Salaam this date 15th July, 2021.


A.Z.MGEYEKWA
JUDGE
15.07.2021

Judgment delivered on 15th July, 2021 in the presence of Mr. Wilson Manase, learned counsel for the respondent in the absence of the appellant.




A.Z.MGEYEKWA
JUDGE
15.07.2021

Right of Appeal fully explained.