

**IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND APPEAL NO. 249 OF 2023**

(Originating from Application No. 85/2021,  
Temeke District Land and Housing Tribunal)

**MOHAMED SALEH ABRI.....1<sup>ST</sup> APPELLANT**

**ABDALLAH SAID MGAZA.....2<sup>ND</sup> APPELLANT**

***VERSUS***

**FATUMA SHABANI SAID DOLOLO**

(Administratrix of the Estate of the Late Shabani Said Dololo).....1<sup>ST</sup> RESPONDENT

**FATUMA SALUMU SAID DOLOLO**

(Administratrix of the Estate of the Late Salum Said Dololo) .....2<sup>ND</sup> RESPONDENT

**JUDGMENT**

28<sup>th</sup> to 30<sup>th</sup> August, 2023

**E.B. LUVANDA, J**

The Appellants named above they are unhappy of the verdict of the trial Tribunal which decreed the suit land to be a family land where the Respondents above named have verdict of the trial Tribunal which decreed the suit land to be a family land where the Respondents above named have vested interest, theyby nullified sale between the First and Second Appellant and adjudged them trespassers to the suit land.

In the memorandum of appeal, the Appellants raised six grounds of appeal namely:-

1. That the Tribunal erred in law and fact in inventing, invoking and applying to its decision irrelevant considerations or deciding basing on its own invented issues that the parties never raised nor were they given opportunity to address tantamount to deprivation of right to be heard.
2. That the Tribunal erred in law and fact in declared that transaction of disposition between the First Appellant and the Second Appellant was nullity without considering that the First Appellant was innocent purchaser for value and has gone into occupation and effected substantial development on that piece of land.
3. That, the trial Chairperson failed to consider that there was no proof that the land in dispute was family or clan land no sufficient inquiry was made as to establish that the Second Appellant is in occupation of a family land.
4. That the trial Chairperson erred in law and fact in deciding as a probate cause rather than land matter.
5. That the trial Chairperson erred in law in and mis directed herself by including new prayer which is not among of the players, pleaded by the parties.

6. That the trial Chairperson reached on a conclusion which is not supported by the relevant and reliable evidence adduced by the parties.

Mr. Mathew Bernard Kabunga learned Advocate for the Appellants argued by combining grounds number one, five and six; ground number two was argued separately; grounds number three and four were not argued, by implication were abandoned.

The learned Counsel for Appellant submitted by prefacing that parties are guided by their pleadings and reliefs sought, citing Order VII rule 8 of the Civil Procedure Code, Cap 33 R. E. 2019, arguing that if new issues are raised in the course of a trial, the court (sic, tribunal) is required to invite parties to address or give more evidence in respect of new issue or matter raised, citing Order II rule 1 and Order IX rule 1 Cap 33 (supra). He submitted that in the judgment, the trial Chairperson came with a conclusion that the piece of land in dispute was family land to which the Applicants has right to have shares, and went further that the disposition made between the First Appellant and Second Appellant was nullity. He faulted the decision of the Tribunal decreeing the suit land as family land that the issue whether the disputed property was a family land was not pleaded, was not among issues framed at the commencement of the trial.

He cited the case of **Shule ya Sekondari Mwilavya vs. Kaemba Katumbu**, Civil Appeal No. 323/2021 CAT Kigoma; **Tuungane Workshop vs. Audax Kamaia** (1978) LRT No. 21; **Normarn vs. Overseas Motor Transport** [1959] EA 131.

For ground number two, the learned Counsel submitted that the Chairperson did not take into consideration the fact that the First Appellant being a bonafide purchaser for value upon purchasing lawful the suit property took possession of it and stated (sic, started) to effect new substantial development on the piece of land. He submitted that the First Appellant purchased that land in good faith, believing he would have clear rights of ownership after purchasing and having no reason to think otherwise. He cited the case of **Stanley Kalama Masiki (sic, Mariki), Chihiyo Kusia (sic, Kwisia) vs. (sic, w/o) Nderingo Ngonuo** [1981] TLR.

The Respondents whose submissions were drawn *gratis* by Ms. Glory Sandewa learned Advocate of Tanzania Women Lawyers Association (TAWLA) surrejoinder that the core matter/issue before the trial court (sic, tribunal) revolve around determining the Applicants' (sic, Respondents) status as legal owners of the disputed land. She submitted that while dressing this issue, the trial court (sic, Tribunal) aptly affirmed that the

land in question is a family land and consequently the Applicants (sic, Respondents) possess a rightful claim to portion of this land. She submitted that the conclusion stems from the firmly established fact that the land's original ownership vested with their grand father, Said Dololo, after his demise the ownership rights were formally transferred to his offspring namely Mwansunya Said Dololo; Salum Said Dololo, Abdallah Said Dololo dubbed as Abdallah Said Mgaza and Shaban Said Dololo, while the Second Respondent is the daughter of Salum Said Dololo. She submitted that court possess authority to extend its decisions beyond the precise issues initially outlines to ensure the delivery of justice. She cited Article 107A (2) (e) of the 1977 Constitution of Tanzania (sic, the Constitution of the United Republic of Tanzania).

For the Second ground she submitted that the court (sic, Tribunal) was proper to declare the transaction between the First and Second Appellant null and void because one cannot validly transfer ownership of a property in which he lack legal ownership. She cited the case of **Lila Jaffer & Seven Others vs. Saidiki Maine & Another**, Land Case No. 107/2013 HC Dar es Salaam; **Mohamed Issa, Mwakongoro vs. Gilbert Zebedayo Mrema**, Land Case No. 107/2015 (unreported).

On rejoinder, the learned Counsel for Appellant submitted the issue in the appeal is a pure point of law, arguing that there is no any technicalities addressed before the Appellant to the court. (sic, Tribunal) He distinguished **Lila Jaffari and Mohamed Makongoro** (supra), arguing that therein, the court decided that only the person who had no title cannot pass the same to another. He submitted that nowhere in the pleading indicated that the Second Appellant was appointed to be administrator of estate of any member of their family.

On my part, regarding ground number one, five and six, the Tribunal is faulted for nothing. This is because the question as to whether the disputed land is a family land, is not novel to the pleadings and proceedings. At paragraph 9(i) of the application (plaint), the Respondents pleaded that the Second Appellant herein disposed the disputed land to the First Appellant, without their (Respondents) consent; at paragraph 9(iii), (iv) and (v), the Respondents pleaded how ownership of the farm land in dispute descended by inheritance from the late Said Dololo (original proprietor) to his surviving off springs and sons including Abdallah Said Mgaza, Shaban Said Dololo, Salum Said Dololo, where it was alleged the three acres in dispute were given to Shaban Said Dololo (whose the First

Respondent is the administratrix of his estate) and Salum Said Dololo (whose the Second Respondent is the administratrix of his estate).

In other words, the suit land was allocated to the family of the late Shaban Said Dololo and Salum Said Dololo. At paragraph 9(vi) of the application the Respondents specifically stated that since 1972 after the division of the said plot to heirs they were exclusively enjoying with their families without any interference. It is in record that the First Appellant who testified as PW1 made it clear that the Second Respondent as their father and family ought to supervise procedure of probate cause in order to dispose their farm. The Second Appellant who testified as DW2 also was recorded to had disowned the Respondents, and refuted allegation of having been given a mandate by his brother (parents of the Respondents) to supervise the estate. In the circumstances, the issue of family land was canvassed both in the pleadings and during trial. As such it cannot be said it was raised or crop up at the time of composing a judgment. Admittedly the question of family land was not among the relief sought and was not framed as separate issue. But in so far it was pleaded and featured in evidence, I don't see any harm or prejudice to the First and Second Appellants. By the way, the learned Counsel did not say how so far his clients were prejudiced or if there was any failure of justice. By virtue of a fact that it was pleaded and featured in evidence, it was his right to cross

examine, and if that was not done, it cannot be taken as amounting to denial to the right to be heard, rather it is taken that a party declined at his volition to exercise that right. It is an absurdity to say the Tribunal ought to invite parties to address an issue or fact which is in the pleadings and evidence.

My be if the learned Counsel could had queries as to whose family the land in dispute was decreed in favour. But still the answer is simple, the evidence adduced tilt in favour of the First and Second Respondents who are administratix of the estate of the late Shaban Said Dololo and Salum Said Dololo, respectively are the lawful owners of the suit land. Therefore ground number one, five and six are devoid of merits.

Ground number two, the learned Counsel for Appellant argued that the First Appellant was a bonafide purchaser for value who purchased the suit land on good faith, believing that he would have clear rights of ownership. It is to be noted that the Second Appellant (DW2) stated that he vended a farm land comprising a house with six rooms, which fact was supported by Advocate Steven Mbai Mosha (DW3) who made was a pioner or pathfinder.

However the First Appellant (DW1) was silence regarding purchasing a farm comprising a house with six rooms. Also a sale agreement between



the First and Second Appellant exhibit D1 indicate that it was a farm, there is no mention of a house comprising six rooms. DW1 said he purchased a farm facing Tazara (sic, TAZAMA) Pipeline, but in exhibit D1, there is no mention of Tazama Pipeline. In a drawing plan annexed to the introductory letter (exhibit D2) purported to had introduced the Second Appellant as lawful owner of the suit land, it depict that in the North is bordered by Abdallah Said Mgaza; South Dr. Adili Msomari; East Abdallah Said Mgaza and West there is a road, while in exhibit D1 depict North is demarcated by Mzee Dololo and Abdallah S. Mgaza; South by Dr. Adili and Msomali; East Mzee Dololo and Abdallah S. Mgaza, West there is a road. In exhibit D2 indicate it is a farm including a house of six rooms, fourty four coconut trees, twenty five trees of cashenuts, and mango trees, which are missing in exhibit D1. In Exhibit D2, did not indicate a specific location, it was left blank. In exhibit D2 there is no mention of TAZAMA, neither mentioned boundaries and neighbours.

More importantly, no single neighbor or hamlet leader appeared to confirm title and ownership of the Second Appellant who disposed it to the First Appellant. In view of the above disparities, the question of bonafide purchaser cannot arise neither be entertained. The oral testimony of the First and Second Respondents, including all their witnesses, was coherent,

plausible and therefore reliable and suffices to indicate their title on the balance.

Therefore the trial Tribunal was legally justified to nullify the sale between the First and Second Appellant and to rule that the First and Second Respondents have interest to the suit land.

The verdict of the trial Tribunal is upheld, with modification that the suit land is a property of family of the late Shaban Said Dololo and Salum Said Dololo administered by the First and Second Respondent, respectively.

The appeal is dismissed with costs.



E.B. LUVANDA  
**JUDGE**  
30/08/2023

Judgment delivered in the presence of the Second Appellant, First Respondent, Second Respondent and one Farijala Kisombe appeared on behalf of the First Appellant.



E.B. LUVANDA  
**JUDGE**  
30/08/2023