

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 117 OF 2018

(Arising from Application No. 30 of 2016 in the District Land and Housing Tribunal for Kinondoni District)

MAIMUNA ISAYA KIRINDO.....APPELLANT

VERSUS

AKIBA COMMERCIAL BANK PLC.....1ST RESPONDENT

BEST GROUP TANZANIA LTD.....2ND RESPONDENT

Date of Judgment 04/12/2020

Date of the last order 08/12/2020

JUDGEMENT

I. MAIGE, J

The appellant herein was the complainant at the District Land and Housing Tribunal for Kinondoni (“the trial tribunal”). In his suit against the respondents and each of them, he was praying for the following reliefs. First, for an order restraining the respondents from interfering with the applicant’s land pending hearing and determination of the suit. Two, for extension of time within which the appellant would settle the loan. Three, for nullification

of the increased charges on the loan by the respondents. In her written statement of defense, the first respondent strictly denied the claim and urged the **trial tribunal** to dismiss the claim.

The **trial tribunal** framed two substantive issues and answered both of them in favour of the respondents. The first issue was whether the appellant defaulted to pay the loan. The second issue is whether the respondent has right to sell the **suit property**.

The appellant has been aggrieved by the decision. In his memorandum of appeal, he is faulting the **trial tribunal** on the following grounds:-

- 1. That the trial Tribunal erred in law and fact when he neglected to consider the appellant took loan of Tshs 6 million and paid 7 installment it remained 3,250,000/=while the respondent claimed to be paid 6,010,000/=as indicated in exhibit D2.*
- 2. That the District land and housing Tribunal erred in law and in fact when he decided in favor of the respondent only in the merely reason that the money was for business without taking into account the problem of the business faced the applicant and the nature of the current situation changes income circulation caused her failure to repay income on time.*
- 3. That the District Land and Housing Tribunal erred in law and in fact when he decided in favor of the respondent without taking into consideration the view of the tribunal wise assessors which was of the view that applicant should at least be given six month to repay the loan.*

4. *That the District land and Housing Tribunal erred in law and in fact as he delivered judgment which give the applicant only 45 days to repay the loan of which is very short time and he did not take into consideration my daily income which does not correspond with the facts of the case and total failure include the evidence of the appellant in the judgment which makes the judgment totally invalid in law.*

The appellant appeared in person and was not represented in the instant appeal. Miss Neema Mnuo, learned advocate, represented the first respondent. The second respondent did not appear. The appeal was argued by way of written submissions the schedule of which was duly complied with by the appellant and the counsel for the first respondent. The second respondent did not and as a result the appeal proceeded ex parte against her.

As I was composing the judgment, I entertained a doubt on the propriety of the exercise of the jurisdiction by the trial tribunal. The position of law, as I understand it, is such that, it is the reliefs sought in the plaint which determine the court jurisdiction. In this matter, two reliefs were sought. The first one is in the form of temporary injunction. It sought to restrain the respondents from selling the **suit property** pending determination of the suit. It is very infortune that it was considered as it is by the trial chairperson without explanation.

The second prayer was for extension of time to pay the loan. In any standard, assuming it was maintainable, the same would in no way amount to a land dispute for the purpose of the jurisdiction of the **trial tribunal**. In the application, I have observed, the appellant did not plead any mortgage instrument. Equally so for the first respondent in his written statement of defense. Yet, the trial tribunal framed an issue as to whether or not the respondents were entitled to sell the suit property. I wonder where was the source of that question.

I requested the parties to address me on this issue. The appellant layman as she was could not afford to make any useful remark. Advocate Wasonga who appeared for the respondents was in agreement that the trial tribunal lacked jurisdiction to entertain the dispute. He advised the Court to nullify the judgment and proceedings of the trial tribunal. I entirely agree with him. From the contents of the pleadings initiating the application, the dispute before the trial tribunal was not a land dispute within the meaning of the provisions of the Land Disputes Courts Act. It was not expected for the trial tribunal to conduct a trial on an informal mortgage and grant the reliefs he granted without the application being substantially amended. Since the issue involved is jurisdiction, I have no option other than nullifying the judgment

and proceedings of the trial tribunal. This is in exercise of my power under section 43 of the Land Court Disputes Act. The same are hereby nullified without an order as to costs. Whoever desire may institute a suit in a court of competent jurisdiction.

It is so ordered and right to appeal is duly explained.

Dated at Dar es Salaam on 8th day of December 2020.



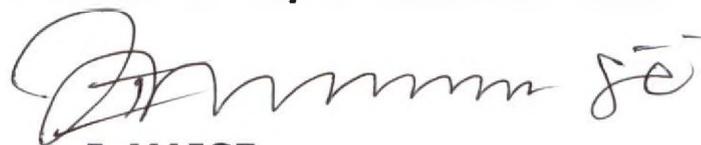
I. MAIGE

JUDGE

08/12/2020

Ruling delivered this 8th day of December 2020 in the presence of the appellant in person and the advocate Wasonga for the respondents.

Dated at Dar es Salaam on 8th day of December 2020.



I. MAIGE

JUDGE

08/12/2020