

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA**

MISC. LAND APPEAL NO. 11 OF 2021

(Arising from Land Appeal No 27 of 2019 of the District Land and Housing Tribunal for Geita before Masao E.C decision of 12/4/2021. Originating Land Case No. 2 of 2019 at in the Ward Tribunal of Nyampulukano)

DORIS SAMWEL KALOKOLAAPPELLANT

versus

FLOLA JAMES1st RESPONDENT

NIXSON SHIKOMBE2nd RESPONDENT

JUDGMENT

8th Nov & 10th Dec, 2021

RUMANYIKA, J.:

With respect to Plot No. 706 of Sengerema Sokoni the 2nd appeal follows judgment and decree of the District Land and Housing Tribunal for Geita at Geita (the DLHT) dated 12/04/2021, only for the reason of no joinder of Sengerema district council and Alex Jonas as necessary parties on 17/04/2019 declaring a nullity proceedings of the trial Nyampulukano ward tribunal.

Essentially the 5 grounds of appeal revolve around two (2) points as under:-

1. The DLHT's failure to hear the parties on the issue of no joinder of the parties during composition of judgment **suo motu** raised by the tribunal therefore biased.
2. The DLHT Chair improperly evaluating and analysing the evidence on record.

When the appeal was, by way of audio teleconference called on 08/11/2021 for hearing, only Doris Samwel Kalokola (the appellant) and Flola James (the 1st Respondent) appeared. Nixson Shikombe (the 2nd respondent) having had been reported died on 27/06/2021. Unless the context required otherwise therefore, the latter won't feature anymore. I heard the parties through mobile numbers 0758 203 021 and 0682 399 355 respectively much as also, the 1st respondent was both a wife and administrator of the estate of the 2nd respondent and the appellant did not object that one.

In a nutshell, the appellant faulted the DLHT Chair with respect to the issue of no joinder of the parties having had not heard the parties nevertheless the appellant had no issues with the local district council much as during the trial it wasn't disputed that the 2nd respondent had sold the plot to the appellant save for the encumbrances involved and she had

asked for time to sort it out. That had the DLHT Chair not ignored the appellant's evidence on record it would have reached at a different conclusion. That is all.

The 1st respondent (also administratrix of the estate of the 2nd respondent) just submitted that no strange issues were raised by the DLHT Chair but indeed the family having had possessed and utilized it for some years the deceased 2nd respondent duly sold the disputed plot to the appellant for shs. 600,000/=. That the devoid of merits appeal be dismissed with costs. That is all.

A brief account of the evidence on record would read as follows;

Pw1 Doris Samwel Kalokola stated that on 13/03/2016, not aware of any one's third party interest she purchased the disputed plot for shs. 600,000/= but actually right from the word go the 2nd respondent and those who witnessed the sale inclusive of the local 10/10 leader stated that actually the plot belonged to one Alex Jonas therefore the plot wasn't encumbrance free much as also the land register read as such. She therefore asked for refund of shs. 1.50 million being market value of a plot and compensation of shs. 1,343,000/=.

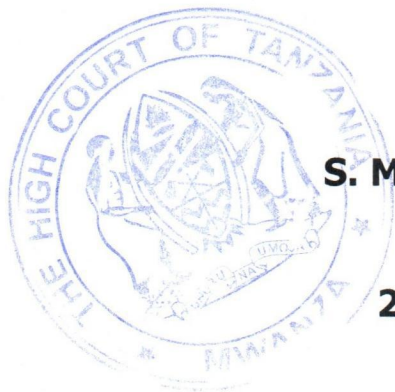
The 2nd respondent is on record having had stated that initially the plot belonged to him then duly sold it to the appellant encumbrance free therefore the latter was at liberty occupy and develop it. In the same breath however he undertook to sort it out with a view to refund, or, in anyway compensate the appellant. That is all.

The issue is not whether or not on 13/03/2016 the 2nd respondent sold the appellant the disputed plot but rather whether the plot was not encumbrance free enough to render the sale contract voidable at the instance of the purchaser. The answer is yes, notwithstanding the principle of caveat emptor one having had inquired with neighbours, the local ten cell leader and some possible witnesses to the intended sale agreement save, at a later stage for the land register, I think the appellant had done all what reasonably was expected of her under the circumstances. With all the undisputed material facts whether or not the local land allocating authorities (Sengerema District Council) and or the said Alex John were not joined it was immaterial.

With greatest respect had the DLHT Chair considered the evidence on record he should not have reversed the decision and orders of the trial tribunal. In lieu of the plot the respondent(s) pay the appellant shs.

1,500,000/= being value of alternative plot and shs. 1,500,000/= as general damages. It is so ordered.

Right of appeal explained.



S. M. RUMANYIKA

JUDGE

27/11/2021

The judgment delivered under my hand and seal of the court in chambers this 10/12/2021 in the present of the parties.



A handwritten signature in blue ink, appearing to be "C. TENGWA", is written over the printed name.

C. TENGWA
DEPUTY REGISTRAR
10/12/2021