

IN THE HIGH COURT FOR ZANZIBAR
HOLDEN AT VUGA
CIVIL APPEAL NO.43 OF 2016
FROM CIVIL CASE NO.100 OF 2012 OF THE LAND TRIBUNAL

1. DAWA SULEIMAN NZORI)
2. RAMADHAN SULEIMAN NZORI)APPELLANTS

VERSUS

HERI SULEIMAN AHMADA ...)RESPONDENT

JUDGEMENT

BEFORE: HON. ABDUL-HAKIM A. ISSA, J

This appeal arises from the decision of the learned Magistrate of the Land Tribunal, Yahya Ussi Yahya (RM) in Civil Case No. 100/2012 at Vuga, Zanzibar. The background to the case is that the Respondent, Heri Suleiman Ahmada filed a Civil Suit at the Land Tribunal against the Appellants, Dawa Suleiman Nzori and Ramadhan Suleiman Nzori. He is claiming that the Appellants have trespassed in his plot of land situated at Msonge – Shakani, Zanzibar. The Respondent has purchased that plot in 1987 from the brother of the Appellants, Othman Suleiman Nzori who is also his foster grandfather. After the death of Othman Nzori in 2009 the Appellants are claiming that the said plot belonged to their late father, Mr. Suleiman Nzori and their brother was just residing

there. He was not the owner of the said plot, hence, the Appellants are the legal heirs and are entitled to the ownership of the said plot of land.

The learned Magistrate of the land tribunal heard the matter and delivered his judgment against the Appellants on 31.3.2016. The Respondent was declared to be the owner of the disputed plot of land, and the Appellants were asked to pay compensation of Tsh. 10,000,000 to the Respondent. The Appellants being aggrieved with the said decision preferred this appeal. They filed a memorandum of appeal which contained six grounds of appeal, which can be summarized as follow:

1. That the learned magistrate of Land Tribunal erred in law by confirming the ownership of the disputed land to the Respondent without having strong evidence of that ownership.
2. That the ruling of the learned Magistrate of the Land Tribunal asking the Appellants to pay compensation of Tsh 10,000,000 did not do justice to the Appellants as they were not the ones who filed the suit claiming that plot of land.
3. That the learned magistrate of Land Tribunal erred in law in not considering the evidence of the Appellants that they left the plot of land to their brother late Othman Suleiman Nzori, which did not give him the right to sell the said plot of land.

4. That the learned magistrate of Land Tribunal erred in law in not realising that the said plot of land was not sold to the Respondent as he claimed as in 1987 the Appellant was 13 years old and in law a minor cannot buy and sale. Therefore, the sale deed is invalid in law.
5. That the learned magistrate of Land Tribunal erred in law by not considering the evidence of the Appellants who testified that on 2006 Othman Suleiman Nzori went to Appellants and requested that the Respondent should be allowed to build his house on the said plot.
6. That the learned magistrate of Land Tribunal erred in law as he did not read the judgment to the Appellants, and the assessors also were not present. He delivered the judgment in the presence of court clerk and a police which is contrary to the procedures.

In the hearing of this appeal both the Appellants and Respondent were unrepresented. With respect to the first ground of appeal, the Appellants argued that the Respondent failed to prove his ownership of that plot of land. He was supposed to show the title deed or sale deed, but none of them was produced. They added that the Respondent produced a piece of paper with names without their signature.

With respect to the second and third ground of appeal the Appellants argued that they are the one taken to Court by the Respondent, but they were asked to pay Tsh. 10,000,000 as

compensation. They added that the plot in question is their property which belonged to their father who died when they were young. The plot was not inherited; their brother was taking care of it. Now, their brother is dead they are the ones who are responsible for that plot.

With respect to the fourth and fifth ground of appeal, the Appellants argued that in 1987 when the Respondent said he purchased that plot of land he was 13 years old, a minor. This means he could not have purchased the land. They added that in 2006 their brother went to them and asked them to allow the Respondent to build his house on the plot and the Appellants refused. Further, They added that after the death of their brother the Respondent drew a boundary and said one portion was sold to him in 1987. When the Appellants sold the plot which entered in the area he claims, the Respondent took them to the Sheha but he never appeared before Sheha when he was called.

With respect to the sixth ground of appeal, the Appellants submitted that the case started with the aid of assessors, but on the day the judgment was delivered the assessors were not there. Further, the judgment was not read to the parties and the assessors opinions were not taken according to law. They prayed that the appeal should be allowed.

The Respondent on his part did not say much. He submitted that the plot of land in dispute belonged to the brother of the Appellants and not their father. Their brother sold it to him in

1987. At one time the brother of the Appellants went to the 2nd Appellant and he told him that he wanted to give the Respondent a plot of land. The 2nd Appellant told him that he can do whatever he wants as it is his plot of land.

We are now turning to the grounds of appeal. With respect to the first ground of appeal, the Respondent has produced in Court a piece of paper which he claims to be a sale deed for the purchase of the disputed plot of land. The piece of paper was written in the form of a letter by "Serikali ya Eneo la Shakani" in 14.5.1987. it talked about the issue of Othman Suleiman Mzori selling the plot of land to Heri Suleiman for Tsh. 65,000. The said agreement was signed by Seller and Buyer and there are names of two witnesses for each side, but the said witnesses did not sign the said paper. The learned magistrate concluded that the Respondent is the owner of the disputed plot of land based on that piece of evidence which proves his ownership. On page 42 of the judgment the learned magistrate wrote:

"Katika shauri hili mdai amefanikiwa kuthibitisha kuwa ni mmiliki halali wa kikataa (kiwanja) bishaniwa kiliopo Shakani, kwa vile Mdai alitoa karatasi aliouziwa kikataa hicho na kaka wa Wadaiwa,"

The first question for determination is that can that piece of evidence sufficiently proves the ownership of the said plot of land. The issue of sales in Zanzibar is governed by the Bills of Sale Decree, Cap. 174 of the Laws of Zanzibar. Section 4 and 5 of this

Decree lays down the procedures for execution of a Bill of Sale that it has to be attested by an advocate or a Registrar or Deputy Registrar of Documents in case the Government is the grantee and further such document should be registered. Further, the transfer of land before 1994 was regulated by Land Alienation Decree, Cap. 94 of the Laws of Zanzibar. Section 4(1) and (3) provides:

"4 (1) No disposition of land by an Arab or African made after or evidenced by an instrument executed after, the nineteenth of December, 1953 whether such disposition is by way of permanent alienation, lease or agreement for a lease for a term exceeding one year or limited to take affect from a future date or by way of morgage shall be of any affect unless an until consent is given thereto by the Board established for the area in which land is situated and such consent is endorsed upon the instrument affecting such transaction".

(3) Notwithstanding the provisions of section 54, 60 and 97 of the Transfer of Property Decree, every such alienation, lease, agreement for a lease and mortgage as is mentioned in subsection (1) shall be affected by a registered instrument.

These provisions emphasised on the requirement of the consent of the Board to be obtained before land is transferred and further the

Board should endorse on the instrument making transfer and the said instrument should be registered.

The Land alienation Decree, was repealed in 1990 by the Registered Land Act, No. 10 of 1990. But in 1994 the legislature passed the Land Transfer Act No. 8 of 1994 to regulate the transfer of land. This Act has similar provision like section 4 (1) of the Land Alienation Decree. Section 3 of the Act provides:

"No permanent transfer of land or long term lease shall take place until the transaction is reviewed and approved by the Land Transfer Board set up under the provision of this Act".

Coming back to the "Sale Deed" in question it was neither attested by an advocate nor was it registered. Further, there was no endorsement of the Board which only means it was not approved by Land Alienation Board. In addition to that although four names were mentioned that they witnessed the sale of that plot, no witness has been called to testify on the issue of sale. The only witness called (PW2) testified that he knows nothing about the sale deed. What he knew is what he was told by Othman Suleiman Nzori that he sold the plot to the Respondent. Hence, the learned Magistrate was wrong in basing his findings on that piece of paper, which does not qualify to be called a Sale Deed.

We are now turning to the fourth and fifth ground of appeal that when the alleged sale was concluded the Respondent was a minor. From the record before the trial Court the Respondent testified in

Court on 26.8.2014 and the Court recorded that the Respondent is 40 years old. This means when the Respondent concluded that sale deed in 1987 he was only 13 years old, a minor. This again put the said sale deed into question regarding its genuineness.

With respect to the sixth ground of appeal in which the Appellants submitted that the case started with the aid of assessors, but when the judgment was delivered the assessors were not there. Further, the judgment was not read to the parties and the assessors opinions were not taken according to law. What has been stated by Appellants is contrary to what is seen in the judgment. On the last page of the judgment it has been written that the judgment was delivered on the chambers of Hon. Yahya Ussi Yahya on 31.3.2016 in the presence of Plaintiff and Defendants and Assessors. Hence, there is no proof on this allegation, but regarding the issue of opinion of assessors the matter is different.

When I looked at the original file the opinion of assessors were taken after the judgment has been written and in fact there is no date of when the said opinion of assessors were given and recorded. It is submitted that this is an error on the part of the learned magistrate and in fact it is contrary to section 5 (1) and 37 of the Land Tribunal Act, which provides:

"5(1) The panel shall consist of a Chairman and two Assessors which shall hear the dispute over which

the Tribunal has jurisdiction as set out in section 13 of this Act”.

“37. All decisions of the tribunal, whether the final judgment or interim matter, shall be made by majority vote of the three members of the panel, the Chairman and two assessors”.

The cumulative effect of these two provisions is that the assessors are part and parcel of the land tribunal and have to be involved in every step of the hearing of the dispute. Hence, their opinion should form part of the record and should be taken and recorded before the magistrate wrote his judgment.

In the upshot, these grounds of appeal are sufficient to dispose this appeal; hence, this Court won't labour with the remaining two grounds of appeal. Therefore, based on the fact that the learned Magistrate erred in basing his findings on the disputed sale deed, coupled with other irregularities this Court is of the view that there should be a trial de novo. Therefore, the proceedings and judgment of the Land Tribunal is hereby quashed and set aside and it is ordered that there will be a trial de novo before another Magistrate of the Land Tribunal.

It is so ordered.

(SGD) ABDUL-HAKIM A. ISSA

JUDGE

27/8/2016

COURT:

This judgment was delivered in chambers on this 22nd day of August 2016 in the presence of Appellants and respondents.

(SGD) ABDUL-HAKIM A. ISSA

JUDGE

27/8/2016

COURT:

The right of appeal is explained.

(SGD) ABDUL-HAKIM A. ISSA

JUDGE

27/8/2016

I Certify that this copy is true from the original.

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REGISTRAR

HIGH COURT

ZANZIBAR.

/HALLY/