

**IN THE HIGH COURT OF TANZANIA**

**(MTWARA DISTRICT REGISTRY)**

**AT MTWARA**

**LAND APPEAL NO.12 OF 2021**

*(Originating from the District Land and Housing Tribunal for Mtwara at  
Mtwara in Land Application No.75 of 2019)*

**SACHIA SOCIETY.....APPELLANT**

***VERSUS***

**AFRICA OMARY.....RESPONDENT**

**JUDGEMENT**

*23/6/2022 & 13/10/2022*

**LALTAIKA, J.**

The appellant herein **SACHIA SOCIETY**, is a Non-Governmental Organization NGO with Certificate of Registration No 18937. The respondent, on the other hand, is a natural person resident of Magomeni Chipukuta Street, Mkanaledi Mtwara Town. Apparently, the parties are in this court because the appellant is dissatisfied with the decision of the District Land and Housing Tribunal for Mtwara at Mtwara (herein after the Tribunal) in Land Application No.75 of 2019.

This appeal is premised on five grounds that I take the liberty not to reproduce them here. Before unpacking arguments advanced by the parties for and against the five grounds, a brief background on the root cause of the dispute leading to this appeal is paramount.

It is on record of the trial tribunal that the appellant (through Ms. Victoria Tungu who spoke as PW1 at the Tribunal) claims to have purchased the disputed land at the price of Tshs.50,000/= in 2005. The appellant claimed further that she utilized the suit land peacefully until 2009 when a dispute arose between her and the respondent over the suit land. The respondent on the other hand, claims that he bought the land for TZS 15,000/- in 2002. He went further and argued that the appellant was a stranger and totally unknown to him and his neighbors.

Having failed to settle the dispute amicably among themselves, the appellant dashed to the trial Tribunal dragging the respondent as a trespasser. Upon finalization of the trial, the Tribunal adjudged in favour of the respondent. The appellant is highly dissatisfied. She is seeking, by way of this appeal that the judgement of the tribunal and its subsequent orders be quashed, costs of this suit and any other order in favour of the appellant that this court may deem fit to grant.

The main issue for my determination is whether this appeal has merit. In order to arrive to that end, I will start by weighing in the following arguments advanced by the parties orally when this appeal came hearing on 23/6/2022.

Submitting on the first ground, the appellant stated that at the trial tribunal she had six witnesses. All these witnesses testified well enough. The evidence they tendered included how she obtained the suit land. She emphasized that she bought the land from one Joseph Chamilanga at a cost of 50,000/ before Chipuputa Mtaa Leaders in 2005. The appellant admitted that some of those Mtaa Leaders who witnessed the sale are dead, but the seller is around. The appellant strongly believes that the

trial tribunal had not analyzed the evidence well enough that is why it ended up deciding in favor of the respondent.

Submitting on the second ground, the appellant averred that the Honourable Chairman of the Tribunal failed to interpret the boundaries of the suit land. This is because, the appellant asserted, the area is within a bigger area of the SACHIA school where the respondent had enlarged his boundary by taking a piece of land that belongs to SACHIA, built a house, planted a palm tree and other trees and put a "michongoma" thorns fence.

The appellant averred further that although the tribunal had visited the *locus in quo* to see the size of the suit land, the Honourable Chairman concluded that there was variation of 2 meters in the description of the size of the suit land among her witnesses. The appellant strongly believes that such disparity was minimum and should not have been used to disregard the rest of the evidence adduced in her favour.

On the third ground, the appellant submitted that in the proceedings of the tribunal there was no witness who had testified on the length of the suit land. She added that the evidence of Cecilia at page 10 of the impugned judgement was added during delivery of the judgement. The appellant stated that the difference of 2 meters' variation of one out of his six witnesses was not such a big deal that can be used to affect the right of young children on whose behalf the SACHIA society had acquired the land.

Submitting on the fourth ground, the appellant conceded that the suit land had beacons but insisted that they were wrongly put there by the land surveyors. She insisted that she was not involved in the

"formalization" exercise. The appellant averred that when the formalization team went to her Mtaa for putting beacons as surveyors, she was in a consultative meeting with the Bishop of the Evangelistic Assemblies of God [EAGT] in her capacity as the treasurer for the church.

Submitting on the fifth ground, the appellant averred that the Tribunal had hesitated in accepting her evidence on important issues even though they were not questioned nor shaken by the respondent. She emphasized that the respondent started trespassing her area by bringing break layers to prevent water and that the attempts to stop him proved futile. The appellant concluded her submission in chief by a prayer that this court allows the appeal and set aside the decision and orders of the District Land and Housing Tribunal.

The respondent, on his part, started off by stating that he believed that the tribunal decided based on the law. It was his foremost prayer was that this court finds out what SACHIA SOCIETY is all about. The respondent averred that although he saw a certificate with registration number 8937 his place where the suit land is located, does not contain institutions. He emphasized that it is a place for residential housing.

It is the respondent's submission that SACHIA is a fictitious institution and that the appellant is using it to advance her own wants. He stated that he knows the appellant as a sister to his former neighbor Michael who is now late. He insisted that the so called SACHIA society did not exist by then.

Responding on the appellant's claim that she was not there when the formalization program came, he submitted that the same was not true. It is the appellants submission that all residents of Chipukuta and

Kagera Streets came together and requested for land formalization services by a land surveyor. He insisted that after several meetings and finalization of contributions of 100,000 by each member of the Mtaa, **Smart Geo Surveyors** were given the task.

Responding to the appellant's claim that the tribunal did not consider and analyze the evidence of her six witnesses, the respondent argued that the present appeal is not the first attempt by the appellant to try to convince the court to rule in her favour. It is the respondent's submission that in the first case which commenced at the Ward Tribunal, the plaintiff was Victoria Tungu. SACHIA Society was not mentioned. He emphasized that the Ward Tribunal decided that it was not going to interfere with the area that was already surveyed. The plaintiff was dissatisfied, and she appealed to the District Land and Housing Tribunal (referred to in this judgement at times by its acronym DLHT or, as earlier alluded the Tribunal).

The respondent went on to narrate that the first appeal was before Hon. Chairman WAMBILI who was later transferred, and Hon. Lukeha, Chairman took over. In his judgement, the respondent averred, the tribunal ordered that the matter goes back to the Ward Tribunal.

Submitting passionately about the above point, the respondent stated that he expected that he would be summoned in the Ward Tribunal as per the judgement of the DLHT. However, the respondent asserted, he received a summons from the DLHT for Mtwara that SACHIA Society was suing him for four (4) acres of land valued at 10 million and wanted him to pay SACHIA a compensation of five (5) million.

The respondent averred that while he expected to see the so called SACHIA society suing him, he was astonished to see Victoria Tungu with whom he had the case before. She had changed herself into SACHIA. He averred further that in that case the second respondent sued alongside him, was Mtwara Municipal Council who never appeared in court.

As the matter proceeded at the Tribunal, narrated the respondent, the Chairman asked why the second respondent never appeared. To this the lawyers asked to go back and amend their pleadings, the prayer which was granted by the Tribunal. Three weeks later, the respondent recalls, he received yet another summons from the same SACHIA that they owed him one acre. Although the Mtwara Municipal Council was dropped as the second respondent, the certificates of sales and agreements were the same. As he asked the tribunal on the correct position, four acres as indicated initially or one acre as it appeared in the new pleadings, he was told to forget about the four acres.

The respondent concluded his submission by insisting that he believed that SACHIA is a conmen group. He prayed that the appeal be dismissed with costs. He elaborated that he had been paying for drafting costs as well as court fees and that, as a self-employed person, he was unable to focus on his activities before finalization of the case.

In rejoinder, the appellant prayed to address the issue of SACHIA, and the claim raised by the respondent that it was a conmen group. The appellant reiterated that is a center for children registered in 2012 with its headquarters in Dar es Salaam. The appellant averred that SACHIA is known to the respondent because when it started it was known as *Shule ya Watoto Wadogo/Chekechea Chipukuta*. It was later called USHINDI. It

was however registered as SACHIA. The land was bought for school purposes.

The appellant also addressed the issue of survey. She emphasized that she was not denying the fact that the area was surveyed. Her only concern was that the exercise did not follow the procedure. She concluded by a prayer that this court allows the appeal and sets aside the judgement and decree of the Tribunal.

I have carefully gone through the lower court records and carefully attended to the submissions by both parties. As alluded to earlier, I am inclined to determine the merits of this appeal. To achieve this, I will address the main complaints raised by the appellant. The first complaint is on failure by the tribunal to consider evidence adduced in her favour. This prompted me to go through the proceedings and read through the impugned judgement.

Having read the judgement between the lines, I am of the settled opinion that the learned Chairman properly evaluated the evidence of both parties in corroboration with the evidence of their witnesses and that obtained by the tribunal at the locus in quo. Indeed, the tribunal subjected both adduced evidence and admitted exhibits to objective test before it reached its conclusion to declare the respondent the rightful owner of the suit land. Surely, this can be seen at page 14-17 of the impugn judgment.

The second complaint is that the tribunal failed to interpret the boundaries of the suit land. In considering this argument, I must admit that I am impressed by the way the Tribunal carefully recorded its proceedings. Consequently, it discovered inconsistency of evidence of PW6 called Cecilia. On page 15 of the impugned judgment the learned

Hon. Chairman considered what PW6 had told the tribunal at the locus in quo and found that PW6's evidence had contradicted with the rest of appellant's witnesses. Weighing in the evidence of both parties in the light of the inconsistency, the Chairman correctly made a finding that the inconsistency went to the root of the matter. See, **Mohamedi Said Matula vs Republic** [1995] TLR 3. For avoidance of repetition this has also addressed the third ground of appeal. Hence, the first, second and third grounds of appeal are hereby dismissed for lack of merit.

This brings me to the fourth and fifth grounds that I choose to address them together. They are on whether the appellant had proved that the suit land belonged to her. The appellant, SACHIA SOCIETY is not a natural person. It was registered under the Societies Act [Cap. 337 R.E. 2002]. It is not known if the appellant was also incorporated under the **Trustees' Incorporation Act [Cap. 318 R.E.2002]**.

It is a procedure in this country that an entity registered under section 2 of CAP 318 acquires perpetual succession, common seal and power to sue and be sued in that name so incorporated. An unincorporated NGO lacks this privilege. It is doubtful that the appellant was qualified to knock the doors of the Tribunal in the first place. The respondent painfully narrated how the appellant abused the court process to institute the same claim twice.

I have observed the demeanor of the appellant [spokesperson of SACHIA Society] and she does not seem to know what she was saying. At some point, the respondent accused her of reading from a script, but the court was tolerant enough to allow her to recollect herself.



That said, and with all due respect, there is not any document which the spokesperson of SACHIA who testified as PW1 in the Tribunal tendered during trial that proved how the purchased land which include the suit land was transferred to the appellant. No attempt whatsoever, whether by the appellant or the good Samaritans who prepared the scripts for her was made to distinguish between Victoria Tungu a natural person who allegedly bought the suit land and the appellant SACHIA society.

Our law requires that he who alleges on existence of some facts must prove the same. **See Antony M. Masanga v. (1) Penina (Mama Mgesi) (2) Lucia (Mama Anna)**, Civil Appeal No. 118 of 2014, CAT (unreported). It is obvious to me that the appellant has failed to prove all the claims raised pertaining to ownership of the suit land.

Based on the above discussion, it is my finding that this appeal has no merit and must be dismissed. However, before I pen off, I have given some thought on the respondents request for costs. I went to the impugned judgement and found that the learned Chairman did not allow costs because he thought parties were neighbours.

I am not going to allow costs either, but my reasoning is slightly different. I don't see how my order for costs can be executed without harming the person of Victoria Tungu who, as I have repeatedly indicated cannot distinguish between an NGO and her personal property. It is my expectation that the spokesperson of SACHIA Ms. Victoria Tungu will learn from this experience and refrain from abusing the court process. She may not be lucky again in the future.

In the upshot, I see no merit in this appeal. The same is hereby dismissed in its entirety. For the reasons I have explained, I make no orders as to costs. Each party to bear its own costs.

It is so ordered.



**Court**

**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE**

**13.10.2022**

This judgement is delivered under my hand and the seal of this court this 13<sup>th</sup> day of October 2022 in the presence of parties who have appeared unrepresented.



**Court**

**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE**

**13.10.2022**

The right to appeal to the Court of Appeal of Tanzania is fully explained.



**E.I. LALTAIKA**

A handwritten signature in blue ink, appearing to read "E.I. Laltaika".

**JUDGE**

**13.10.2022**