

**IN THE HIGH COURT OF ZANZIBAR**

**HELD AT CHAKECHAKE PEMBA**

**CIVIL APPEAL No. 06 OF 2020**

**(Arising from the Land Petition No. 37 of 2018 of the Land Tribunal held at  
Machomane Chake - Pemba)**

**ABEID KHAMIS RAMADHAN..... APPELLANT**

**VERSUS**

**MKUBWA MOH'D ABEID..... RESPONDENT**

**JUDGMENT**

15<sup>th</sup> & 16<sup>th</sup> June, 2020

**A. I. S. Suwedi, J**

The appellant, Abeid Khamis Ramadhan being aggrieved by the decision of the Land Tribunal sat at Machomane Chakechake Pemba, lodged this appeal and advancing 6 grounds of grievances. However, all of six grounds of appeal crystallize on the issue of evidence. Whether the evidence adduced by the appellant sufficed to prove the claimed lodged before the Land Tribunal.

Way back, the appellant instituted a claim before the Land Tribunal against Mkubwa Moh'd Abeid, respondent herein for piece of land which includes 2 coconut trees and a jackfruit tree situated at Mgogoni, Chakechake Pemba bounded as *North by Chake – Furaha Road; South by Abdalla Khamis Nassor; East by Khamis Ali Omar and West by Suleiman Moh'd Omar*. Originally, the disputed area was part of the land bought by the appellant from Khamis Rihan Mtwana and the respondent illegally took that area. The appellant besides, claimed for

compensation of TZS 1,500,000/- for the use of fruits of the mentioned trees from the 2009 and for disturbance caused. The Land Tribunal dismissed the claim as the appellant failed to prove at the required level.

Before me both the appellant and the respondent appeared in person, without the legal help. Submitting, the appellant adopted the memorandum of appeal and stated further that the learned trial Magistrate did not consider the evidence adduced by him which includes the Deed of Sale between them. The appellant also stated that he was the one who sold part of land to the respondent but he extended the area bought. He finally urged me to allow the appeal and to set aside the judgement of the Land Tribunal.

Replying, the respondent submitted that he bought two plots from the appellant. The plots were well surveyed and he took what belongs to him. In fact, he denied to have extended the area and he has already officialised the process. However, he is ready to give back the area to the appellant if proved to have extended the area upon a survey to be conducted by the Land Department at the appellant's cost. He finally prayed for the appeal to be dismissed.

Appellant rejoined by stating that he claim for the area extended by the respondent only and reiterated his earlier prayer.

Now is my time to say whether the evidence adduced before the Land Tribunal was suffice to prove the claim or otherwise. At the very outset, I am screening section 117 of the Evidence Act No. 9/2016 that:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts **must prove that facts exist**

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. [Emphasis added]

A quick look to that provision is that anyone who assert that he own something, the duty is on that person to prove the ownership and not otherwise. The appellant as stated earlier that is the one who instituted a claim before the Land Tribunal. According to the above cited provision, the appellant was under duty bound to prove the allegation filed. With the effect, I am obliged to read thoroughly records of the evidence in order to ascertain whether the evidence was suffice or not.

The appellant before the Land Tribunal confirmed to have sold the disputed area. He stated that the area which has coconut tree and jackfruit is not included but the respondent intruded that area. The appellant only mentioned that boundaries were said but he never tendered the deed of sale. The appellant besides brought another witness who confirmed that the appellant sold a house with banana trees to the respondent.

On the other hand, the respondent's evidence was that, he bought banana trees from the respondent and then a house within a plot. The area bought has been surveyed and transferred by the Zanzibar Land Transfer Board. The jackfruit is not part of the appellant's area.

The Land Tribunal visited the area and found the disputed area to have been a small area surrounding the respondent's house.

Having sum up the evidence, I am of the view that parties are not disputing the sale done by them but the small area surrounding the house sold. The appellant claimed to have sold the house only but not the pathway adjacent to the house. Pleadings before the Land Tribunal

have been attached with documents but none had been tendered during the trial, so I cannot observe them. However, upon relying on what have been submitted, I am convinced that the appellant never prove the claim before the Land Tribunal. Practically, it is impossible to sell a house only without the plot or area adjacent to it. With that I am completely agreed with the findings of the learned trial Magistrate of the Land Tribunal that the appellant failed to prove the claim at the required level.

Without prejudice to what I have stated, the evidence adduced show that the area has been surveyed and parties transferred the ownership upon the sale done. Kindly, I wish to advise the parties to approach the Government Surveyor to visit the area and measure according to the site plan and the Agreement for Sale entered between them to make sure on the area. The fact that the appellant is the one who claiming, he should bear the cost of the surveyor.

Eventually, I found this appeal to have lack merit and for the reasons stated, I see no reason for interfering with the findings of fact by the Land Tribunal in the Land Petition No. 37 of 2018. Finally, I am dismissing the appeal in its entirety and each party to bear its own cost.

**DATED at CHAKE CHAKE PEMBA this 16<sup>th</sup> day of June, 2020**



**A. I. S. SUWEDI**

**JUDGE**