

to be the owner of the house in dispute and the Appellant and the 2nd Respondent were ordered not to disturb the 1st Respondent. The Appellant being aggrieved with the said decision preferred this appeal. He filed a memorandum of appeal which contained four grounds of appeal which can be summarised as follows:

1. That the learned Magistrate of the Land Tribunal erred in law by validating the illegal sale agreement between the 1st and 2nd Respondents when there was no power of attorney issued by the Appellant.
2. That the learned Magistrate of the Land Tribunal erred in law by considering the exhibits tendered by the 1st Respondent which contradicts on the land in dispute and its boundaries.
3. That the learned Magistrate of the Land Tribunal erred in law by not considering the evidence of the Appellant.
4. That the learned Magistrate of the Land Tribunal erred in law by considering weak evidence produced by the 1st Respondent.

In the hearing of this appeal the Appellant was represented by learned advocate Mr Soud Ayoub, the 1st Respondent was represented by learned advocate Mr Hamdu M. Seif. The 2nd Respondent was served in person but she refused to receive the summons, hence, the hearing of the appeal proceeded on her absence.

Mr Soud, the learned advocate for Appellant started his submission by arguing the 1st ground of appeal. He submitted that the exhibit PT1 was the sale deed between the 1st Respondent (buyer) and the 2nd Respondent (seller) but the sale was conducted on behalf of the Appellant, the owner of the house. He submitted that there was no doubt on the ownership of the house. He cited the case of **Paschal Maganga V. Kilinga Mbarika**, Civil Appeal No. 240 of 2017 which on page 7-8 shows that the owner has the good title and no one can sell what is not his. He added that on page 36 of the proceedings it is clear that there was no power of attorney which was issued by the owner to the 2nd Respondent. Hence, the 2nd Respondent had no authority to sell the house; the sale was void ab initio.

With respect to the 2nd ground of appeal Mr Soud submitted that there is conflict between Exhibit PTI and PTII of the 1st Respondent. He said the sale was done on 13.9.2017 and in PTI the 2nd Respondent sold the house to the 1st Respondent. PTII is a “stakbadhi” which shows the parties as Husna Alawi Hussein buying from Hussein Alkindy. He added that in PTI the area is at Kombeni, but in PTII the area is at Maungani. Further, the boundaries are also different in these two documents. But the judgment and decree used the boundaries of the Appellant and departed from PTI and PTII.

With respect to the 3rd and 4th grounds of appeal Mr Soud submitted that the evidence of the Respondents were weak as they failed to prove the boundaries and area of the house in dispute. The Sheha on page 38-39 of the proceedings confirmed where the house in dispute situates; and on page 36 it is clear that the house is not owned by two persons. The testimony that the house is owned by two persons shows that the evidence was weak. He prayed for the court to decide according to their prayers in the memorandum of appeal.

Mr Hamdu, on the other hand, opposed this appeal. With respect to the 1st ground of appeal he submitted that the learned RM was right and the sale was valid although there was no power of attorney. He submitted that during the sale the Appellant was there as seen on page 37 and 40 of the proceedings. Further, on page 32 the Appellant and the 2nd Respondent introduced themselves as husband and wife, which shows that they were together. Further, the Appellant allowed the sale agent to see the house for the purpose of sale (page 33 of the proceedings) and also allowed others to see the house. Therefore, there was no need to see the power of attorney. Lastly , he said on page 12 of the judgment the learned RM discuss the issue of the consent of the Appellant.

With respect to the 2nd ground of appeal, Mr Hamdu submitted that the learned RM did not consider PTII and looked at the house which was sold, the sale agent visited the house and money was paid for that house and all people agreed that the house is at Kombeni. They were all concerned with the house and not boundaries.

With respect to the 3rd and 4th grounds of appeal Mr Hamdu submitted that the evidence given by the Appellant was weak in the sense that he did not dispute that his house was being visited for purpose of sale. Further, no civil or criminal case was filed against the 2nd Respondent; there is no even a police report. In addition, he did not dispute that the keys of the house was given to the 1st Respondent. It was a fraud scheme created by Appellant and 2nd Respondent. On page 10 of the judgment the RM discussed the incident and the circumstances.

On the other hand, Mr Hamdu submitted that the 1st Respondent's evidence was strong and it shows the chain of events leading to the sale. PW2 and PW4 on page 33 and 39-40 testified on the chain of events. The Appellant gave the 1st Respondent a plot of land in order for the 1st Respondent to release the house. PW3 on page 38 to 39 of the proceedings showed this. Further, on page 34 the 1st Respondent was given the keys of the house. He prayed that this appeal should be dismissed with cost.

Mr Soud in his rejoinder submitted that the issue was whether the sale was valid or not. The Appellant did not say anywhere that he was married to the 2nd Respondent. In fact that was not true. On the issue of boundaries he submitted that they are important and they define the land or a house. The Appellant did not allow a person to visit the house; there were tenants in the house and they could show the house. He reiterated his prayers.

This court will similarly start its determination with the 1st ground of appeal. Mr Soud admitted that there was a sale of the house which was entered by the 1st Respondent (buyer) and the 2nd Respondent (seller). The 2nd Respondent signed the sale deed on behalf of the Appellant. Mr Soud argued that since the sale was done by an agent a power of attorney was needed. But there was no power of attorney which was issued by the owner to the 2nd Respondent. According to the testimony of the Appellant; he does not even know the 2nd Respondent, hence, the 2nd Respondent had no authority to sell the house and the sale was void ab initio.

The 1st Respondent admitted that there was no power of attorney which was shown to him, but averred that the Appellant and the 2nd Respondent represented to him to be husband and wife; this fact was confirmed by PW1. Further, the 1st Respondent submitted that when the sale was concluded and the money exchanged hands from the buyer to seller, the Appellant as well as the 2nd Respondent were there. These facts were also confirmed by PW4.

Now, the issue for determination here is whether the sale was valid or not. From the facts in the proceedings and from the reading of Exhibit PTI it is clear that the house in dispute was owned by the Appellant and the 2nd Respondent sold the same on his behalf. The issue is whether the 2nd Respondent had the authority to sell the said house. It is true that the 2nd Respondent did not have the power of attorney (express authority), but the law of agency allowed for both express and implied authority. Section 183 of the Contract Decree, Cap. 149 of the Laws of Zanzibar provides: "The authority of an agent may be expressed or implied".

Further, section 179 of the Contract Decree defined what is expressed authority and what is implied authority. It provides:

"express authority" means the authority given to an agent by words spoken or written."

"implied authority" means the authority given to an agent which is to be inferred from the circumstances of the case."

From the facts on the record there was no express authority given to the 2nd Respondent; the Appellant denied to have authorised the 2nd Respondent to sell the disputed house. But the facts on the record show that the 2nd Respondent was the one looking for buyers, she had the keys to the house and she also showed the house to the 1st Respondent. Further, she misrepresented to be the wife of the Appellant and when the sale was concluded the Appellant himself was present and the money was received by them together inside the disputed house. At that juncture if the Appellant did not authorise the 2nd Respondent to sell the house he could have stopped it, but he did not and together they received the

money. Therefore, from these circumstances it can be inferred that the 2nd Respondent had implied authority to sell the house.

Section 221 of the Contract Decree further provides guidance with respect to the contracts entered through agent. It provides:

“Contracts entered into through an agent, and obligation arising from acts done by agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.”

Therefore, since the agent, 2nd Respondent had the implied authority to sell the house, it follows that the sale is valid and is binding on the Appellant. Therefore, the 1st ground of appeal lacked merit and is hereby dismissed.

With respect to the 2nd ground of appeal Mr Soud discussed the two exhibits tendered by 1st Respondent, namely Exhibit PTI and PT II. He tried to show the discrepancies in these two documents. Exhibit PTI is the sale deed in which the 2nd Respondent sold the house to the 1st Respondent while PTII is a “stakbadhi” in which Husna Alawi Nassor bought a plot of land situated at Maungani from Likindi Hussein on 10.12.2001. Mr Soud argued that the plot in PTI situated at Kombeni while in PTII situated at Maungani. Further, the boundaries in these two documents were different.

Mr Hamdu, on the other hand argued that the learned RM did not consider PTII and looked at the house which was sold, the sale agent visited the house and money was paid for that house and all people agreed that the house is at Kombeni. The Court agrees with the learned advocate for the 1st Respondent that although there are differences in these two documents, the learned RM did not consider the exhibit PTII and the main reason is that the house in dispute is situated at Kombeni and not Maungani. In addition, the house belonged to the Appellant and not the 2nd Respondent. The 2nd Respondent sold the house as the agent of the Appellant. Further, the Tribunal visited the house in dispute and all parties agreed that it was the house which has been sold and the house is

situated at Kombeni. Hence, the exhibit PTII is of no value and was prepared for the purpose of defrauding the 1st Respondent.

On the issue of boundaries the decree stipulates that the house in dispute has the following boundaries:

North: Munira Moh'd Hussein

South: Ali Khamis Ali

East: Mwalim Suleiman Mussa

West: Ali Khamis Ali.

These boundaries are different to boundaries found in PTI, PTII or PTIII. These are the boundaries found in WSD of the Appellant as he is the person who originally owned the house and he knew the boundaries better than any other person. But the issue which needs to be determined is whether the parties are talking about the same house. The learned RM visited the house in dispute and all parties agreed that it was the same house they are litigating and in fact the sale was concluded inside the house and the Appellant was present. Therefore, there was no doubt about the house which was sold. The boundaries were just changed by the Appellant and 2nd Respondent in PTI and PTII in order to defraud the 1st Respondent. Therefore, this Court found the arguments raised have no merit and are dismissed.

With respect to the 3rd and 4th grounds of appeal Mr Soud argued that the evidence produced by the 1st Respondent was weak and the judgment should not be in his favour. This court went through the proceedings and judgment and it is clear that there was no dispute that the house originally belonged to the Appellant; and there was no dispute that the house was sold to the 1st Respondent by the 2nd Respondent.

The issue which was determined in the Tribunal and in this Court is whether the 2nd Respondent had the authority to sell the said house. This Court has answered this issue in the affirmative as all the circumstances showed that the 2nd Respondent had the implied authority to sell the house. Further, the house was sold in the presence of the Appellant and money was received by the 2nd

Respondent and the Appellant together. Hence, there can be no denial that the house has been sold to the 1st Respondent. In addition they reduced their agreement in writing and the sale deed has been registered with the Registered of Documents and also has been stamped. It is a valid document of sale which is admissible in evidence. Further, the 1st Respondent called one of the witnesses who witnessed the conclusion of the sale agreement (PW4). Therefore, on balance of probability the 1st Respondent was able to prove his claim and this Court agrees with the Tribunal. These grounds of appeal are found devoid of merits and are dismissed.

In the upshot this Court uphold the decision of the Land Tribunal and this appeal is dismissed with cost.

It is so ordered.

A handwritten signature in blue ink, appearing to be 'J. B. S.', is written on a small rectangular piece of paper.