IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT CHAKE-CHAKE

CIVIL APPEAL NO.26 OF 2015

(FROM ORIGINAL DECREE CIVIL CASE NO.1 OF 2012

OF THE LAND TRIBUNAL – CHAKE-CHAKE, PEMBA)

SALEH SEIF SAID … … APPELLANT

VERSUS

1. HADIA MWALIM KIGUNDI ………… … RESPONDENTS
2. ALI KHAMIS HAMAD
3. SAID JUMA SALIM

JUDGMENT

DATE OF JUDGMENT: 22.9.2022

BEFORE: ISSA, A. A. J

This appeal arises from the decision of the Land Tribunal, Salum H. Bakar (RM) in Civil Case No. 1 of 2012 at Machomane, Chake-chake, Pemba. The background to the case is that the appellant, Saleh Seif Said filed a suit at the Land Tribunal against the respondents, Hadia Mwalim Kigundi, Ali Khamis Hamad, and Said Salum Juma. The appellant is claiming to have purchased a plot of land situated at Furaha, within the district of Chake-Chake, Pemba on 21.1.2011. He purchased the said plot for TZS 270,000 from the 1st respondent who was represented by her sons the 2nd and 3rd respondent. The transaction was conducted before the Sheha of Mvumoni and was reduced into writing. The document of sale was tendered and admitted in court. The appellant is claiming that the respondents do no want to give vacant possession of the said plot and 1st respondent is continuing with the cultivation. The said plot has the following boundaries:

North – the Furaha road

South – Sabah Seif Said

East – the house of Munawar

West – the hospital of Furaha

The respondents, on the other hand, admitted the claim, but averred that the appellant has already built his house on the plot sold to him. The plot he is claiming has not been sold to him.

The Land Tribunal heard the matter and delivered its judgment on 4.12.2014 in favour of the respondents. The 1st respondent was declared to be the rightful owner of the disputed land, and the appellant was ordered to remove his hands on the said plot.

The appellant being aggrieved with the said decision preferred this appeal. he filed a memorandum of appeal which contained three grounds of appeal, which can be summarised as follows:

1. That the Land Tribunal erred in law in its finding which did not consider the fact that the appellant lawfully purchased the said plot of land.
2. That the Land Tribunal erred in law when it did not consider the evidence of the appellant.
3. That the Land Tribunal erred in law when it give right to the appellant without having valid reason in law.

In the hearing of this appeal the appellant was present in person while the respondents did not appear though the summons were sent twice and they refused to come. Hence, the appeal was heard ex parte.

The appellant adopted his grounds of appeal and submitted that he has purchased the land from the 1st respondent and he has a document of purchase which was tendered in court. He added the document of purchase had the signature of the 1st respondent as well as the signature of the 2nd and 3rd respondent. Further, he said the children of the 1st respondent admitted to have sold the land but they asked the appellant to allow her to cultivate during her life time. He said the 1st respondent sold the land when she was in need of

money to pay for her child who was accused of stealing a chainsaw. He prayed for this appeal to be allowed.

In determining this appeal, this court will revisit the facts of the case and the evidence produced in court. To start with all the witnesses of the appellant, namely: PW1 to PW5 testified that the respondents sold the plot of the land to the appellant. The said sale was concluded before the Sheha of Mvumoni, who testified as PW2 and reduced the transaction into writing.

The respondents themselves admitted that the said plot was sold to the appellant. Though each respondent had reservations regarding the said sale. The 1st respondent said she inherited the said plot from her father 39 years ago together with her sister Mwajuma Mwalim Kigundi. She said they have not sold the plot but her son, the 2nd respondent sold the said plot and he did not give the money to her for the said sale. She added that she put her signature on the document of sale by mistake as she did not understand what she was doing.

The 2nd respondent, the son of the 1st respondent testified that the plot in dispute is owned by the 1st respondent. He did not say that it was jointly owned with another person. He also testified that he asked the mother of the appellant to go and talk with the 1st respondent regarding the sale. If they agreed they can proceed with the sale. Hence, when he was told that the 1st respondent has agreed he received the money and proceeded with the sale. He received TZS 270,000 which he did not give the 1st respondent; he used the money for his own needs.

The Land Tribunal was moved with the evidence of the respondents particularly that: firstly, the 1st respondent did not participate in the sale transaction. Secondly, she did not receive the money and also that the plot is jointly owned with another person. Thirdly, because the 2nd and 3rd respondents when they sold the land they had no power of attorney; hence, were not authorised to sell the said plot. Lastly, because the procedure of transferring the land according to the Land Transfer Act was not followed.

The Court now will look at the above reasoning of the Tribunal. It is true that the 1st respondent was not physically present when the transaction of sale took place. It has been alleged by the appellant and his witnesses that the 1st respondent authorised his sons, the 2nd and 3rd respondents to sell the said plots. The Sheha (PW2) in his testimony testified that it was the 2nd respondent who initiated the process of sale by calling the agent of the appellant. PW2 explained further that the 2nd respondent took them to the plot in question and then the 3rd respondent appeared and they all said that they have been authorised by their mother, the 1st respondent to sell the plot. It is submitted that PW2, the Sheha is a credible witness and he has no reason to lie. The testimony of PW2 was corroborated by PW3 who was the witness to the said sale. He also said that the 2nd respondent said he was authorised by her mother. Therefore, it was the 2nd respondent who was lying and who changed the story of how things had transpired.

Now, let address the question of authorisation, the Tribunal erred in demanding a power of attorney. Authorisation can be made orally and is accepted provided the person who gave the authorisation does not dispute it. 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 and 3rd respondent; the 1st respondent denied to have authorised the 2nd respondent to sell the disputed plot. But the facts on the record show that after

the sale transaction was reduced into writing, the Sheha gave it to the mother of appellant (PW3) who went to the 1st respondent to seek her signature. PW3 testified that before the 1st respondent put her signature on the said document the content of the said document was read to her by someone, and the 1st respondent put her thumb print. This fact confirms that the 1st respondent authorised the 2nd and 3rd respondent to sell the said plot. If she was not aware of the sale and did not want the sale to proceed as he sister was not involved in the sale she would not have put her signature. This court believes that her explanation that she did not know what she was doing is an afterthought and the explanation of 2nd respondent that the 1st respondent thought she was signing for an aid is also a lie. She signed the document confirming the sale.

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 plot, it follows that the sale is valid and is binding on the 1st respondent.

With respect to the issue of joint ownership of the plot in question; it is submitted that the Tribunal misdirected itself on that issue. There is no evidence before the court that plot was jointly owned between the 1st respondent and another person. Further, even if that was the fact, the 1st respondent would not have signed the document of sale knowing that the plot is jointly owned.

Lastly, on the issue of transfer of land as rightly pointed out by the Tribunal. Section 3 of the Land Transfer Act No. 8 of 1994 provides:

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

The import of this provision is not that the sale is invalid because the Board has not approved it. Rather the process of approval is required and can follow after the sale has been concluded. What this provision means is that in order for the sale to take affect the approval of the Board is required. Hence, the buyer can proceed and seek approval at the appropriate time.

It is submitted that the Tribunal erred in its decision which is hereby quashed and set aside. It is declared that the plot of land situated at Furaha is the property of the appellant and the respondents should give the appellant vacant possession of the land. They should remove everything they have on that land.

It is so ordered.