IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL APPEAL NO. 103 OF 2005

SUZANA MISA.....APPELLANT

VERSUS

MTORO SABURI.....RESPONDENT

JUDGEMENT

MLAY J

The appellant SUZANA filed a suit in the District Court of Kinondoni against the respondent/defendant MTORO SABURI seeking;

a) A declaratory order that the plaintiff is the lawful owner of the suit premises.

b) A permanent injunction order be issued against the defendant jointly and severally not trespassing or entering upon the plaintiff plot of land (suit premises).

c) Costs of this suit.

d) Any other or further relief (s) the Honorable court may deem just and equitable to grant.

The defendant /respondent filed a counter affidavit seeking;

a) A declaration that the defendant is the lawful owner of the suit premises.

b) A permanent injunction order be issued against the plaintiff jointly and severally, not to trespass or enter upon the defendant's plot of land (suit premises)

c) Costs of the suit

d) Any other or further relief (s) the Honorable court may deem just and equitable to grant.

Both parties were represented by counsels at the trial and the trial Magistrate Makwandi RM granted judgment in favour of the defendant/respondent. Being aggrieved by the judgment and decree of the District Court, the appellant has appealed to this court on the following grounds;

1. That, the learned trial Magistrate erred in law and in fact by failing to hold that the appellant is the lawful owner of the piece of land in dispute and the respondent is the trespasser.

2. That, the learned trial Magistrate erred in law and fact by failing to understand properly the nature of the dispute despite the visit to the locus in quo.

3. That, the learned trial Magistrate erred in law and in fact by dismissing the appellant's suit.

At hearing of this appeal both parties were represented by the same advocates who handled the suit in the trial court, Mr. Katemi for the Appellant and Mr. Rwenyagira for the respondent. By consent, both counsels agreed to argue the appeal by way of written submission.

However the written submissions filed on behalf of the appellant have been drawn and filed by the Women's Legal Aid Centre while Charles, RC and Co. Advocates filed submissions on behalf of the respondent.

On the first ground of appeal, the appellant's counsel has submitted that the land in dispute belongs to the appellant on account of the evidence that the land in dispute originally belonged to one Shakeli, Lung or Mungoro and the land was later granted to the appellant by the former owner when he decides to move away from Dar es Salaam. The learned

counsel referred this court to exhibit "P1" and other documents tendered in court as exhibit **"P2".**

Alliance was also made on the evidence of land village authorities, particularly of Kin'gonda Mfaume who gave evidence as **"PW3"**. The appellant Counsel blamed the trial Magistrate for being "overwhelmed by exhibit **"D1"** tendered by the respondent to show that he was allocated the land in dispute. The appellant counsel argued that the trial Magistrate ought not to have fully relied on this document because it had no legal basis and that it lacked authenticity. The lack of authenticity was attributed to the allegation that one MBWANA MFAUME who signed on Exhibit **"D1"** is the same person as KIN'GONDA MFAUME who gave evidence for the appellant as **"PW3"** and denied to have signed it. Secondly one J MKOMBOZI **"DW2"** who also signed the document, signed twice while being required to be urged by the respondent, was signed by only one. The counsel argued in the alternative that if the respondent was allocated any land, it was not over the appellant's land.

The counsel alleged that the trial magistrate failed to evaluate this evidence and invited this court to condemn the trial magistrate and to invoke the provisions of Order XXXIX Rule 25 of the Civil Procedure Code, 1966.

On the second ground, the appellants counsel submitted that the trial Magistrate visited the land on 8.9.2001 but the visit was not recorded. The appellant concluded that "during the visit it was obvious that the appellant's land has been annexed by the respondent. That the respondent has just extended and crossed the border, which is marked by a pathway, into the appellant's land.

On the last ground of appeal the appellant's counsel simply submitted that for the facts given in the two grounds, that the trial court had no legal basis to dismiss the appellant's suit. The respondent counsel rejected the appellant's submission. On the first ground, the respondent posed the question, "who is Shekeli?" it has been submitted that although this Shekeli

existed and had been allocated land that land was re-taken by the village and was divided to other persons who were in need of land after Shekeli had failed to complete the procedures necessary to be granted ownership, that is developing the land. It was therefore submitted that Shekeli had no shamba because his "land" had been redistributed to other people by the Village Council. They referred to the evidence of **"PW3"** KIN'GONDA MFAUME a chairman of the committee which redistributed the land. It has been submitted on behalf of the respondent that Shekeli lost his right over the land by failing to develop it at the right time.

Referring to exhibit **"P1"** it has been submitted that this letter from Shekeli does not hold water at all since Shekeli had been trying to give something he does not have. It was further submitted that the village council distributed land sometimes in 1986 and that the land had to be developed within a year and once the Village Government is satisfied that the land has been developed, a certificate is issued to confirm that the developer of the land is the rightful owner of the land. It was

contended that the appellant does not possess such a certificate but the respondent who was allocated the land in 1986 had developed it and has been given a certificate to confirm his ownership of the three acres of land.

The respondent concluded that the trial court visited the land in disputed on 5.9.2001 and found the three acres of land "clean and developed" with the house belonging to the respondent and two graves one of the appellant's mother who died in 1990 and the other of her uncle who died in 1999.

The two grounds of appeal are interconnected in one issue, which is "whether the trial Magistrate failed to properly evaluate the evidence adduced during the trial", and the result, reached to wrong decision that the land in dispute, belongs to the respondent.

Now in my considered opinion, having looked at the evidence adduced by all witnesses, especially "PW1" (plaintiff in the trial) I am convinced that the magistrate did not fail to

properly the evaluate the adduced evidence by both parties and therefore the respondent is the lawful owner of the disputed land.

In regard to the evidence adduced by **"PW1"** she testified that when she was allocated the said shamba, it had permanent crops, i.e orange trees etc. Also I take into consideration the evidence of **"DW1"** and an exhibit **"D1"** which is the certificate that proves the respondent is the lawful owner of the land.

In view of the above evidence, there is no doubt that the trial magistrate did not fail to properly evaluate the evidence adduced by the parties.

On the basis of the foregoing I dismiss this appeal and pronounce the respondent to be the lawful owner of the property in dispute.

This appeal is dismissed with costs