IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC. CIVIL APPEAL NO. 4 OF 2007

(Originating from the District Court of Geita
Civil case No. 2 of 2001)

ASHANTI GOLD FIELDS (T) LTD.....APPELLANT

Versus

CONRAD BUBERWA.....RESPONDENT

JUDGEMENT

15/9 & 11/12/2009

Sumari, J.

This is an appeal by the appellant company against the decision of Geita District Court in which the respondent had sued the appellant claiming a total amount of Tshs. 8,030,325/= alleged to be the unpaid balance for 430 banana plants which were in his shamba at Mtakuja village which the respondent was claiming for compensation when the said shamba was acquired and relocated to the appellant for mining purposes. The trial court awarded the said amount of money to the respondent and appellant was dissatisfied, hence this appeal.

Brief facts giving rise to this matter and which are undisputed is that part of the area where the respondent's plot had, was allocated to appellant and before the said piece of land among pieces of land acquired by the appellant, there was an exercise of counting crops,

plants and other properties and the said counting was for purposes of establishing the said crops and other properties for the said compensation. Thereafter filled forms were prepared by each person indicating the number of different crops in his acquired area. For the respondent who was the plaintiff the filled forms were tendered as Exhibit P.1. which shows that the respondent had 645 banana plaints.

In the District court the respondent/plaintiff was claiming that out 645 banana plaints, he was paid for compensation of only 215 plants; as such his claim in the District court was for the remaining 430 banana plaints. He was also claiming that the rate of compensation for each plant should be that was indicated in Exhibit P.2. The trial magistrate in arriving his decision he agreed with respondent's contention. This is what offended the appellant.

In his first ground of appeal, appellant is complaining that, the trial magistrate erred in fact by relying on the evidence of Pw1 and Pw4 in respect of the crops for which the respondent was supposed to be compensated and the rate of compensation applicable.

Mr. Gallati argued that the evidence of Pw1 and Pw4 was substantially and by content in contradiction with Exh. P.2. Referring to Exhibit P.2 which document bears title **FIDIA YA MAZAO YALIYO KIJIJI CHA MTAKUJA"** That the first part of this document reads *"Utanguiizi: Kampuni ya Ashanti---------- katika maeneo ya kijiji cha mtakuja. Kampuni ina mpango wa ----------*

Viwango vimekubalika na sehemu zinazohusika kutumika kwa kipindi cha miezi mitatu na kutiwa sahihi".

He further argued that the rates indicated in this form is the one which accepted by the trial court to be the true rates for arriving at the amount which ought to be paid to the respondent.

In his opinion that was wrong because from the document itself these rates were aimed to be used during the exploration exercise (uchorongaji). Even the words used is utafiti i.e. Exploration. In the same form these rates were applicable for 3 months only and that was in 1997, said Mr. Gallati.

Now the dispute is compensation for acquired land for mining purpose. These forms when read, the compensation was for only destructed crops and not for the acquired land for mining purposes. That's why it is contended that the content of these documents is substantially in contradiction to Pw1 and 4's evidence. Pw1 and Pw4 did not say the respondent's land was acquired in 1997. They were talking of acquisition of land subsequent to the period of 1997 when there was exploration exercise. That Pw4 said in his evidence that the said rates in Exh. P.2 were agreed to cover even the period when the distributed area acquired and allocated to the appellant. If that was the case, these document could say so but these forms were applicable for 3 months only.

He further contended that, the procedure for acquisition of land followed and ought to be followed, when the respondent's land was

acquired and reallocated to appellant is the general procedure applicable under the law when the land is acquired.

On his strength to disqualify Exh.P.2 Mr. Gallati said, in this case a valuer was appointed, this is Dw2 who assessed what was in the respondent's plot and that is the value which the respondent was paid. So it was wrong for the trial magistrate to revert to Exh.P.2 which was an irrelevant document for acquiring the land.

Insisting further, he said the rates for compensation crops are the rates provided under the law. The submissions prove this at GLCA; so the issue whether the rates are sufficient or insufficient that could not be an issue because the law has to be found as it is.

As for ground 2, that the trial magistrate erred in law in arriving into the amount which to be paid to the respondent without regarding the evidence of Dw2, the valuer, Mr. Gallati had in mind that the issue is what rate was supposed to be applicable in compensating the respondent and the amount of banana plants.

As for the amount of bananas the filled form, Mr. Gallati admitted that Exh.P1, shows that the respondent had 645 banana plants. He however, contended that, according to DW2 the criteria for compensating banana plants is by compensating banana cluster (shina) and he said according to the procedure 3 banana plants, constituted one cluster (miche 3).

. So according to him, 645 banana plants were divided by 3 and that is what the respondent compensated for. The respondent was claiming to be compensated for each plant.

The trial court accepted the criteria and awarded the respondent each plant instead of cluster, which is in disregard of the professional evidence by Dw2. That was in his opinion wrong. He thus prayed the appeal be allowed with costs.

In reply Mr. Muna, Advocate submitted that he is in agreement with the judgment of the District Court to the effect that the respondent was entitled of Tshs. 8,030,925/=. That the issue is whether the trial magistrate had correctly applied the rates which were contained in Exhibit P.2 in awarding compensation to the respondent. He also agreed that Exhibit P2 on the face of it was intended for compensation of exploration for 3 months. He however, contended that Mr. Gallati, has forgotten that there is Exh. P.3 which is the continuation of Exhibit P.2

This Exhibit P.3 is titled ***"utaratibu wa ulipaji wa mazao, Fidia Wilayani Geita"*** which was intended to cover situations where land was acquired and according to Exh.P.3 the rates in Exh.P.2 was applicable for lands which acquired for mining purposes. So what he contended, although Exhibit P2 reads for purposes of Exploration, it also covered situation where land was acquired.

To substantiate that the trial court was right in applying Exhibit P.2; Mr. Muna said there was a meeting held on 26/11/1998 and in

that meeting the appellant was duly represented by Dw1 Asa Mwipopo. There were also representatives from District commissioner and Land offices and it was agreed that the 1992/93 rates which were mentioned by Mr. Gallati in the submissions at the trial, were found to be in the lower side and so agreed that the rates in exhibit P.2 were the proper rates for compensation at the time the appellant was acquiring the land.

That was what transpired in the meeting and was flashed by the media, (Exh.P4) that appellant had agreed to the rates. Although Dw1 was there and the matter flashed in the media, the appellant never disowned that such an agreement was reached. He therefore submitted that the trial magistrate was right in his decision. But again, if the 1992/93 rates were found to be on the low side during exploration, then the rates found to be on the low side could not properly be used in the acquiring of the land. That would be double standard. If those rates were unreasonable for purposes of paying compensation during exploration, they cannot be reasonable at the payment of acquiring land. He called upon the court not to agree with Mr. Galati that Exh. P.2 was meant for exploration only.

In reply to ground 2, Mr. Muna submitted that it is true that at the time Exhibit P.1 filled, 645 banana plants were found. At the time of compensation only 215 plants compensated for. In an attempt to challenge what submitted by Mr. Gallati, that the counting was according to cluster (3 plants); Mr. Muna said that, that fact was not made known to the respondent. He insisted that, that was an

internal arrangement by the appellant and Dw2, the valuer. He is of the view that in so doing, the respondent was condemned unheard in the matter which he was directly affected. In his opinion, if the payment in respect of 645 plants were made in good faith that should have been known right from the beginning. Since that was not the case he called upon the court to dismiss the 2nd ground of appeal.

I had ample time to go through Exh.P.2 which document bears title **FIDIA YA MAZAO YALIYO KIJIJI CHA MTAKUJA".** The contents of this form is self explanatory. It reads:

"Utangulizi: ***Kampuni ya Ashanti ina leseni ya utafiti katika Maeneo ya kijiji cha Mtakuja. Kampuni ina mpango wa kufanya kazi ya uchorongaji mashimo ya utafiti katika maeneo ya kijiji, kazi ambayo itasababisha uharibifu baadhi ya mazao ya wanakijiji. Idara ya Kiiimo imetayarisha viwango vya uiipaji ambavyo vitatumiwa na Ashanti kwa watakaodhurika na zoezi hili. Viwango hivi vinatokana na thamani ya mazao haya kwa mwaka 1992/93 katika dola na kubadiiishwa kwa shilingi kwa uwiano wa sasa wa dola ya marekani. Viwango vimekubalika na sehemu zinazohusika kutumika kwa kipindi cha miezi mitatu kwa kutiwa sahihi."***

One thing I wish to put clear to both counsels here is that, Exh.P.2 was not meant for exploration only or for acquired land. It was specifically meant for destructed or damaged plants during exploration.

Beside that, careful reading of the respondent's claim in his plaint, what actually claimed by the respondent in the suit is the payment of unpaid balance in respect of properties found at the plaintiff's/respondent's shamba and not payment of acquiring land and specifically through evidence, the 430 banana plants. There is no where in the plaint that plaintiff/respondent claimed for payment of the acquired land by the appellant.

What the appellant is complaining of, is that the trial magistrate relied on the rates indicated in Exh.P.2 which according to appellant's counsel was wrong since Exh. P.2 was an irrelevant document for acquiring the land. With due respect to Mr. Gallati, I see no where in Exh.P.2 indicating that the document is for acquiring the land. As I said earlier the document Exh.P.2 is specifically meant for destructed or damaged plants during exploration and this is what the trial magistrate decided. However, what is the central complaint and which I think the trial magistrate was right in his decision is the rates applied.

According to Pw4's evidence which supports that of Pw1, the rates stated in Exh.P2 were agreed in a lawful meeting as stated and the rates were found to be on the lower side and therefore the rates applied and agreed by the defendant/appellant was Tshs. 13,530 which amount was paid for 215 banana trees. The respondent is therefore claiming the balance remained for the 430 plants, which Mr. Gallati has come up with a strange formula of payment. That according to DW2 the criteria for compensating banana plants is by

compensating banana cluster (shina) and he said according to the procedure 3 banana plants, constituted one cluster (miche 3). I'm saying it is a strange formula because as well stated by Mr. Muna for respondent, that formula was not revealed to the respondent and therefore was condemned unheard if truly that was decided. But still the evidence of Dw2 raises a lot of doubts. It is not supported by Pw2 who was from the District Land office and who was in the counting exercise. One should expect Pw2 and Dw2 to have a consistent version in support of Exh. D2. I'm unable to believe what testified by Dw2, his evidence is unreliable. There was no logic behind hiding the formula of payment to Pw1/respondent while the same was to affect him directly.

I therefore see nothing wrong with the trial magistrate's decision, I can not fault it. The appeal is devoid of merit. It is dismissed with cost.

A.N.M. SUMARI
JUDGE

Delivered in the presence of counsels for the parties.