IN THE HIGH COURT OF TANZANIA

(MTWARA REGISTRY)

AT MTWARA

LAND APPEAL NO. 14 OF 2014

(From the decision of the District Land and Housing Tribunal of Lindi
(J. Njiwa, Chairman) dated 27th August, 2014 in Land Case No. 5 of 2014)

YUSUF AHMED GHULAM AND 198 OTHERS .... APPELLANTS

VERSUS

DIRECTOR,
LINDI MUNICIPAL COUNCIL .... RESPONDENT

JUDGMENT

Twaib, J:

The appellants sued the respondents at the District Land and Housing Tribunal claiming *inter alia* for an order against the respondents that the whole exercise of surveying the appellants' piece of land should be reviewed with a view to establishing the correct measurements and that compensation be paid to them basing on the market value.

The appellants are residents of Mitwero Area, Lindi Municipality. It is their contention that they are lawful owners of their respective pieces of land, which they have occupied for a number of years, for both residence and agriculture. In 2013 the respondent acquired the said lands. The appellants did not dispute the acquisition. The dispute arose mainly on the modality and procedures employed

by the respondent in taking their land. The appellants also disputed the amount of compensation allocated to them, on the ground that the same was unfair and inadequate.

The respondents disputed all the claims made by the appellants. The main issue in dispute was whether the legal procedures for acquiring the suit land were adhered to. The trial tribunal dismissed the appellants' suit with costs, holding that the procedures were duly complied with, urging the appellants to go and collect the compensation offered. The applicants were dissatisfied and lodged this appeal through the services of Phoenix Advocates, relying on three grounds. By consent of the parties hearing of the appeal proceeded by way of written submissions.

In support of the first ground of appeal, the appellants argued that sections 6, 7 and 8 of the *Land Acquisition Act* Cap. 118 R.E 2002 provides for the mandatory requirement to serve notice of intention to acquire the land to the owners of the land personally or to the occupier or to the person having interest over such land by the Minister for Land or his appointee. The requirement of notice is crucial in order to enable the appellants participate fully in the whole exercise. In this case, no notice was produced in court to show that the respondent complied with the requirements of the law. They referred to the evidence of PW2 and PW4, who testified that there was no participation of the owners because they were not legally notified. He added that there was no notice of the meetings as required by law aimed at educating the parties as claimed by DW1 and DW2 and therefore the acquisition was unlawful.

They added that section 8 (4) of the Land Acquisition Act provides for the requirement to publish the notice of intention to acquire land in the gazette after

the notice being served to the owners of the acquired land. But no evidence was brought to court showing that the respondent published the notice or that they were served therewith as required by Regulation 10 (1), (2) and (3) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.

They also submitted that the valuation report and the minutes of the Village Meeting relied upon by the respondents were improperly tendered in evidence because the Written Statement of Defence filed by the respondents contained no annexure of those documents. They blamed the trial Tribunal for admitting those documents and using them in its decision.

Submitting on the second ground, the appellants' counsel argued that under section 11 of the Land Acquisition Act, owners of the acquired land are entitled to be paid compensation, and that the basis for the assessment of the value of any land for the purposes of compensation under the Act is its market value as provided under rule 3 of the *Land (Assessment of the value of the land for compensation) Regulation*, GN. 78 of 2001 and as held in the case of ***Salumu Juma Mzeru v Omari Ubaya*** [1984] T.L.R 31 (H.C).

The applicants' advocate went on submitting that during the meeting held in the village with the respondent they agreed on payment of compensation of TZS 5,000,0000/=, TZS 7,000,000/= and TZS 15,000,000/= per acre but contrary to their agreement the respondent informed the appellants that they are entitled to compensation of TZS 400,000/= and TZS 700,000/= per acre for undeveloped and developed lands respectively.

Counsel pointed out that under rule 4 of *the Land (Assessment of Value of the Land for Compensation) Regulations* the market value of the property is to be arrived at by use of comparative method evidenced by actual recent sale of

similar properties or by use of income approach or replacement cost method where the property is of special nature and not saleable. A similar stand was taken in the case ***Amodu Tijan v The Secretary of Southern Nigeria*** (1921)2 AC 399.

Relying on the above rule, appellants' counsel maintained that the respondent failed to bring any evidence to support their assertion that they complied with the above rule in determining the market value of the appellants' pieces of land. Counsel pointed out that in his testimony, DW2 admitted that PW5 one Yusuf Ghulam sold one acre of his piece of land for TZS 2,500,000/=. The same was confirmed by DW1 during cross examination. The appellants' witnesses also indicate that all pieces of land taken by the respondent comprised of permanent crops, seasonal crops as well as some buildings, thus it was unreasonable to pay the appellants TZS 400,000/= and 700,000/= as compensation per acre.

He further referred to the court the case *of* ***Lohay Akonay v Joseph Lohay*** (1995) TLR 80 where it was held that fair compensation is not confined to unexhausted improvements alone, and that where there is no unexhausted improvement but some efforts have been put into the land by occupier, the occupier is entitled to fair compensation for deprivation of the property claimed.

He added that there was a problem in both measurements of the appellants' land as well as the amount assessed to be the compensation, and that since the appellants were ready to vacate and leave the place, it was the duty of the respondent to work together with them in the measurement of the said land for compensation purposes.

In the last ground the appellants' counsel reiterated what they submitted on the first and second grounds and concluded by praying that the appeal and for an

order that the entire exercise be conducted once again by observing all rules governing the acquisition of land in Tanzania.

Responding to the above submissions the respondent's counsel started by pointing out that the appellants are 199 in number in which each claim to own a piece of land. It was his view that in this case only five appellants out of 199 proved ownership of their respective pieces of land. Other appellants did not testify to prove ownership. He opined that each of the appellants had a burden to establish ownership of his or her piece of land as was held in the case of ***Haruna Mpangaos and 932 others v Tanzania Portland Cement Company Ltd***, Civil Appeal No. 129 of 2008 (unreported)

On the requirement of notice of acquisition, it was submitted on behalf of the respondent that the appellants were given notice and acknowledged in their testimony to have attended the village meeting called by the respondent. In the village meeting the appellant were told about the acquisition of land and the intended project. He added that while the law requires that owners be notified, it does not provide for the form of notice.

On the issue of publication of such notice the respondent submitted that the notice was published in the gazette as required by section 8(4) of the *Land Acquisition Act*. The same was published in *Majira* newspaper dated 13th November, 2013 which was tendered before the trial Tribunal.

On the amount of compensation to be paid, it was the respondent's view that the allegation put by the appellant that they were to be paid TZS 5,000,000/= for undeveloped land and TZS 7,000, 000/= for developed land was baseless as neither a sale agreement nor a valuation report was tendered by them at the trial tribunal to prove the allegation, and thus the appellant did not prove their

claims as required by section 111 of the *Evidence Act* Cap 6 (R.E 2002). On the other hand, counsel argued that the respondent proved the compensation to be paid to the appellants by tendering the valuation report which was made according to the market value.

In their rejoinder, the appellants' counsel submitted that the issue whether the appellants were the owners of the suit land was dealt with during the trial and it was concluded that the appellants were the lawful owners of the disputed land. He reiterated his earlier submission on the requirement of notice of acquisition by insisting that in view of section 8 (1) of the Land Acquisition Act there was no notice issued to the appellants.

The appellants added that they were not disputing the valuation report and the minutes of the village tendered during the trial, but their concern was that such documents were not tendered in accordance with the law. They further reiterated their earlier submission on the amount of compensation to be paid.

Having examined the trial record and the rival submissions from the parties, the following matters need to be addressed by the court. **One**, the impropriety of admission of Exhibit D1 (minutes of the village meeting) and Exhibit D2 (valuation report); **two**, the ownership of the suit land by the appellants; **three**, the requirement of notice of acquisition; and **four**, the amount of compensation allocated to their respective piece of land.

I will begin with the admission of exhibits D1 and D2. The appellant's counsels claim that the two documents were improperly admitted in evidence as they were not annexed to the written statement of defence. But Exhibit D1 only related to facts, which were not in dispute. They simply indicated that the

appellants and the respondents held a meeting where they discussed the acquisition process and matters relating to compensation. Witnesses of both the appellants and the respondent testified to this fact. Hence, even if it is discounted, it will have no effect on the findings reached by the trial tribunal. As for Exhibit D2, the appellant's counsel did not object to its admission at the trial. Any objection thereon at this stage would be an afterthought. The complaint is thus without basis.

On the second issue, I wish at the outset to agree with the appellants' counsel that the issue of ownership of the suit land was resolved by the trial tribunal in favour of the appellant and the respondent did not cross-appeal against it. I take it as unchallenged findings. The relevant part of the trial tribunal findings on the issue reads:

> *"I have gone through the evidence on the record very carefully. I have found that neither of the respondent's witnesses gave evidence disproving the applicants' right over the suit land. DW1 and DW2 gave evidence which recognize the applicants' right over the suit land. Even exhibit D2 shows that the applicants were known by the respondent to have right over the land that is why they were recognized for compensation...The applicants were the lawful owners of the suit land."*

As to the requirement of notice of acquisition I must say that this is not one of the complaints in the application filed by the appellants' at the trial tribunal. But assuming for the sake of arguments that the same is among their complaints, I have been asking myself on the real import of sections 6, 7 and 8 of the *Land Acquisition Act*. I have no hesitation to say that the said provisions have been placed to safeguard the interest of the owners or interested parties in the acquired land by ensuring that they are all notified of the acquisition process.

In this case I have no doubts in mind that the appellants were notified about the acquisition that is why they were ready to vacate their area for the project to take place. In the process, they even suggested the amount of compensation to be paid to them. They could not have done all those things if they were not properly notified about the acquisition process. Even the appellants' counsel is aware of this fact when he categorically stated in his written submissions that:

> *The question of measurements of the farm caused much misunderstanding due to the failure of the respondent to cooperate with the appellants in the exercise.* ***Bearing in mind that the appellants were ready to vacate and leave the place*** *it was the duty of the respondent to work together with the appellants in measurement of the said land for compensation.*
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> ***The appellants' witnesses stated that, through the meeting held in the village with the respondent they agreed on payment of compensation of Tshs 5,000,000/=, 7,000,000/= and 15,000,000/= per acre*** *but contrary to their agreement the respondent informed the victims of the suit land that they are entitled for compensation of Tshs 400,000/= and Tshs 700,000/= per acre for the undeveloped and developed lands respectively.*

Therefore, judging from what was testified by the parties on the record and the submissions of the appellants' counsel quoted above, the appellants seemed to have been aggrieved only by the amount of compensation allocated on their pieces of land on the following basis: **One**, they were aggrieved on the amount of compensation allocated on undeveloped and developed land, Tshs 400,000/= and Tshs. 700,000/= respectively as being inadequate. That it was not in accordance with the market value. **Two**, they complained that during the

process of surveying their respective land for the intended project the measurement of their land was not properly taken. They pointed as example that PW1 claimed to own 4 acres but the respondents recognized only two acres.

But again going by the records I agree with trial chairman's findings on those grievances when he partly held as follows:

> *It was the duty of the applicants to prove that the amount of Tshs 400,000/= per acre as value of undeveloped land and Tshs 700,000/= for developed was not in accordance with the market value at Mitwero, Lindi Municiplaity.Dw2 the Municipal valuer stated that the valuation was done according to the market value of the land at Mitwero based on the sale transactions done by residents of Mitwero...The applicant through PW1 to PW5, stated that the market value of the suit land per acre was tshs 5,000,000/=, 8,000,000/= and Tshs 15,000,000/= without any legal basis. The applicants ought to have produced a counter valuation report showing that the market value at Mitwero per acre stands at the alleged amount.*
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> *It was also a duty of the applicants to establish that the measurements taken by the respondent were not correct but they failed to do that. It is therefore considered that the same as mere afterthoughts having no legal basis.*

I further agree with the trial tribunal that in the circumstances of the case since the land in dispute is not jointly owned by all appellants, and each appellant has his/her own piece of land, it was the duty of each appellant to establish his/her size of land and the amount of compensation which was denied by the respondent as alleged, instead of making a general complaint as they have done herein: See ***Haruna Mpangaos and 932 others v Tanzania Portland Cement Company Ltd,*** Civil Appeal No. 129 of 2008 (unreported).

On those grounds, the appellants' appeal is devoid of merits and it is hereby dismissed with costs.

DATED and DELIVERED at MTWARA this 7th day of June, 2016.

F.A. Twaib

Judge