IN THE HIGH COURT OF TANZANIA

DODOMA DISTRICT REGISTRY

AT DODOMA

MISC. LAND APPEAL NO. 15 OF 2016

(Appeal from the District Land and Housing Tribunal of Kondoa

Land Appeal No. 65 of 2014

Arising from Land Case No. 6 of 2014, Kikore Ward Tribunal)

GEJEE GILOSA..... APPELLANT

VERSUS

HASSANI MOHAMED DUWE.....RESPONDENT

Date of JUDGEMENT- 23RD/06/2017.

Mansoor, J:

JUDGEMENT

Before Kikore ward Tribunal (the ward tribunal) the appellant, Gejee Gilosa was a successful party in an application No. 6 of 2014.The main complaint before the ward tribunal was that the respondent, Hassan Mohamed Duwe had on 22/1/2014 trespassed into a twelve acre piece of land which the appellant claimed ownership thereof. The appellant told the ward tribunal that having trespassed into his land the respondent planted maize

thereat. The appellant's account was that he inherited the land from his father.

To prove his case the appellant brought several witnesses who testified in his favour namely; Umuri Simio(village chairman),Athumani Juma, and Maulidi Said Lubuvo.All the three witnesses said they knew of the trespass as the appellant had reported on the same to the village government where they happen to be members. In particular, Maulid said Lubuvo testified that he is a member to the village government and that the appellant was allocated 22 acres by the same in his presence. When visited the locus in quo this witness said the ward tribunal learned that the appellant is bordered with one Adam Musho on the east.

The respondent on the other hand declined the allegations of trespass leveled against him. He testified that he came into possession of the land in dispute since 2000.However, in 2002 other people he did not know claimed ownership thereof. It is at this juncture he was deprived of his right of quiet possession of the land in dispute. Following the incident he had to report the matter

to the village government against the ones who purported to claim ownership of the Suitland. Not until he appeared before the ward tribunal to face the allegations of trespass that he came to know the people who had also claimed ownership of the land in dispute.

In substance, the respondent testified that he is the rightful owner of the disputed land as was allocated the same by the village government since 2002 and in 2004 his ownership was confirmed by the same. He tendered documentary evidence to that effect. Apart from other proof of ownership the respondent tendered in evidence a contract evidencing sale of a five acre piece of land to one Marry Fidelis Lymo. When questioned on the possibility of bringing the ones who had witnessed the documents evidencing his ownership over the disputed land he said he would summon them but did not. Equally, when he was required to mention a few neighbors he borders with in so far as the land in dispute is concerned he happened not to know any.

On the strength of evidence before it, the ward tribunal found for the appellant. According to the ward tribunal the

documentary evidence as to ownership of the land in dispute did not do the needful in as much as the appellant failed to bring the witnesses to back up his version of story that they witnessed the documents in question to clear the doubt or rather cast a possibility that the same may have been forged. Also the appellant's failure to name few individuals he borders with at the disputed land led to unfaithfulness.

Dissatisfied with the ward tribunal's finding the respondent appealed to the District Land and Housing Tribunal of Kondoa (Land Appeal No.65 of 2014)(DLHT).He filed four grounds of appeal in his memorandum of appeal which can conveniently be culled to two. One, the appellant did not tender documentary evidence to prove ownership of the disputed land and thus the ward tribunal erred in law and fact in deciding in his favour and (2) the ward tribunal erred in law and fact in deciding in favour of the appellant when it was not properly constituted.

Unlike the ward tribunal the DLHT found for the respondent on account that he had tendered before the former the documents evidencing his ownership over the

disputed land. Also the DLHT found the appellant's version being contradictory as he happens to have claimed inheritance over the disputed land as aforesaid but at some point said was allocated the same by village government. Aggrieved, the appellant appealed to this court. He has put forward three grounds of objection. One, the DLHT erred in law and fact in holding that the respondent is a lawful owner of the land in dispute by placing its reliance on a written letter to that effect and thereby disregarding the provisions of the village Land act[Cap 114 R.E 2002](the act).Two, the DLHT erred in law and fact by placing its reliance on respondent's documentary evidence to prove his ownership over the disputed land when in fact the ward tribunal doubted the authenticity thereof and three, the DLHT erred in law and fact in holding that the appellant contradicted himself merely because he initially testified that he inherited the disputed land and at some point said was allocated the same by the Hurui village council.

When the matter was scheduled for mention on several occasions the respondent did not appear. A substituted service through publication was proposed and effected as the respondent's whereabouts was unknown and yet

proved futile. The respondent was a no show person. The matter was scheduled to be heard exparte. When the matter came up for hearing on 5th June, 2017 the appellant's learned advocate, Mr.Ngongi prayed to argue the same by way of written submission. This court granted the prayer.

Submitting in support of appeal the appellant contends that the records of the ward tribunal show that the respondent claimed to have been allocated about 180 hectares (one hundred and eighty hectares) through a letter dated 14/08/2010 when in fact the provision of regulation 76(2) of the village Land Regulations, 2001 (the regulations) requires consent of the district council to approve such an allocation. I find it incumbent to correct right away that as per the receipt evidencing payment of certain charges in respect of the disputed plot and not the said letter, the respondent happens to have been allocated 180 acres and again not 180 hectares as the appellant submitted. The provision of regulation 76(2) of the regulations cited by the appellant provides as follows:

"Where an application is made to the village council for an amount of land whether by

way of a customary right of occupancy or by way of a derivative right or consent to the grant of a derivative right which is between twenty – one and fifty hectares in extent, the village council shall forward that application to the district council having jurisdiction in the district where the village is situate together with its recommendation on that application and shall not grant that application unless and until the district council shall signify in writing to the village council that it consents to that application"

As the procedure was not followed the allocation of 180 acres to the respondent contravened the cited mandatory provision of the law, he charges.

The appellant submitted further that the proceedings before the ward tribunal show that the respondent was unable to bring neighbours whom he borders with as witnesses in respect of the disputed land but failed. The failure in question entails that the ward tribunal was justified

not to believe his version of story and the DLHT ought not to place reliance on his testimony.

I have scanned the evidence before the ward tribunal and gone through the decision of the DLHT and gather that the appellant's case before the ward tribunal was stronger than that of the respondent for the reasons that will be apparent shortly. The ward tribunal visited the locus in quo along with its members in which case the appellant and respondent were the ones presumably, identifying their respective pieces of land. At this juncture the ward tribunal had the advantage of observing what was told in court by seeing the land in dispute.

Another misgiving is on the documentary evidence which the DLHT regarded as being the conclusive evidence that the respondent is the rightful owner of the plot in dispute does not suggest that the land measures 180 acres .But, a certificate evidencing confirmation of ownership over the disputed land show that he was allocated a piece of land measuring about 1140 paces which is equal to only 16 or so acres. In the circumstances as this no one can say with certitude that the respondent was truly allocated the

disputed land with the village council given the said discrepancy in evidence. Indeed, not in the circumstances as this where the respondent did not summon member(s) of village council whom he claimed had witnessed the documents to testify in his favour.

I do not accede to the appellant's invitation that the fact that the receipt evidencing ownership of the Suitland implies that the respondent was allocated 180 acres as shown therein entails that he was allocated the same in contravention of the provision of regulation 76(2) of the regulations. Whereas I agree with the appellant that the respondent's testimony on the number of acres he owns has not been so far inconsistent for on one occasion said he was allocated 42 acres and on the other said was allocated about 100 acres, by no means is caught up with regulation 76(2) of the regulations.

Regulation 76(2) of the regulations does not permit allocation of land by village council by way of customary right of occupancy. As far as I could gather from the testimonies of various witnesses herein and the documentary evidence tendered in evidence the

respondent's allocation of land cannot be said to qualify and be termed as 'customary right of occupancy'. Customary right of occupancy has been defined under section 2 of the act in the following words:

> ***"customary right of occupancy" means right of occupancy created by means of the issuing of a certificate of customary right of occupancy under section 27 of this Act and includes deemed right of occupancy"***

Section 25(1) (2) (a) of the act requires a certificate of customary right of occupancy to be in a prescribed form. My understanding of the stance of the law above is that the requirement set under regulation 76(1) and (2) only binds the holder of a certificate of customary right of occupancy. As there is no proof so far that the respondent has a certificate of title, one that is in a prescribed form, regulation 76(1) and (2) cannot apply in the circumstances. If anything, the respondent has only hand written documents claiming to substantiate that he is a true owner of the suit land.

Otherwise, I remain alive to the effect that the respondent failed to prove his ownership to the land in dispute more so because his version of story was not backed up by any witness before the ward tribunal even those one would have expected to testify in his favour. For example the respondent was expected to summon the village council members who according to him, had witnessed the documents he referred as evidence of ownership over the suit land. Equally the respondent was expected to summon the said Dukuma Alos,a person he claimed to have permitted to occupy the suit land on temporary basis(caretaker).

It is for the foregoing reasons this court allows the appeal and quash the decision of the DLHT.

Based on the above reasoning, this appeal has merits, and it is hereby allowed, with no orders as to costs.

DATED at **DODOMA** this **23rd** day of **JUNE, 2017.**

L. MANSOOR

JUDGE

23rd JUNE 2017