IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

[IN THE DISTRICT REGISTRY]

AT ARUSHA

LAND APPEAL NO. 10 OF 2016

(From the Decision of the District Land and Housing Tribunal for Karatu District in Land Application No. 12 of 2014)

YONA TLATLA..... APPELLANT

VERSUS

MALE GINAWAN.....RESPONDENT

JUDGMENT

Date of Last Oder:-18/04/2018

Date of Judgement:- 08/06/2018

BEFORE: S.C. MOSHI,J

The respondent Male Ginawani sued the appellant Yona Tlatla before Karatu District land and Housing Tribunal over a piece of land that is located at Endonyawet village, Buger ward within Karatu district. The Tribunal decided in favor of the respondent. Aggrieved by the decision, the appellant preferred a petition of appeal that contained 10 grounds of appeal as follows:-

1. That, District land and the Housing Tribunal erred in law since it has no any Jurisdiction to try the matter, basing on the value of the land lodged by the respondent by then applicant in his application was less 3,000,000/= Tsh. (Three Millions Tsh) as the laws set the limits for the application to received filed and dealt by the district land and the Housing Tribunal minimal is 3,000,000/= -

50,000,000/= Tsh for immovable Property and 45,000,000/= for immovable properties, so Tribunal has erroneously received filed and dealt with the matter.

2. That, District Land and the Housing Tribunal of Karatu erred in law and facts, by giving decision without giving the reasons for such decision, the facts which is mandatory to be follows as stipulated by laws.
3. That, Tribunal erred in law and facts, by receiving applicant's/respondent's application without the cause of action to be disclosed, applicants/respondent hasn't mentioned the size of the land he claimed, when you go through the Decree written by the Tribunal you will also see that the size of the land which the applicant/respondent claimed is not stated and if you go through application for the execution the applicant/respondent applied for the execution which states in paragraph 3(A) of the form No. 3, he said Quotation ..... NAOMBA NIKABIDHIWE SHAMBA LANGU ZAID YA EKARI 31/2 ..... The word zaidi signifies that, the applicant/respondent and the Tribunal have no knowledge of the size of the land which were dealt with, this is the big error not acceptable by the laws.
4. That, Tribunal erred in law and facts by exaggerating that the land I bought is 17 acre, the facts and the truth is that the land which I bought is seven acres, I bought from the one TLUWAY AXWESSO, and the purchasing deeds were lost, I reported the matter to the Village authority, surprisingly respondent at the hearing brought, the Copy and is marked as EXHIBIT P2 AND P3, Tribunal has failed to direct its mind that, the Contract falls under Private laws and the

one who is supposed to have copies is me and the one who sold it to me, and not an authorized third party as the respondent did, so it is very clear that, respondent has sabotaged and still the purchasing deed and made some forgeries and alteration in order to be seen that I invaded applicant's/Respondent's Land.

5. That, Tribunal erred in laws by failing to base on my words and the testimony of my witnesses that, the Land which I bought is 7 acres as the respondent tried to lie Tribunal.
6. That, Tribunal erred in laws and facts, for failing to base their opinion and the decision on the Village Committee members testimony, which they clearly told Tribunal that, the disputes was over boundaries and the matter was resolved, Tribunal should knows that, Committee knows better than them Tribunal and they can't lie, but yet Tribunal hasn't put their eyes on that testimony.
7. That, Tribunal erred in law and fact, by visiting the **LOCUS IN QUO**, Tribunal didn't collect independent/Tribunal evidence from the villages/audience the thing which were important, but instead they just go and see and come out with the conclusion, Villagers knows much than them, so this is also a big error.
8. That, I Hereby by notifying your Court that, I didn't invade or encroach respondent's land, this is also proved by the land Village Committee members, but yet Tribunal didn't approve it.
9. That, Tribunal erred in law and fact by saying the decision was made by assessors and the chairman, while there is no any statement by the assessors and also their signatures are not seen, this proves that, this is not the decision of the Tribunal as the chairman said.

10. That, I am Praying wherefore all the decision of the District land and the Housing Tribunal quashed since unjustly and unfairly made, and the respondent should pay all the costs of the suit.

Before me the parties appeared in person and the appeal was disposed of by way of written submissions. The appellant abandoned the 1st, 2nd, 4th, 5th, 7th, 8th, 9th and 10th points of appeal. Hence he argued the 3rd and 4th grounds of appeal only. He among other things submitted as follows; the gist of the 3rd ground of Appeal is that the Respondent sued the Appellant at the trial Tribunal for undisclosed Suitland. Respondent's omission to mention the boundaries of the Suitland in his Application at the trial Tribunal was very fatal to his entire claim. This is because the *name* of any land is its boundaries. If no boundaries are mentioned in a land claim or suit, the claim or suit discloses no cause of action for indeed the name of any land is its boundaries and no land is claimed if no boundaries are mentioned in that suit. This automatically renders meaningless the first issue framed by the trial Tribunal which was *"who is the owner of the disputed land"*. This issue ought not to have been framed as the land claimed was not known at the trial Tribunal when the said issue was framed because there was no description of the land claimed in the suit. The substance of any Judgment is the Decree. Reading the contents of the trial Tribunal's Decree, boundaries of the Suit land are not stated.

He also stated that, that, the Tribunal erred in law and facts by exaggerating that the land the appellant bought is 17 acre, the facts and the truth is that the land which the appellant bought is seven acres.

The appellant bought it from TLUWAY AXWESSO, and the purchasing deeds were lost. He reported the matter to the Village authority, surprisingly, the respondent at the hearing brought, the Copy and is marked as EXHIBIT P2 AND P3. The Tribunal has failed to direct its mind that the Contract falls under Private laws and the one who is supposed to have copies is him and the one who sold it to him, and not an authorized third party as the respondent did. So it is very clear that, the respondent has sabotaged the purchasing deed and made some forgeries and alteration in order to show that the appellant invaded applicant's/Respondent's Land.

He also said that, the Tribunal erred in laws and facts, for failing to base their opinion and the decision on the Village Committee members testimony, which they clearly told Tribunal that, the disputes was over boundaries and the matter was resolved. The Tribunal should have known that, Committee knows better than them and they can't lie, but yet the Tribunal hasn't put its eyes on that testimony.

He also argued that, the other aspect is that in the trial Tribunal, the Respondent stated the value of the Suitland as being only 2,000,000/=. The maximum pecuniary jurisdiction of the Ward Tribunal as stipulated under section 15 of the Land Disputes Courts Act, 2002 on a disputed land property is Tshs. 3,000,000/=. The Respondent had no *valid* reason to file his claim at the District Land and Housing Tribunal on a land claim whose value was less than T.shs. 3,000,000/=. He was supposed to have filed his claim at the Ward Tribunal because he was not represented by an Advocate.

He contended that, under such circumstances the Respondent was under the law obliged to have filed his claim at the trial Forum of the lowest grade as stipulated under Section 13 of the Civil Procedure Code – Cap. 33 R.E. 2002 which reads thus:

> *......"Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of resident magistrate and a district court shall be deemed to be courts of the same grade".*

He argued that the trial District Land and Housing Tribunal fatally erred in law in entertaining Respondent's claim on a land whose value was only Tshs. 2 million. The trial Tribunal acted without jurisdiction. In this respect he cited the decision of the Court of Appeal of Tanzania, sitting at Zanzibar in Civil Appeal No. 11 of 2001 between ***WKT & TRUST COMMISSINER as Administrator of the Estate of the late ZAWADI Binti SAID AND 1. ABBASS FADHILI ABBASS 2. REGISTRAR OF DOCUMENTS*** Honourable Ramadhani, J.A as he then was, held that: *"The issue of jurisdiction is fundamental and it can be raised at any stage in proceedings".*

In respect of the 6th ground of Appeal, he inter alia said that, the trial Tribunal erred on point of law in that it failed to give weight to the evidence adduced by the Appellant's witnesses at the trial. Had the deserved weight been given to the evidence adduced by the members of the Village Committee who gave evidence on Appellant's side, the trial Tribunal would have reached at a proper decision and would have rightly dismissed Respondent's claim. Appellant's witness one Gida Kumay who is the Member of the Village Committee in his evidence stated that the

dispute between the parties in that action was boundaries. He stated that the *Committee set* the boundary between the two by planting Sisal. This witness stated that .....:- *"Male is the one who has not crossed that sisal boundary. The Respondent's house has never been moved. It is still there where he built at the first time".* The last phrase that *....."it is still there where he built at the first time"* would definitely mean that the Appellant lived in his portion and within the sisal boundary set by the Village Committee and he did not encroach on Respondent's land but rather it is the Respondent who crossed the sisal boundary and entered upon Appellant's land.

He said that, the Respondent's claim against the Appellant at the trial Forum was not only clumsy and vague but he had no cause of action against the Appellant.

In response thereof, the respondent submitted *inter alia* thus; the issue of boundaries of the suit land was clearly stated by the witnesses who testified before the trial Tribunal including the Respondent and his witnesses. The trial Chairman of the trial Tribunal together with his assessors while accompanied with both parties to the suit, visited the locus in quo and after seeing the boundaries of the suit land and basing on the strength of the Respondent's evidence formed the opinion that the disputed land measuring 3.5 acres belong to the Respondent as such the Appellant was rightly declared as a trespasser. It follows therefore that, the fact that the trial Tribunal paid visit to the site where the disputed land is situated, it is clear that the trial Tribunal was very much conversant with the boundaries of the suit land. The trial Chairperson gave very sufficient reasons for holding in favour of the Respondent. He

argued that, it is pertinent however to be noted that, even Regulation 3(2) (b) of the District Land and Housing Tribunal) Regulations of 2002 which governs the procedures and manner which the application is to be filed before the District Land and Housing Tribunal do not impose the requirement of stating boundaries in the application as it simply requires that the application should state the address or location of the suit land only. The Respondent before the Trial Tribunal submitted and tendered the sale agreement which proved that he lawfully acquired the disputed land through purchase and the same was rightly admitted as exhibit P1 by the trial Tribunal. Recognition of this document is very crucial as it states clearly the boundaries of the Respondent's land which he claimed to have been encroached by the Appellant as such the assertion that the boundaries of the suit land was not stated is of no any weight.

Regarding pecuniary jurisdiction, he stated that, the trial Tribunal was right to entertain this case because it satisfied itself that it has jurisdiction over the matter. But again the Respondent did not state that the value of the disputed land is only Tanzania Shillings 2,000,000/= as lamented by the Appellant's Counsel as there is nowhere in the records of the trial Tribunal where the Respondent stated so. But again the issue of jurisdiction goes to touch the substantive point of law which in fact calls for the preliminary objection which has to be raised at the earliest stage of the case. It follows therefore that, raising this point at this stage is an afterthought which in any way cannot be entertained by this court.

I have considered the parties submissions. I will begin discussing the 3rd ground of appeal. This point centers on the question as to whether the claim revealed any cause of action. This question could have be dealt

with at the earliest stage of the trial, however it seems that the trial tribunal neglected it. This question is manifested in the pleadings, especially in the statement of defense, (Majibu) the first paragraph where it is written:-.

> *"Kwamba kinachotakiwa ni kiasi cha ardhi niiiyovamia mipaka yake na mahali ilipo i.e location. Siyo anwani wala namba ya simu yake."*

Again, the 6th paragraph reads thus:-

> *"Kwamba mlalamikaji aweke wazi madai yake asifanye ubabaishaji, kwani ukubwa wa eneo ninalomiliki ama uhalali wa mkataba wangu siyo msingi wa madai ya uvamizi."*

Reading through the two paragraphs, it is obvious that the appellant questioned the particulars of the suit land that was involved in the claim; the description and the size of the suit land.

The complaint Form did not disclose the description of the suit land nor does it disclose the size. Paragraph 3 of the Form shows the address but it does not show the boundaries of the farm. Again in paragragh 6 the respondent did not state the the description of the suit land nor did he state its measurements. The paragraph reads thus:-

> " Mjibu maombi alinunua shamba Ekari saba lililopakana na mimi mara kwa mara ameendelea kuvamia eneo kubwa na kudai kuwa ni mali yake. Aidha aliyonunulia shamba hilo kiasi cha Ekari

saba ameibadilisha kwa ujanja na kuandika kwamba ni ekari kumi na saba....."

Reading through the averments, it is obvious that the respondent did not indicate the farm the land that he was claiming. There was no way that the other party or the Tribunal could have known the suit in dispute.

It is true, as argued by the appellant that in the circumstances the land in dispute was not known and there is no way that the decree could be enforced. The size and description of the land is not known.

Having discussed as I did, it is obvious that the claim did not disclose the cause of action.

That said, there is no need of discussing the other points of appeal. Consequently I quash all the proceedings and judgment of the Trial Tribunal and I set aside all orders made there from.

Each party should bare its own costs.

Right of Appeal is explained.

S.C. MOSHI

JUDGE

8/07/2018