IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL NO. 2 OF 2020

(Arising from the judgement and decree Land Application No. 67of 2015 of Maswa District Land and Housing Tribunal)

DINDAYI SAGUDA..... .....APPELLANT

VERSUS

MAYENZE MIPAWA SWEYA.....RESPONDENT

EXPARTE JUDGEMENT

Date of Last Order: 25th June, 2020
Date of the Judgment: 14th August, 2020

MKWIZU,J.:

In the District Land and Housing Tribunal of Maswa **Mayenze Mipawa Sweya,** the respondent, instituted a land dispute against **Dindayi Saguda appellant and DED Bariadi Town Council** who is not a party in this appeal.

Brief facts constituting the claim were to the effect that, the respondent had in the year 2006 hired his land measuring 6 acres to the appellant for four years. In his absence, appellant applied for and obtained a Customary Title Deed. In the year 2013, the DED Bariadi Town Council. Conducted a

valuation for purposes of compensation. Respondent was only compensated one acre on the pretext that the rest of his 6 acres were the property of the appellant who had a customary title over the suit land No NyMT/JSS/14.The respondent the from applied in the DLHT to be declared the owner of the suit land and that , the Customary Title be revoked and the appellant be declared a trespasser. The respondent, on his part had claimed that he purchased the suit land from the respondent. Having heard both parties, The DLHT was of the view that respondent did prove his case, he was declared owner of the suit land, and DED Bariadi Town Council was ordered to pay the respondent compensation to the tune of 9,171 826 as per the valuation report.

The appellant is aggrieved. He has come to this Court with six grounds petition of appeal that:

1. The respondent having failed to give in his pleading/ Application sufficient particulars of 6 acres of land allegedly claimed from the appellant, the chairman of the trial tribunal lacked jurisdiction to hear and determine a land dispute in respect of such six acres of Land.

2. That the chairman of the tribunal erred in law when he drew a first issue which is central contrary to the law.

3. That the chairman of the trial tribunal erred in law for lying in his judgement on exhibit PE2 which does not form part of trial tribunal's record.

4. That the chairman of trial tribunal erred in law for admitting Exhibit PE2 as omnibus.

5. That the chairman of the trial tribunal erred in law and fact in holding that appellant was licensed by respondent to occupy and /or use the suit land.

6. That the chairman of the trial tribunal erred in law in holding that the appellant applied and was issued with customary right of Occupancy over suit land without the respondent's concert.

When the matter came for hearing on 24/6/2020, respondent did not enter appearance though duly served on 20/2/2020 and he once appeared in court

on 17th March 2020.This necessitated the court to accede to the appellant's advocate prayer for hearing ex- parte and the court so ordered.

The appellant was being represented by Mr. Audax Constantine advocate who argued the appeal orally. He abandoned grounds No. 3,4,5 and 6 and argued grounds 1 and 2.

Starting with grounds 2 of the appeal, Mr. Audax submitted that at Maswa DLHT, respondent through paragraph 6 (a) (ii) had alleged that he had hired his land to the appellant and left to Mwanza while the WSD was to the effect that appellant purchased the said land from the respondent. In framing the issues, the learned trial chairman, framed a central issue that *"whether or not the applicant is the legal owner of the suit land which he hired to the respondent (now appellant) from 2006 to 2010"*

Mr. Audax said, the issue was framed in contravention to Order 14 Rule1 (3) of the CPC which requires the issues to be framed basing on the contested material facts arising from the party's pleadings. He said, the issue was incorrectly framed as on the face of it, it adjudged the appellant the loser. He prayed the court to declare the trial tribunals decision defective. On this

Mr. Audax referred the court to the case of **Stansalaus Rugaba Kasusura and the AG V. Phares Kabuye** (1982) TLR, 338 and invited the court to order a re trial.

As regards to ground one of the appeal, Mr. Audax submitted that the application that was tabled before the tribunal did not disclose sufficient particulars of the suit land. Making reference to paragraph 3 of the application, Mr. Audax said, the respondent described the land as located at at Nyalumata village, Sumanda Ward within Bariadi Town without a specific description of the boundaries and all covering features surrounding it for easy and proper identification to enable the tribunal make an executable decree. He cited the case of **Daniel Dagala Kanuda (As an administrator of the estate of the late Mbalo Lusha Mbulida) V. Masaka Ibeho and 4 Others**, Land appeal no. 26 of 2015 H/C Tabora (unreported).

He finally urged the court to nullify all the proceedings, judgement and decree and order for a retrial.

The main issue is whether this appeal has merit. Starting with ground No. 2, it is argued that the trial tribunal framed issues contrary to Order 14 Rule 1 (3) of the CPC. I have gone through the record as well as the impugned judgment and observed that it is true that the tribunal on 11/10/2016 at page 9 of the typed proceedings did frame the following issues for its determination:

1. *Whether or not the appellant is the legal owner of the suit land which he hired to the 1st respondent from 2006 to 2010.*

2. *Whether or not the 1st respondent during the hiring time, he took possession of the suit land and obtained customary Right of occupancy without the consent of the applicant.*

3. What reliefs entitled to the parties.

Rule 1 (3) of order 14 of the CPC provides:

> *"1 (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue."*

Discerned from the above provision of the law is that, issue are to be framed from the facts of the case that need to be proved. Mr. Audax proposed that tribunal framed an issue which is not contested and that from its context, it adjudged the appellant the loser from the beginning. He concluded that failure to frame issue properly lead to a wrong decision and therefore the vitiates the proceedings.

The question here is whether the issues framed above emanated from the contested material facts of the parties pleadings? Paragraph 6 of the applicant's application read:

"6. (a) Cause of action/brief statement of facts constituting the claim:

(i) That, the disputed land measures about 6 acres is the lawful property of the Applicant which he has been allocated by his late father one Mipawa Sweya in 1997. Also at that period the Applicant's father has allocated to the Applicant's such relatives such as: (i) Kitemba Mipawa 7 acres, (ii) Kilala Mipawa 10 acres, (iii) Sweya Mipawa 5 acres, (iv) Mayenze Mipawa (the Applicant) 7 acres, (v) Kunu Mipawa 4 acres and (vi) Sosoma Mipawa 6

acres. After have been allocated they continued to use their lands without interrupted by anybody.

(ii) *That, in 2006 the Applicant travelled to Mwanza looking for live and his 7 acres of land hired to Dinday Saguda (the 1st Respondent) for four years, from 2006 up to 2010. When the Applicant was at Mwanza the 1st Respondent applying to the Respondent for surveying the hired in order to get a Customary Title Deed for his name, the application which was granted by the 2nd Respondent.*

(iii) *That, in 2013 when the Applicant returned back from Mwanza, the 2nd Respondent sent his Valuators to value the Applicant's land together with his relative's land in order to be compensated and allow the 2nd Respondent to survey that area. The Applicant's land was value only one acre instead of all his 7 acres and he was paid compensation of Tshs. 1,300,000/= only for one acre, but his relative was paid compensation for all their value land.*

(iv) That, the Applicant make follow up to the 2nd Respondent know how he has been paid compensation for only one acre instead of his 7 acres, the 2nd Respondent informed him that the remaining 6 acres has an obstacle with the 1st Respondent because it has been surveyed and issued a Customary Title Deed for him (the 1st Respondent). After the Applicant follow it in deed, he found that the 2nd Respondent issued a Customary Title Deed Nos. NYMT/JSS/9; NYMT/JSS/14 and NYMT/JSS/87 in the name of 2nd Respondent without consent from the Applicant also without involving Nyaumata Village Council nor the Ward Executive Officer of Somanda Ward. "

And paragraphs 5,6,7 and 8 of the 1st respondent's written statement of Defence states:

"*5. That the contents of paragraph 6(a) (i) of the Application are not known to the 1st Respondent.*

6. That the contents of paragraph 6(a) (ii) of the Application are strongly disputed and the Applicant shall be required to prove the same strictly, the 1st Respondent further avers that he is a

*lawful purchaser for value from the Applicant way back in 2006. Also being a lawful purchaser for value the 1st respondent was and is free to do anything in his area. Leave is sought to make a copy of the Customary Title Deed be annexed hereto and marked as **"DS1"** and form part of this Written Statement of Defence.*

7. *That the contents of paragraph 6(a) (iii) of the Application are strongly disputed, and the 1st Respondent further states that the Applicant was there the valuation was conducted and during payments to the 1st Respondent he objected but later his objection was overruled and the 1st Respondent was successfully compensated. Leave is sought to make a copy of the previous cancelled cheque be annexed hereto and marked as **"DS2"** and form part of this Written Statement of Defence.*

8. *That the contents of paragraph 6(a) (iv)of the Application are vehemently disputed and the 1st Respondent further states that the Village Council and neighbours surrounding the land were involved."*

Issues of ownership of the suit land and whether respondent hired the suit land to the appellant were contentious as far as the above quoted part of the pleadings are concern. The proposition made and the framing of the complained issue No 1 above, did came out of the pleadings. This was in line with the provisions of order 14 Rule 1 (3) of the CPC. Mr. Audax suggested that from its proposition, the first issue adjudged the appellant a loser. I think this is a misconception. First of all, non-framing of issues per see is a procedural irregularity which is only fatal if it occasions failure of justice to the parties. This is the position in the case of **Norman V. Overseas Motor Transport** [1959] EA 131, where it was held:

> *"The failure to frame issues is an irregularity, the question would appear to be whether notwithstanding the failure to frame issues the parties at the trial knew what the real question between them was, that the evidence on the question had been taken and the court dully considered it* "

Apparent from the above is that an omission to frame an issue may not be fatal as long as the parties at the trial knew the real question between them and evidence is taken on it and the court observes it.

In Paragraph 6 of the application quoted above, applicant (now respondent) alleged that he is the owner of the suit land and that he hired the same to the appellant (original respondent) who instead and without the respondent's consent, applied for and granted Customary Right of Occupancy. On the other hand, paragraphs 5, 6, 7 and of the WSD denied the claim by the respondent. Parties did present their evidence for and against the application and lastly the tribunal did consider the parties evidence before it rendered its decision. The above position is fortified by the trial court's decision at page 9 of the typed decision, I quote for convenience:

> *"In order to tackle the application at hand I must start my determination with the first issue that is whether or not the applicant is the legal owner of the suit land which he hired to the 1st respondent from 2006 to 2010.*

The answer to this issue is in the affirmative because the applicant has proved his claims on the balance of probabilities that he was allocated 7 acres by his late father in 1999 but in 2006 he hired the same to the 1st respondent for four years at Ts. 350,000/= as from 2006 to 2010.

There is no evidence which proves that he sold the suit land to the 1st respondent in 2006 because even the 1st respondent did not tender any sale agreement and during cross examination he admitted that he has n any sale agreement.

The applicant have proved by documentary evidence that he is the legal owner of the suit land as per PE2 collectively as his evidence has been highly corroborated by PW2 Joseph Shabalanya who was ordered by the Town Director to recognize the real owner of the suit land hence he confirmed that the real owner of the suitl and is the applicant herein (see PE2 dated 06/02/2015)"

Deducing from the above party of the trial triunal's decision, it is obvious that parties were aware of what they were litigating for and what was in dispute and the trial chairman did consider the evidence of both sides on the

issue on controversy before it arrived into its decision. I find nothing to fault the trial tribunal. The second ground of appeal is unmerited.

Coming to the first ground of appeal where the appellant is faulting the tribunal for considering a land matter whose description was not sufficiently given. It is a trite law that, a party in a land dispute should give sufficient description of the suit land. The aim being to inform the court of the identity of the suit land as against all the other pieces of land surrounding it. In the case of **Daniel Dagala Kanuda (administrator of the estate of the late Mbalu Kashaha Bulada)** (Supra) cited by the appellant's counsel, it was stated at page 4 -5 that:

> *"The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it "*

In our case, respondent gave very short description. Paragrapg 3 of the application stated "***the disputed land is located at Nyaumata Village, Somanda ward within Bariadi Town Council"***

This would seem very insufficient information to inform the court as well as the opponent part the real location of the suit land. Surprisingly however, my perusal of the records has encountered nothing suggesting that appellant was not made to understand the location of the suit land. Both parties appeared to have enough knowledge of the issues between them as they all adduced evidence without hesitancy and called witnesses to support their respective positions.

It is the position of the law under section 45 of the Land dispute Court Act, Cap 216 R.E 2019 that "No decision or order of a ward tribunal or district land and housing tribunal shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account of the improper admission or rejection of any evidence unless such error, omission

or irregularity or improper admission or rejection or evidence has in fact occasioned a failure of justice."

Guided by the above provision of the law I am of the settled view that the omission to give detailed descriptions of the suit land under the circumstances of this case did not occasion any failure of justice. This grounds also crumbles.

In the end, the appeal is dismissed for lacking in merit. The respondent is awarded his cost.

DATED at **SHINYANGA**, this **14th** day of **AUGUST**, 2020

E.Y.MKWIZU
JUDGE
14/08/2020

COURT: Right of appeal explained.

E.Y. MKWIZU
JUDGE
14/08/2020

THE HIGH COURT OF TANZANIA