IN THE HIGH COURT OF TANZANIA

AT TABORA

LAND APPEAL NO. 11 OF 2019

(Arising from Tabora District Land and Housing Tribunal,
Land Application No. 39A/2017)

HAPPY IBRAHIM ..... 1ST APPELLANT

IBRAHIM MANONI ..... 2ND APPELLANT

JOSEPH JOHN ..... 3RD APPELLANT

Versus

PATRICK PAULINO MIKINDO ..... RESPONDENT

JUDGEMENT

13/03 & 27/03/2020

BONGOLE, J.

This appeal arises from the decision of the District Land and Housing Tribunal for Tabora at Tabora in Land Application No. 39A/2017. The facts giving rise to this appeal are that the dispute was on the piece of land situated at Mabatini Area, Urambo Urban whereby the Respondent claims to own the same as he bought the land on 22/09/2010 from one Tatu Said as per the sale agreement. On the other hand the first appellant Happy Ibrahim and the third appellant Joseph John claims to buy the same from Maganga Bakari (who was the first Respondent in District Land and Housing Tribunal) and the second Appellant Ibrahim Manoni respectively.

The Respondent claims that the 1st and 3rd Appellants are the trespassers to the land while the 1st and 3rd Appellants argue to own legally the same and they are not trespassers.

The appellants aggrieved by the decision of the District Land and Housing Tribunal for ordering that the Respondent has legal foundation and he has lawful owner of the suit land with exclusion from any other person including the Appellants, the Appellants have preferred the appeal to this court armed with the following grounds:-

i) That, the trial tribunal erred in law and in fact in failing to evaluate the evidence before it thus misdirecting itself in consideration thereof consequently arriving in wrong judgement.

ii) That the trial tribunal erred in law and in fact to rely on solely hearsay evidence as it is not true that the appellants have ever exceeded to the Respondent land and the appellants' evidence holds water than that of the Respondent.

iii) That, while admitting that the 1st and 3rd appellant legally bought the dispute land it was wrong for the trial tribunal to order structure and or building elected on the disputed land be demolished.

iv) That, the trial tribunal erred in law and fact to hold that the appellants have trespassed on Respondent land while they were no proof of the same.

v) That, trial tribunal erred in law and fact to hold that the disputes was solved and determined by the Urambo District Commissioner without due regard that the District Commissioner has no jurisdiction to determine the right of ownership of the parties.

vi) That the trial tribunal erred in law and fact to hold that the land of Tatu Said in Eastern side while neither Tatu or her administrator were ever called to testify or prove on the same.

It is on the above stated grounds the appellants pray to this court as follows;-

(a) That the appeal be allowed.
(b) That the decision of district land and housing Tribunal be quashed.
(c) Costs of the case be awarded.
(d) Any other reliefs this Honourable Court may deem fit and just to grant.

At the hearing Mr. Musyani Emmanuel and Mr. Saikon Justin, learned Counsel, represented the appellants and the respondent respectively.

Mr. Musyani prays to make his submission generally on those six (6) grounds as;-

He submitted that the 1st and 2nd appellant lawfully bought the disputed land way back in 2009 before the same land was sold to the respondent in 2010 and later on was sold to the 3rd Appellant.

PW2, Witness of the Respondent herein confirmed that the 1st appellant Happy Ibrahim legal bought the disputed land and she own legally the disputed land.

Mr. Musyani submitted that it was wrong for the trial tribunal to believe on story than evidence on record as the respondent himself informed the court and admitted that the 1st and 3rd Appellant have their piece of land in the disputed area. They were no any proof of existence of the land of the

late Tatu Said, and they were no proof if the said land is on Eastern side as alleged by the court.

Mr. Musyani added that the court failed to evaluate properly the evidence before it, as they were contradiction of evidence, PW1 (Respondent) recorded to have informed the court that the 1st Appellant (then 2nd respondent) has exceeded the boundary about 10 legs paces but PW2 recorded saying the 1st and 3rd Appellant (the then 2nd and 4th Respondent) have trespassed for 3 steps while PW3 recorded saying the 3rd respondent has trespassed 25 to 30 meter.

He cited the case of ***MOHAMED SAID MATULA VS. REPUBLIC*** (1995) TLR 3 the Court held that:-

> ***"Where the testimonies by witnesses contain inconsistences and contradictions, the court has a duty to address the inconsistences and try to resolve them where possibly else the court has to decide whether the inconsistences and contradiction are only minor, or whether they go to the root of the matter".***

That the evidence brought by the respondent was completely contracting by itself and it is not minor, it goes to the roof of the case

In reply, Mr. Saikon Justin Nokoren submitted that from the outset, ***the evidence before the trial District Land and Housing Tribunal was properly evaluated and the chairman correctly arrived at the***

decision, and therefore there are no valid grounds to disturb the decision of the trial Tribunal.

That, the allegation of the fact that the respondent purchased the disputed land in 2009 before the same land was sold to the respondent is baseless and unwarranted as it on record at **page 8 and 9 of the trial Tribunal's Proceedings** respectively, that PW1 (the respondent in the instant appeal) purchased the suit property in 2008 from one Tatu Saidi (deceased). The version of the proceeding read that, and he quote:-

> "..... I remember it was in year 2008 one Tatu Saidi, sold the dispute land to me about 1½ acre at 600,000/= ..... when I purchasing in 2008 we did write, but after trespasser and after the dissolving of dispute by the Afisa Tarafa, we were provided the sale agreement ....."

From the evidence on record at page 18, 19 and 20 of the same proceedings respectively, that PW2 (GREYSON GURAKI), a division officer, during examination in chief testified that, and he quote:-

> *"..... the one TATU SAID confirmed that she has sold the plot to the Applicant for T.shs. 600,000/= the sale agreement was signed on 22/09/2010 kitongoji Government of Mabatini ..... the money was paid in 2008, I was not see the money, but the late TATU SAID agreed to have taken the T.shs. 600,000/= ....."*

With due respect to the appellants' submission in chief, it does not deserve to arrest us even a while, as the applicant (respondent herein)

purchased the said disputed properly in 2008 as substantiated by PW1 and PW2 and not as claimed by the appellants. Therefore, the evidences on record were properly and correctly evaluated; and the order to demolish any structure or building was legally warranted.

Mr. Nokoren submitted further that, it is evident at page 34, 35 and 38 of the trial Tribunal's Proceedings respectively, that the 1st appellant (DW1) and 2nd Appellant (DW2), claimed to have purchased the disputed land from one MAGANGA BAKARI (1st respondent in the trial case) in 2009. Again, the 3rd Appellant (DW3) bought the same in 2014 from the 2nd appellant (DW2) as evidenced at page 40 of the trial Tribunal Proceedings. However, it is not disputed that the 1st and 2nd appellant to have purchased the disputed property from MAGANGA BAKARI (the 1st respondent in the trial case), the issue is that the 1st respondent sold the land which does not belong to him and the Appellants have failed to procure attendance of the 1st respondent during trial of the case to solidity their assertion. Therefore, the Appellants were defrauded and swindled by MAGANGA BAKARI as evidenced at page 9 of the Trial tribunal proceedings.

That the appellants at page 2 of their submission in chief argued that the PW2 testified that 1st Appellant (Happy Ibrahim) legally bought the disputed land. In opposition of this dubious argument, we are of the settled mind, that this assertion is not borne out by the record as there is nothing on record to prove so. *It is our contention that, even if he had said so, which is not true in the case, the appellants were defrauded to purchase the applicant (respondent in the instant appeal) disputed land and they should pay the price of their negligence.*

That the appellants argued that there was no proof of existence of the land of the late TATU SAID, no proof if the said land is on eastern side as alleged by the Tribunal. In opposition of this misconceived argument we are of the view that, the evidence on record speaks itself on this issue, as shown at page 16, 17, 18 trial Tribunal's proceedings and 5 of the trial Tribunal's Judgement.

He added that the evidence on record does not contradict each other, rather than complement each and nothing which was contradictory at all. That the disputed land was unsurveyed, and the witnesses approximated the measurement of the land area in which each appellant has trespassed in. And the measurement of the trespassed land was not in dispute, what was in dispute was that the said disputed land was sold to them by MAGANGA BAKARI. The appellants had failed to call material witnesses to justify their claim including but limited to the seller.

Further that the question of whether the District Commissioner (DC) has appointed any (commission) special committee to resolve the dispute cannot be raised at appeal, and the DC is legally empowered to issue any instruction or directive either orally or written to his subordinate as he did to PW2. The role of PW2 was to mediate the dispute as he did, and one is not barred by his mediation outcome, however a civilized person, is expected to respect the outcome of the mediation.

That the appellants have cited the case of **Mohamed Said Matula Vs. Republic (1995) TLR 3.** He said, this authority is irrelevant and distinguishable in the circumstances at hand. First and foremost, there was

no contradiction of witnesses, or contradiction which goes to the root of the matter, secondly the above case dealt with inconsistence and contradiction of witnesses in criminal cases and standard of proof is beyond reasonable doubt. Therefore, the rules and procedures in criminal cases cannot be applied in civil cases as standard of proof is on balance of probabilities in which the applicant (respondent in the instant appeal) has proved to the required standard.

That the appellants have Cited Article 24(1) of the Constitution of the United Republic of Tanzania 1977, to back up their argument of right to land. However, the said article shield also the applicant (respondent in the instant appeal) and what is matter was rules of evidence, and the evidence on record outweighed that of appellants.

He had it that the issue of District Commissioner's jurisdiction in respect of land dispute is uncalled for as the trial tribunal adjudicated the case under consideration as the tribunal of first instance and not as an appellate organ. The District Commissioner's office tried to mediate a land conflict with commendable initiative at least to say.

Finally that there was no any good reason to fault the tribunal's decision.

In a brief rejoinder Mr. Musyani insisted that the case so cited was relevant to the current situation and the court is not bound it may draw inspiration on the case, yet the office of District commissioner did try to mediate a land conflict but it did not declare that Tatu Said is the owner of the disputed land, it was wrong for the District Commissioner office to

declare that Tatu Said as the owner of the land, Section 62(2) of the Village Land Act Cap 114 RE 2002 reads as follows;-

"The following court are hereby vested with exclusive jurisdiction, subject to the provisions of part XIII of the land Act, to hear and determine all matter of the dispute, actions and proceedings concerning land, that is to say-

(a) The Court of Appeal,
(b) The Land Division of the High Court,
(c) The District Land and Housing Tribunal,
(d) The ward tribunal, and
(e) The village Land Council.

That the proper organ which could have declared the land to be of Tatu Said is the ward tribunal, the district land and housing tribunal and the High court he buttressed.

After considering the evidence on record and both submissions, I will now determine the grounds of appeal altogether as they both touch on the evaluation of the evidence. As can be glanced from the appellants' submission and the evidence on record, it is alleged that the trial tribunal did not properly evaluate the evidence before it and as result it made a wrong decision. That, the trial tribunal properly analysed the evidence before it and the respondent has a legal foundation. It is clear from the evidence that the visit of the tribunal to the locus in quo noted that the respondent has more credible simply because it noted that the 1st and 3th appellants had trespassed to the respondent's land.

It is also on the record that the area which the appellants alleged to be theirs was identified by the village government for Mabatin it was agreed that those people whom allocated the land by the village government for Mabatin they have to pay Tshs.400, 000 per portion of the land and the remaining portion of the land was handled to the owner Tatu Said who now is deceased. Then the land was handled to the owner Tatu Said when she sold the same to the respondent on 22/09/2010 for consideration of Tshs.600, 000/=.

In these circumstances, it is my finding that the trial Tribunal was correct to hold that the appellant were trespassers.

The respondent went to the office of the District commissioner for Urambo and lodge complains against the third appellant that he has trespassed to his land. Due to this complaint the office of the District commissioner conveyed the meeting so as to solve the matter amicably.

It follows that the trial Tribunal was perfectly entitled to arrive at the impugned decision, given the evidence adduced by both parties. In the premises, I do not find any reason to fault the decision of the trial Tribunal as the said decision is lucid and sound. I will not disturb it. Consequently, I find the appeal to have no merit, and I, therefore, dismiss it in its entirety with costs.

S.B. BONGOLE

JUDGE

27/03/2020

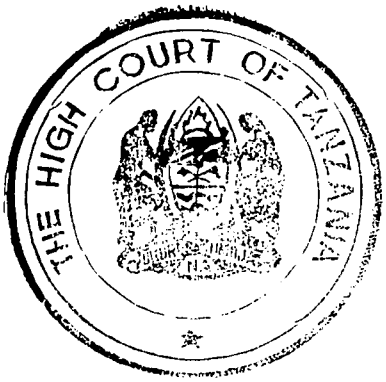
Judgement delivered under my hand and seal of the Court in chambers this 27/03/2020 in the presence of the parties.

S.B. BONGOLE

JUDGE

27/03/2020

Right of appeal is explained.



S.B. BONGOLE

JUDGE

27/03/2020