IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 25 OF 2020

(Originating from the District Land and Housing Tribunal for Karatu in Land Application no. 31 of 2017)

PETRO META SLAA..... APPELLANT

VERSUS

JOHN EMMANUEL GADIE..... RESPONDENT

JUDGMENT

7/9/2021 & 10/12/2021

ROBERT, J:-

This appeal emanates from the judgment and decree of the District Land and Housing Tribunal (DLHT) for Karatu at Karatu in Application No. 31 of 2017 where the Appellant unsuccessfully sued the Respondents claiming ownership of a piece of unsurveyed land measuring two (2) acres situated at Mang'ola Village, Karatu District in Arusha Region.

The appellant's case at the trial Court was to the effect that, he was allocated the suit land by the village council in 1974 during "Operesheni Vijiji". For the whole time, the said suit land was used by the appellant for

different activities. In 2016, the respondent invaded the disputed land which made the appellant to register a land dispute before the DLHT of Karatu. After a full trial, the DLHT decided in favour of the respondents on grounds that, the respondent has been in peaceful occupation and possession of the suit land for seventeen (17) years since 1992 until 2009 when the appellant filed the application. In the end, the DLHT dismissed the application with costs and the respondent was declared a lawful owner of the disputed land. Aggrieved, the Appellant registered this appeal based on the following grounds;

1. *That, the District land and Housing Tribunal erred in law and fact to declare the respondent lawful owner of the suit land without taking into consideration that the appellant lived in the suit land and erect building over long period of time.*
2. *That, the District Land and Housing Tribunal erred in law and fact as it made wrong reasoning and it failed to properly scrutinize the evidence adduced during trial.*
3. *That, the District land and Housing tribunal erred in law and fact for the decision of the tribunal relied on the wrong reasoning while visit locus in quo.*
4. *That, the District Land and Housing Tribunal erred in law and fact to rely on the evidence adduced by the respondent over the ownership of the land while the respondent lack locus stand.*

At the hearing of this appeal, both the appellant and respondent appeared in person without representation. With leave of the court, hearing proceeded by way of written submissions.

Submitting in support of the appeal, the appellant decided to argue the first, second and third grounds of appeal and abandoned the fourth ground of appeal.

Submitting on the first ground, the appellant argued that, he was allocated the suit land since 1974 during Operation Vijiji, built houses on the suit land and lived there until now while the respondent lived in an area 600 meters away from the appellant's land. He argued that, section 15(1) of the Village Land Act, Cap. 114 (R.E.2019) acknowledges the validity of the interest in land created under operation vijiji.

He argued further that, even the respondent testifying as (DW1) explained that in 1974 his father's land was allocated to various people. He maintained that, upon allocation of the land to the appellant and in view of the cited law, the appellant had indefeasible right on the possession of the land. The appellant built a house in 1998 which is more than 20 years now and the respondent had never complained to the village council nor tribunal about that. Therefore, he faulted the DLHT for declaring the respondent a lawful owner of the suit land without taking

into consideration that the appellant lived in the suit land for more than 20 years.

Responding to this ground, the respondent submitted that, the appellant failed to prove that he owned the disputed land. There is no dispute regarding his land where he built his house as there was permanent boundary between undisputed land and disputed land which is a cattle pass (Pario) which has been there for a long time. however, it was evidenced by the respondent's witnesses that in 2014 when he was celebrating his son's marriage, he requested for a piece of land to build a temporary house and when the tribunal visited locus in quo the said house was still there.

Further to that, the appellant failed to bring a single witness who witnessed his allocation of land during operation vijiji in 1974 to support his claim. All his witnesses submitted hearsay evidence, there was no one with strong evidence to prove his claim and it was submitted that during operation vijiji all the villagers were given one acre area and not three acres as alleged by the appellant and the said one acre area has never been invaded and the appellant is using it peacefully until now. Thus, this ground is devoid of merit and deserve to be dismissed with costs.

On the second ground of appeal, he argued that, the trial tribunal erred in law to rely on contradictory evidence of the respondent and his witnesses. While the appellant testified that he was allocated three acres bordered on the East by a Korongo, North by Safari Massawe, South by Niima Mihale, and Theodory Gabriel (now the land of Kondo Dessi). The respondent testified that, the land in dispute measured two acres bordered on east- Catle Path, West- Korongo, North- Family of Emmanuel Gadie and South- Family of Emmanuel Gadie. He submitted further that, DW1 on his testimony said the disputed land is three (3) acres and he built a one room house while Dw3 said the disputed land has 3 to 4 acres. Considering the said contradictions, he maintained that, the trial tribunal ought not to believe the evidence adduced by the respondent.

Responding to this ground, the respondent submitted that, the trial tribunal did analyse the evidence of both parties together with its exhibits and its observation during the visitation of locus in quo and came up with a well-considered and reasoned judgment in favour of the respondent herein. The decision considered that: The appellant failed to tender the purported settlement minutes of the meeting held on 30/5/2012 which would have proved that indeed settlement was done or otherwise and whether the quorum of the village council's meeting was complete; the

appellant is estopped to deny his previous admission through agreement dated 8/12/2008 (Exhibit D1) which proves that, he previously admitted to have cut down respondent's trees in the disputed land; during visiting locus in quo, the appellant's land which is not in dispute was seen to have been fenced and clearly shown to have no relationship with the disputed land; the temporary house at the western side of the cattle pass was built in 2014 and the appellant requested to build it while his son got married due to the fact that it was a cultivation season and the appellant's farm had crops. Both DW3 and DW4 testified to have been personally present when the appellant was allowed to construct the said house.

On the third ground, he argued that, when the trial tribunal visited the disputed land it dealt with the things not in question and left behind the important matters. Instead of dealing with the measurement of the disputed land which is not clear if it is 2 acres or 3 acres it dealt with the area not in dispute. The trial tribunal did not solve the issue of the boundaries regardless of its visitation to the locus in quo. Further, the conclusion made by the tribunal that the land of the applicant which is not in dispute was fenced with trees and "vichaka vya miti" is only an assumption of the trial tribunal due to the fact that everyone who owns land can divide it the way he wants, the tribunal did not bother even to

know the size of the land. There was a lot of questions left by the tribunal prior to the decision favouring the respondent herein.

Based on the reasons submitted herein, he prayed for the whole proceedings, judgment and orders of the trial tribunal to be nullified and set aside. The appellant to be declared a lawful owner of the disputed land and be granted the costs of this appeal.

Replying to the last ground of appeal, the respondent submitted that, the argument raised by the appellant that the boundaries of the disputed land were not ascertained were very weak as the decision of the tribunal was not based on the visitation to the locus in quo rather it was satisfied with the strong evidence of the respondent and his witnesses. As long as the appellant failed to prove that he was allocated more than one acre it was enough for the trial tribunal to observe that his one acre has not been interfered with. Further to that, the appellant failed to prove on his claim on the balance of probability that he was allocated three acres. On the basis of his submissions, he prayed for the appeal to be dismissed with costs.

In his brief rejoinder the appellant reiterated what was submitted in the submissions in chief.

Having considered the submissions made by both parties, this court will now turn to discuss and answer to the grounds No. 1 to 3 generally. The main question for determination is whether the trial tribunal was right to decide in favour of the respondent based on the evidence adduced?

It is a principle of law that generally, in civil cases the burden of proof lies on the party who alleges anything in his favour. (see section 110 and 111 of the Law Evidence Act). In the present case, the appellant alleges that, the disputed land was part of the three acres land allocated to him during operation vijiji in 1974, he built his residential house in that land and the respondent invaded part of the land in 2016. However, he presented no evidence to prove that alleged allocation of land by the village authority in 1974 and no witness testified to be present during the said allocation.

On the other hand, the respondent (DW1) testified that, the disputed land is part of his father's land acquired since 1936 when he moved to the village. His father surrendered part of the land to government authorities but not the disputed land. The trial tribunal admitted exhibit D1 tendered by DW2 which is an agreement signed on 8/12/2008 were the appellant admitted to have caused destruction on the suit land by cutting trees (see exhibit D2 and page 5 of the impugned

judgment). It was also testified by DW1, DW2, DW3 and DW4 that the appellant had requested the respondents to allow him to use the disputed land temporarily when his children got married in 2014. Further to that, when the trial tribunal visited locus in quo they found the appellant's residential house in a land fenced with "vichaka vya miti" and it was not part of the land alleged to be invaded.

Considering the totality of evidence presented in this case, this Court finds that, the appellant did not present sufficient evidence to establish ownership of the suit land. Since the respondent is in possession of the suit land, which the appellant alleged that he trespassed into, the burden of proving that he is not the owner of the suit land is on the appellant under section 119 of the Evidence Act. Unfortunately, that proof is lacking.

This Court is in agreement with the trial tribunal in respect of its findings on the appellant's admissions in exhibit D1 tendered by DW2. As rightly stated by the trial tribunal, admissions are not conclusive proof of the maters admitted but may operate as estoppel under section 26 of the Evidence Act, Cap. 6 (R.E 2002). In the circumstances, the appellant cannot be allowed to deny what he admitted through exhibit D1 and there is no evidence that the land referred to in exhibit D1 is different from the land in dispute in this case.

On the foregoing, I find no merit in this appeal and I dismiss it accordingly. The decision of the trial tribunal is left undisturbed.

It is so ordered.

K.N.ROBERT
JUDGE
10/12/2021