IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SONGEA

AT SONGEA

LAND APPEAL NO.10 OF 2020

(Originating from the Decision of the District Land Housing Tribunal of Mbinga at Mbinga in Land Case No. 04 of 2018

JACOB JACKOB CHALE..... APPLICANT

Versus

LUCAS YACOB MAPUNDA..... RESPONDENT

JUDGMENT

Date of Last Order: 18/03/2021.
Date of Judgment: 15/04/2021.

BEFORE: S.C. MOSHI, J.

The appellant instituted a land application at the District Land and housing Tribunal of Mbinga at Mbinga claiming recovery of the area, payment of damaged properties which included buildings and crops, order that the intruder be vacated from the invaded area at his own expenses, costs of the suit and other reliefs the tribunal deem fit to grant. At the end, the trial tribunal held that the suit land belongs to the respondent, he is not a trespasser. The suit was dismissed, hence this appeal. The grounds of appeal are thus: -

1. *The trial tribunal erred in law and fact by delivering judgement in favour of the respondent while the Land is solely the property of the appellant.*
2. *The trial tribunal erred in law and fact by not considering the evidence adduced by the appellant during the hearing of the matter.*
3. *That the trial Tribunal erred in law and fact by delivering a contradictory judgement in the vastness of the suit land.*

When the appeal was called up for hearing, both parties were unrepresented.

The appellant on his part submitted that, he lived on the land since 1990 for more than twenty years. In the trial tribunal it was not stated whether he should be evicted or not and no description of land was given.

On the second ground, he said that his testimony was not heard, the record varies with his testimony as he said that he settled on the land in 1990 but it is recorded 1994.

On the third ground he argued that there is contradiction, the case was filed by Jacob Jacob Chale but it received testimony of Jacob Gabriel Chale. He said that, the judgement is against the person who opened the case. The judgement shows that the suit had already been decided in case no. 4/2018 while there is no other previous judgement of case No. 4/2018.

He argued further that the judgement was fabricated, it shows that he testified that the area measures 25 acres, his witness said it measures 60 acres and Pw4 said it measures 40 meters.

In reply, the respondent submitted that the case was already adjudicated upon, the initial party was his father Jacob Gabriel Chale who is the appellant's father. The initial case ended, it was determined, it ended in this court before Kwariko, J. He sued again at Mbinga where he raised an objection to the effect that he doesn't know the appellant. It was decided that the appellant knew nothing about the case as he was young. He said that the tribunal found that respondent's evidence was stronger than his. He prayed the court to dismiss the appeal with costs.

In rejoinder, the appellant stated that firstly the case was titled Jacob Jacob Chale but he was not allowed to testify. Secondly that there was a case between him and Jacob Gabriel Chale, his father. However, the dispute was on Mango farm which his father was given by respondent's grandfather in 1990. He used it up to 1991 and left it. In 2011 his father returned to the farm that he had left it in 1991 but his father lost the case both before the Ward tribunal and District Land and Housing tribunal, he also lost the case in the High Court. In 2016 defendant left the land which involved a dispute which he won and invaded the appellant's family land, which is now the suit land.

The issues before the District Land and Housing Tribunal were three: (i)Who is the lawful owner of the disputed land (ii) Whether the respondent has trespassed to the disputed land and (iii) To what reliefs the parties are entitled to. The District Land and Housing Tribunal Chairman analyzed the evidence and found that the evidence regarding acquisition of the land and the evidence on the size of the land was contradictory. He ultimately found that the applicant had failed to prove his case on the balance of probabilities.

I have decided not to discuss the merits of the case in view of irregularities which I noted in the judgement and proceedings. The record shows that the case was filed by Jacob Jacob Chale who testified as PW4 and is aged 31 and by the year 1997 he was aged 9 years. Whereas PW1 was a witness, he is Jacob Gabriel Challe, aged 71 years and he is the father to the applicant.

However, at page two of the judgement (which is unnumbered) the chairman incorrectly considered the evidence of PW1 to be the evidence of the applicant, Jacob Jacob Chale while that piece of evidence was adduced by Jacob Gabriel Chale. He again at the following page (page 3-unnumbered) referred to Jacob Chale (PW4) to be the son of the applicant whereas Jacob Jackob Chale was the actual applicant. Having misdirected

himself as he did, he evaluated and analyzed the issues on the assumption that PW1 was the applicant.

It is evident that the case was not prosecuted by the applicant. The District Land and Housing Tribunal chairman took PW1 for the applicant. The confusion is eminent.

There was also a question of the case being res-judicata but reading through the record it is obvious that the previous suit was between Pw1 and the respondent, and not PW4 (applicant) and the respondent.

Again, PW1 prepared a power of attorney purporting to authorize PW4 to prosecute his case on his behalf. However, PW4 did not indicate in the pleadings that he is acting on behalf of PW1. Surprisingly, despite PW1 surrendering his power to prosecute his case in court to PW4, he also appeared in person and gave his testimony. All in all, there is nothing on pleadings indicating that PW4 was acting vide powers of Attorney on behalf of PW1 as he sued on his personal capacity.

All in all, in view of this mix-up in the proceedings and judgement, it is my view that the irregularities are fatal, they affected the merits of the matter.

I therefore, basing on aforegoing, nullify all the District Land and Housing Tribunal proceedings, judgement and decree. Any interested

party may institute a fresh suit. I order no costs because the error was partly committed by the District Land and Housing Tribunal.

Right of Appeal Explained.

S.C. MOSHI

JUDGE

15/04/2021