

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 22 OF 2018

(Originating from the District land and Housing Tribunal of Kiteto at Kibaya in land
Application No. 09 of 2017 dated 28/02/2018)

ADAM SELEMANI1ST APPELLANT

ZUBEDA RISASI2ND APPELANT

VERSUS

MWITIKILA VILLAGE COUNCIL.....RESPONDENT

JUDGEMENT

13/4/2021 & 28/5/2021

ROBERT, J:-

The Respondent, Mwitikila Village Council, sued the two Appellants herein at the District Land and Housing Tribunal (DLHT) of Kiteto at Kibaya for trespass to the suitland alleged to be a village land measuring 60 acres located at Mwitikila Village in Kiteto District. After a full trial, the trial Tribunal declared the Respondent herein a lawful owner of the suit land and ordered the Appellants herein to vacate from the suitland and provide vacant possession to the Respondent herein.

Aggrieved, the Appellants preferred an appeal against the judgment and decree of the trial Tribunal on five grounds which I have reproduced as follows:

1. That, the Honourable Chairman erred in law and fact in failing to give weight to appellants evidence that they owned that piece of land prior to the birth of Mwitikira Village.
2. That the honourable Chairman erred in law and fact in holding that the exhibits tendered by the respondent prove that the respondent was the lawful owner.
3. That the honourable chairman erred in law and fact holding that there was no evidence of the respondents being allocated such land when te same was adduced by calling witness who were involved.
4. That the honourable chairman erred in law and fact in holding that the appellants had no right over the land therefore trespassers.
5. That the honourable chairman erred in law and fact by contending that there was no compensation or reallocation what so ever to those who own the piece of land prior to 2004.

The Appellants in this appeal appeared in person without representation whereas the Respondent was under the services of Mr.

Pastor Kang'oke, learned Counsel. The Court ordered the appeal to be argued by way of written submissions as desired by parties.

Highlighting on the first and second grounds of appeal jointly, the Appellants stated that, they were allocated the disputed land by Olboloti village authorities in 1988 and again in 1996 to 1999 prior to the establishment of Mwitikila Village when Olboloti village council was allocating land to the villagers at makasini area, Olboloti village. They maintained that they were among the people who benefited from that allocation as they were villagers of Olboloti village. They argued further that one of the witnesses for the Respondents at the trial Tribunal (Appellants herein), Mr. Swalehe Nkunya, testified that he was one of the members of the social welfare committee who allocated the disputed land to the Appellants in 1997 but the trial Tribunal ignored this evidence.

The Appellants criticised the exhibits tendered by PW1 at the trial tribunal and referred to by the court at paragraph 1 page 4 of the impugned judgment as "Muhtasari wa Halmashauri ya kijiji cha Mwitikila" literally meaning "Minutes of Mwitikila Village Council" dated 20/4/2004 and "Muhtasari wa Mkutano Mkuu wa Kijiji" which means " Minutes of the Village Assembly" dated 25/4/2004 which sought to prove that the disputed land is part of the land located at Makasini area reserved for

water source according to the Land Use Plan of Mwitikila Village which was approved by the Village General Assembly on 25/4/2004. The Appellants argued that they were allocated the disputed land since 1997 for cultivation purposes. They claimed that the said land was declared to be public land and reserved for water source in the year 2004 while the Appellants had acquired it before the existence of Mwitikila Village.

Submitting on the 3rd, 4th and 5th grounds of appeal together, the Appellants argued that, at the trial they had brought several witnesses including a member of the Social Welfare Committee who participated during the land allocation in the year 1996 to 1999 and witnessed that the disputed land was allocated to the Appellants for cultivation purposes earlier before the existence of the Mwitikila Village. They maintained that, they were not trespassers but lawfully owners of the disputed land.

Based on the stated grounds, they prayed for the court to quash and set aside the judgment entered by the trial Tribunal.

Contesting the appeal, Mr. Kong'oke contended that the first two grounds of appeal are based on one argument that, the Hon. Chairman of the trial Tribunal did not give weight to the to the Appellant's evidence that they were allocated the disputed land prior to the birth of the Respondent, Mwitikila Village Council. He argued that, the Appellants

failed to prove their case before the District Land and Housing Tribunal. They failed to prove to the required standard that they were allocated the disputed land by the Village Council as provided under sections 18,19, 20,21,22, 23,24 and 25 (1)) of the Village Land Act, Cap 114 R.E 2002 read together with section 64 and section 181 of the Land Act, Cap. 113 R.E 2002).

He submitted further that, the Appellants failed to tender any document to substantiate their claim. He maintained that the Appellants' evidence had no weight than that accorded by the Hon. Trial Chairman and his assessors. He submitted that the two grounds are devoid of merit and they should be dismissed with cost.

On the third, fourth and fifth grounds, he submitted that, the witnesses brought by the Appellants during trial contradicted themselves. He noted that while DW3, Abdalah Ally Suti testified that he was among the members of the committee who allocated land to the Appellants while DW4, Swalehe Nkunya when cross examined stated that DW3 was not one of the members of the Allocation Committee. He observed that at the time of the trial DW3 was the Chairman of Olboloti village which is alleged to have allocated land to the Appellants but he failed to tender a register

of the members of the village who were allocated land in the very same village even to explain about its existence.

He argued further that the trial Tribunal visited the locus in quo in January, 2018 and observed that the disputed land is the water catchment area and there was no evidence that the area was being used as farms since 1997 as claimed by the Appellants. He noted that, a land which has been in cultivation for 20 years could not remain natural and good for water source conservation.

Based on the submissions made, he prayed for the court to uphold the judgment of the trial tribunal and dismiss the appeal with costs.

I should note here that, when I took over the conduct of this matter I noted that, upon completion of the written submissions as per the scheduling order, on 13th September, 2019, my predecessor (Mwenempazi, J), who was presiding over this matter before his transfer, had observed that there was no clear description of the disputed land, he also noted lack of evidence on allocation of the disputed land by the village authorities. Therefore, he ordered the case file to be remitted back to the District Land and Housing Tribunal for recording of additional evidence on the description of the disputed property and collection of evidence in respect of its allocation by the village authorities. The DLHT complied with

the order of the Hon. Judge and remitted the case file to this Court as directed.

I will now look at the additional evidence collected by the DLHT as directed by this Court before deliberating on the grounds of appeal filed by the Appellants. At the DLHT, one witness testified for the Appellants (first Appellant) likewise the Respondent called one witness, Kumbo Olemokoyo to testify for the Village Council.

The first Appellant informed the Court that, the suit land was given to ~~them by the Olboloti village government. By then there was no village~~ known as Mwitikila Village. He tendered a list of names of persons who were allegedly allocated portions of land by the village. The list was admitted as exhibit A1.

When cross-examined by Mr. Kong'oke, Counsel for the Respondent, he stated that Exhibit A1 does not show where it was created or its creator. He also noted that exhibit A1 does not have a signature of the author or a rubber stamp.

Kumbo Olemokoyo testified for the Respondent. He tendered a sketch map titled "Matumizi Bora ya Ardhi katika kijiji cha Mwitikila 2004" which was admitted in court without objection as exhibit R1. During cross-examination he stated that, the land in dispute was part of the land

declared as village land. He noted that exhibit R1 was cleared in the year 2004.

That is the entire body of additional evidence collected by the DLHT. The Hon. Chairman ordered remittance of the case file back to this court for necessary steps on 7/7/2020.

Having gone through the evidence on record, submissions of both parties and the additional evidence collected by the DLHT, I will now pose here and make a determination of this matter. In this matter although the grounds of appeal raised by the Appellants are four, there is one central issue on which the entire decision will necessarily rest, whether the trial Tribunal was right in its evaluation of evidence by deciding that the Appellants were not the lawful owners of the disputed land.

In their submissions, the Appellants faulted the trial Tribunal for failure to give weight to their evidence which sought to establish that they owned the disputed land prior to the birth of Mwitikila Village and for finding that the Respondent was the lawful owner of the disputed land.

Records indicate that, at the hearing of this case the trial Tribunal raised two major issues for determination. First, who is the lawful owner of the disputed land between the two parties and, secondly, whether the Respondents (Appellants herein) are trespassers to the disputed land.

Before coming to the trial Tribunal's decision on the issues raised, I should consider the Appellants evidence on them. The two Appellants, Adam Selemani and Zubeda Juma testified as DW1 and DW2 respectively. They both stated that they were allocated 30 acres of land each by Olboloti Village Council in 1997. After allocation the social welfare committee members showed them the boundaries of their respective pieces of land. They both mentioned the names of the Committee members to be Saidi Maimbi, Kasimu Kimosa and Swalehe Nkunya.

Their testimonies are supported with that of Abdallah Ally Suti and Swalehe Nkunya who testified as DW3 and DW4 respectively. DW3 testified to the effect that from 1996 to 1999 the village council allocated land to villagers at Makasini area and the Respondents (Appellants herein) were among the villagers who were allocated land by Olboloti Village Council. He stated further that during allocation of land in 1988 to 1999 he was not the chairman of the village council but he participated in the process of land allocation. DW4 informed the trial Tribunal that, in 1998 Olboloti Village Council allocated land to both Appellants and he was one of the social welfare committee members who participated in the process of allocating land to the Appellants. However, during cross-examination DW4 stated that DW3 was not one of the members of the village land

committee and he did not participate in the process of allocating land to the Appellants.

Appellants' evidence was contradicted by that of Kumbo Ole Mokoyo (PW1) who informed the Tribunal that he had been a chairman of Mwitikila Village Council since 1999 to the time of his testimony. He stated that according to the Village Land Use Plan the disputed land was reserved for water source and livestock grazing. To support his testimony, he relied on the Minutes of the village council and those of the Village General Meetings which were admitted collectively as exhibit P1.

PW1 informed the trial Tribunal further that, the Appellants had invaded an area of land which was reserved for water source and prohibited for cultivation. He clarified that the Appellants are not the villagers of Mwitikila Village and the land was not allocated to them by the said village council. He also stated that the first Appellant was charged, convicted and sentenced for destruction of environment when he cleared the disputed land in the year 2006.

Considering the evidence adduced, the trial Tribunal decided that although the Appellants and their witnesses alleged to have been allocated the disputed land by Olboloti Village Council prior to the establishment of Mwitikila Village, there is no sufficient evidence to that

effect. There is document evidencing ownership issued to the Appellants by Olboloti Village Council and Village General Assembly to support their claims. That said, the Hon. Chairman resolved that since there is no any evidence to prove that the disputed land was allocated to Appellants for cultivation by Olboloti Village Council there is nothing to prevent Mwitikila village from preserving the said land for water source.

Based on the evidence on record, this court is in agreement with the trial Tribunal that there is no evidence to establish that Olboloti village council or village assembly were involved in allocating the disputed land to the Appellants. The Appellants did not allege that they entered into a vacant land. On the Contrary, they stated that they were allocated the disputed land by the Village council. The Village Council could only allocate land to the Appellants by operation of the law and procedure. Lack of evidence from the Village council to establish that the Appellants were allocated the disputed land is an indication that laws and procedures were not observed in obtaining the disputed land. The court is not convinced that each of the two Appellants each applied for allocation of 30 acres of land orally and they were granted orally.

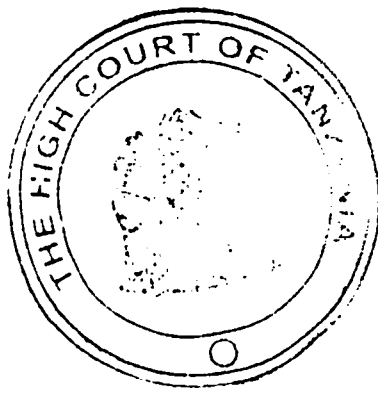
I have also considered the additional evidence collected by the DLHT as ordered by this court specifically, the list of villagers who were allegedly


allocated portions of land by Olboloti Village Council, exhibit A1 and a sketch map of Mwitikila Village admitted by the Tribunal as exhibit R1. I find the two documents to add no value in terms of providing evidence on allocation of the disputed land by the Village Council and providing clear description of the disputed land. There is no evidence that exhibit A1 was prepared by the village authorities, it is a mere list of individuals which doesn't show its creator, it is not signed or stamped. Similarly, exhibit R1 does not indicate the location of the disputed land in the map or provide and description relevant to the disputed land. In view of the above, I find no merit in the first and second grounds of appeal.

Based on the evidence on record, in the absence of any proof to the contrary, this court finds that there is no any evidence to establish that the Appellants were allocated the disputed land by Olboloti Village council. The Hon. Chairman was right in holding that the disputed land was part of the Mwitikila village land, reserved for public use as water source area.

In a nutshell, I uphold the decision of the District Land and Housing Tribunal and dismiss the appeal with costs.

It is so ordered.




K.N. ROBERT
JUDGE
28/5/2021