IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)
AT ARUSHA

MISC. LAND APPEAL NO. 46 OF 2020
(C/F the District Land and Housing Tribunal for Manyara at Babati in Land Appeal No. 69 of 2019; Originating from Gidhim Ward Tribunal, Application No. 5 of 2019)

MARTINI PETRO ..... APPELLANT

Versus

GWARDA GUNAY ..... RESPONDENT

JUDGMENT

15th April & 11th June, 2021

Masara, J.

In Gidhim Ward Tribunal (the trial Tribunal), the Respondent sued the Appellant claiming for a piece of land measuring 4 acres, located at Gidiryam Hamlet, Guye village, within Babati District (the suit land). The trial Tribunal declared the Appellant the lawful owner of the suit land. The Respondent was dissatisfied by the decision of the trial Tribunal, he appealed to the District Land and Housing Tribunal for Manyara (the first Appellate Tribunal. The first Appellate Tribunal allowed the appeal and declared the Respondent the lawful owner of the suit land. The decision of the first Appellate Tribunal hinged on what was termed as failure of the trial Tribunal to evaluate the evidence. That decision did not please the Appellant. He has preferred this appeal on three grounds couched in the following terms:

a) *That, the first appellate Tribunal erred in law and in fact to set aside the decision of the trial Ward Tribunal despite the evidence that the Respondent sold the land in dispute to the Appellant;*
b) *That, the first appellate Tribunal erred in law to deliver Judgment before reading the opinion of the assessors to the parties; and*
c) *That, the first appellate Tribunal erred in law and in fact to order the handing over of the suit land to the Respondent without application for execution of the decree immediately after pronouncing the judgment.*

The dispute between the parties herein was whether the Appellant bought the suit land from the Respondent sometimes in 2010 or he just rented it for a fee in February 2008, for a period of 10 years, which lapsed in 2018. The appeal proceeded through filing of written submissions.

Submitting on the first ground of appeal, Mr. John Lundu, earned advocate for the Appellant, stated that at the trial Tribunal there was ample evidence that the Appellant bought 4 acres of land in 2010 on two diverse dates, the first 3 acres on 20/2/2010 and the other 1 acre at TZS 200,000/= per acre. Mr. Lundu stated that although the sale agreement was not availed to the Respondent, yet according to the evidence of Marselina Qarama Saina the sale agreement regarding the 3 acres was read and translated to the Respondent. In his view, the learned Chairman of the first Appellate Tribunal erred in finding that it was impossible for one acre to be sold at TZS 200,000/= without assigning reasons. Further, that the first Appellate Tribunal failed to appreciate that the Appellant built a house and planted sisal on the suit land, therefore he was the lawful owner of the land. Mr. Lundu underscored that even in the visit at the *locus in quo* all the neighbours including the hamlet chairman proved that the suit land was sold to the Appellant by the Respondent.

Submitting on the second ground of appeal, Mr. Lundu averred that the opinions of the assessors in the first Appellate Tribunal which ought to have been read to the parties before composing judgment were not read. He referred to section 23(2) of the Land Disputes Courts Act, 2002 which dictates on the requirements to read opinion of the assessors to the parties prior to composing of a judgment by the chairman. According to Mr. Lundu, the opinions of assessors were not read to the parties, they only featured when the judgment was read.

On the third ground, Mr. Lundu submitted that the decision of the first Appellate Tribunal was delivered on 4/12/2019 and on the same date, before an official application for execution by the Decree Holder was preferred, the Tribunal Chairman wrote a letter to Guye Village Executive Officer allowing the Respondent to use the suit land. According to Mr. Lundu, that was in contravention of section 33(3) of the Land Disputes Courts Act and Regulation 23(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003. Basing on the foregoing submission, the learned counsel for the Appellant implored the Court to allow the appeal by restoring the decision of the trial Tribunal with costs.

In his reply submissions, Mr. Gwakisa Sambo, learned advocate for the Respondent, amplified that all the Respondent's witnesses were unanimous that the suit land was not sold to the Appellant but it was leased. He maintained that land at Gidhim is very expensive, therefore it could not have been sold at TZS 200,000/= per acre. Mr. Sambo further stated that there was no evidence from the Appellant that he constructed a house or planted sisal on the suit land as alleged by the learned counsel. That the evidence of the Appellant is that he purchased 3 acres of land and not 4 acres. Mr. Sambo emphasised that the trial Tribunal erroneously awarded the Appellant 4 acres while there was no evidence led to substantiate it as the Appellant testified only about 3 acres. According to Mr. Sambo, the testimonies of the Appellant's witnesses were full of inconsistencies and contradictions. He amplified that the Respondent was not served with a copy of the alleged sale agreement in all the ten years and that the Appellant did so intentionally in order to tamper with the original lease agreement. Mr. Sambo also stated that there was no evidence to indicate that the village leaders had a copy of such contract and no official receipt showing the village officers to have witnessed the sale.

Submitting on the second ground of appeal, Mr. Sambo affirmed that section 23(3) of the Land Disputes Courts Act was complied with since assessors' opinion were read to the parties on 3/12/2019 prior to composing the judgment by the Appellate Tribunal chairman.

Responding to the last ground of appeal, Mr Sambo submitted that the suit land was properly vested to the Respondent through application for execution that was filed vide Misc. Application No. 38 of 2020 in the first Appellate Tribunal. He insisted that the ground has nothing to do with the merits of the appeal. Mr. Sambo prayed that the appeal be dismissed with costs.

Having strenuously scrutinised the lower Tribunals' records, the grounds of appeal and the submissions of the advocates for the parties, I am inclined to determine the grounds of appeal in the course they were filed and argued by the advocates for the parties.

Starting with the first ground of appeal, I note that from the trial Tribunal record, the Respondent, who was the Applicant therein, testified that he leased the suit land to the Appellant for a period of 10 years from February 2008 which was to end in 2018. The land, from his evidence, was leased for TZS 800,000/= for the whole period of 10 years. According to the evidence on record, the lease agreement was signed by the Village Executive Officer, one Joshua Sulle. On his part, the Appellant claimed to have bought the suit land in 2010. His sole reliance is the sale agreements tendered at the trial.

A proper scrutiny of the trial Tribunal records confirms what is stated by Mr. Sambo regarding the farm allegedly bought by the Appellant. In his entire testimony, the Appellant's evidence related to the three (3) acres which he bought from the Respondent on 20/2/2010. There is no single word from him

on how he came into possession of the 1 additional acre, making it 4 as was given to him by the trial Tribunal. The same applies to his second witness, Marselina Qamara Saina, who only testified how the Appellant bought the 3 acres. The only evidence adduced to the effect that the Appellant bought the other 1 acre making it 4 acres came from the third witness, Clement Qamara, who testified to have witnessed the sale agreement for that 1 acre. However, when examined by one of the Tribunal members, the Appellant insisted that the land he bought, is the one the Respondent complained of. There is no evidence that could be relied on by the trial Tribunal to award the Appellant 4 acres. Therefore, the trial Tribunal erred in awarding the Appellant 4 acres.

It was the Appellant's testimony that he bought the 3 acres for his father in-law, one Felisi Fabiano of Mbulu-Hhayloto. The Appellant further testified that it was his father in-law who gave him the money to buy that piece of land and that the said father-in-law was present on the day they went for verification of the borders and the day the sale agreement was executed. This is contrary to what the tendered sale agreement shows, since the name of the said Felisi Fabiano, on whose behalf the land was allegedly bought, does not appear as a buyer or as a witness. This further discredit his evidence that he bought the land.

Regarding the sale agreements, I note that there is no record as to when and through whom the sale documents paved their way into the trial Tribunal's record. Further, the alleged sale agreements are photocopies but there are no explanations regarding the whereabouts of the original agreements, if they exist. None of the witnesses in the alleged sale of 3 acres was called to testify in the trial Tribunal. Similarly, the contract that purports that the Appellant bought 3 acres was witnessed by an office attendant (Clementi Qamara), who signed and stamped with the seal of the Village Executive Officer (VEO). There

is no proof that this person was mandated to act on behalf of the VEO, who is Government employee. In his testimony, when examined by one of the Tribunal members regarding his capacity to witness the sale agreements, the said Clementi Qamara said that his appointment to act as an interim VEO was made by the Guye Village Assembly. It is common knowledge that appointment of an acting VEO cannot be made by a Village Assembly since a VEO is a government employee. Therefore, the person alleged to have witnessed and stamped the sale agreement had no such capacity in law. This renders the said sale agreement (if at all it was so made) regarding the selling of the 3 acres dated 20/2/2010 illegal. Notably, the VEO mentioned to have signed the second agreement on the sale of 1 acre was not called to testify. I should add that the evidence that the Appellant bought the 1 acre is wanting since it was not supported by the evidence of the Appellant himself.

According to the Respondent and his witnesses, he was not given a copy of the lease agreement, despite many follow ups to secure a copy. This was also admitted by the Appellant's witnesses, especially Clementi Qamara who witnessed the purported sale agreement, stating that there was no necessity of availing a copy to the Respondent since it was a sale agreement. Failure to avail a copy of the said agreement, denied the Respondent the right of knowing what was contained in the said document. In other words, there was an ill-motive on the part of the Appellant relating to the transactions between the parties. The Respondent's intention was to lease the suit land but the impugned agreements indicate that the land was sold to the Appellant. Had the Respondent been given a copy thereof, he would have known what was written in the agreement.

According to Mr. Lundu, the sale agreement was read and explained to the Respondent. I find this assertion difficult to buy in because there is no credible reasons advanced for not serving the alleged seller (the Respondent) a copy of

the agreement unless there was something to hide. Even if we assume that the same was read to the Respondent, there is no evidence that what was read to them was what was written in the agreements. From the tendered copies, the Respondent and his witnesses appear to have signed the sale agreement by affixing thumbprints. That would suggest that they are either illiterate or they did not sign the document. Staying with it for 10 years without serving the seller with a copy may give a room for tampering with the original contents.

In his submissions, Mr. Lundu states that at the visit in the *locus in quo* neighbours and even the hamlet chairman supported the version that the suit land was sold to the Appellant by the Respondent. Needless to say, there is no such evidence. The record on visiting the *locus in quo* shows only minutes of the attendees and the agenda to be discussed. The record is silent on the attendance of neighbours and or the hamlet chairman. Mr. Lundu also stated that there was a house and sisal plants in the suit land which justify the assertion of sale. He is wrong. The mere fact that the Appellant built a house on the suit land or planted sisal plants, if any, does not by itself confer ownership to him over the suit land.

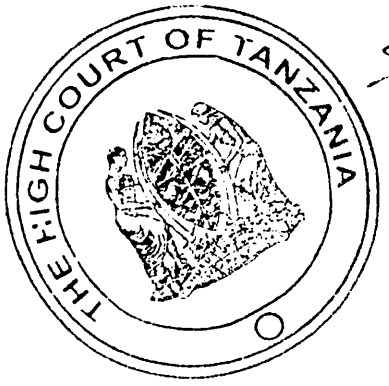
I do agree with the first Appellate Tribunal's Chairman that the Respondent's evidence was more credible. I agree with him that he only intended to lease the suit land. There were no reasons for him to sell the land in 2010 and wait until 2019 to initiate the process of claiming back the land. In their firm evidence, the land was claimed because the lease period had come to an end in 2018 and that they found some other people were sub-leased by the Appellant. As discussed above, the sale agreements purported to have transferred ownership of the suit land from the Respondent to the Appellant have many shortfalls rendering them to be void ab initio. In the circumstances, the first ground of appeal is dismissed for being devoid of merits.

In the second ground, Mr. Lundu contended that opinions of the assessors were not read to the parties before composing the judgment, contrary to the provisions of the law cited. Much as I agree with him that it is the requirement of the law that opinion of the assessors must be read to the parties before composing judgment, I do not agree with him that in the appeal under consideration the assessors' opinion were not read. The record of the first Appellate Tribunal reveals that on 3/12/2019 the Chairman read opinion of the assessors to the parties. The record is to the effect that on that day both parties admitted to have heard the opinions of the assessors. The judgment thereof was delivered on 4/12/2019. Therefore, Mr. Lundu's contention that assessors' opinions were not read to the parties is without proof. Thus, the requirements spelt under section 23(2) of the Land Disputes Courts Act was complied with. The second ground of appeal is dismissed as well.

I now revert to the third ground of appeal, which faults the Tribunal chairman for handing the suit land to the Respondent on the date the judgment was delivered. This needs not detain me. It is true that there is a letter by the Tribunal Chairman dated 4/12/2019 addressed to Guye Village Executive Officer stating that the Respondent was officially allowed to use the suit land while waiting if the Appellant would prefer an appeal. However, there is no proof that the Appellant was evicted from the suit land. Moreover, Mr. Sambo told this Court that the Respondent filed an application for execution vide Misc. Application No. 38 of 2020, which, unfortunately, is not part of the records before me. In fine, it was not in issue whether such letter denied the Appellant his right to appeal against that decision as he did in the instant appeal. I therefore do not see the relevance of the third ground of appeal as it has nothing to do with the merits or demerits of the impugned decision subject of this appeal.

For the above analysis and reasons, the appeal is wanting on merits. The decision of the first Appellate Tribunal was justified. It is hereby confirmed. Consequently, this appeal is dismissed in its entirety with costs.

Order accordingly.



Y. B. Masara
JUDGE
11th June, 2021