IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPEAL No. 12 OF 2021

(Arising from the District Land and Housing Tribunal for Lushoto at Lushoto in Land Application No. 5 of 2020)

1. HASSAN RASHIDI KINGAZI
2. KIANGO JUMA KINGAZI ---------- **APPELLANTS**
[Administrator of the estates of the late Juma Rashid Kingazi]

Versus

SERIKALI YA KIJIJI CHA VITI ---------- **RESPONDENT**

JUDGMENT

29.07.2021 & 05.08.2021
F.H. Mtulya, J.:

This appeal concerns interpretation of Regulation 3 (2) (b) of the **Land Disputes Courts (The District Land and Housing Tribunal) Regulations**, 2003 GN. No. 174 of 2003 (the Regulations) with regard to the words: *the address of the suit premises or location of the land involved in the dispute*. This court was invited on 29th July 2021 by two learned minds who sharply differed on the interpretation of the words in the Regulation and prayed for this court to set a precedent on the subject.

According to Mr. Henry Njowoka, learned counsel for Hassan Rashid Kingazi & Kiango Juma Kingazi (the Appellants) the land in dispute, as per requirement of Regulation 3 (2) (b) of the Regulations, must be sufficiently described with certainty in terms of size, location, and demarcations surrounding the land. In Mr. Njowoka's opinion, the enactment in Regulation 3 (2) (b) of the Regulations borrowed a leaf from Rule 3 of Order VII in the **Civil Procedure Code** [Cap. 33 R.E. 2019] (the Code) which require sufficient identification of the property, if the subject matter in the dispute is an immovable property.

According to Mr. Njowoka, the sufficient description of the land in dispute as required by the law is not such as general mentioning of a name of village or postal address in pleadings. It must be description containing exact size, location and boundaries to be able to distinguish land in dispute with other surrounding lands. To bolster his argument Mr. Njowoka invited the authority of this court in **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi**, Land Case Appeal No. 74 of 2018.

In inviting the present dispute and his argument, Mr. Njowoka submitted that Serikali ya Kijiji cha Viti (the Respondent) did not plead in the Prescribed Form at paragraph 7(a) (i) which initiated

the proceedings in the in the **District Land and Housing Tribunal for Lushoto at Lushoto** (the Tribunal) in **Land Application No. 5 of 2020** (the Application) hence cannot be declared as rightful owner of the disputed land. To substantiate his argument, Mr. Njowoka submitted that the Respondent did not plead either 2.5 or 1.5 acres and the declaration of the Tribunal that she owned 1.5 acres is not reflected anywhere on the record.

In order to support his submission with the practice of the Court of Appeal, Mr. Njowoka asked this court to visit precedents in **Madam Mary Silvanus Qorro v. Edith Donath Kweka & Another**, Civil Appeal No. 102 and **Samwel Kimaro v. Hidaya Didas**, Civil Appeal No. 271 of 2018, arguing that it is the settled law that the court cannot grant something which was never pleaded. Finally. Mr. Njowoka submitted that in the present appeal facts registered during the hearing are at variance with pleaded facts hence un-pleaded facts must be ignored as per requirement of the law in the decision of **Barclays Bank (T) Ltd v. Jacob Muro**, Civil Appeal No. 357 of 2019.

The submission registered by learned counsel, Mr. Njowoka, was protested by Mr. Shafii Rugine, learned Lushoto District Council Solicitor, who appeared for the Respondent. In his opinion, Mr.

Rugine, thinks that the Respondent complied with Regulation 3 (2) (b) of the Regulations as she stated address and location in fourth and seventh paragraphs of the Prescribed Form by use of the words: *Viti Village within Lushoto District in Tanga Region*. According to Mr. Rugine, sizes and demarcations of disputed lands are not part of the text in Regulation 3(2) (b) of the Regulations.

With regard to un-pleaded facts and variance of facts in pleadings and during the hearing, Mr. Rugine argued that un-pleaded facts may be considered during trial, provided they receive proof of evidence. In order to substantiate his argument, Mr. Rugine submitted that AW1 to AW4 stated categorically during trial that the Respondent claimed not more than 2.5 acres and was awarded 1.5 acres.

By way of emphasizing his previous submissions in support of this appeal, Mr. Njowoka rejoined Mr. Rugine's submission and briefly submitted that Regulation 3 (2) (b) of the Regulations requires specific particulars of the land in dispute and not vague location as indicated in the precedents of **Rwanganilo Village Council & 21 Others v. Joseph Rwekashenyi** (supra) and **Daniel Dagala Kanunda** (as administrator of the estates of the late Mbalu Kashaba Buluda) **v. Masaka Ibeho & Four Others**, Land Appeal No.

26 of 2015. According to Mr. Njowoka, the rationale of searching sufficient descriptions of lands in disputes is found at page 6 in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others**, Land Case No. 13 of 2019, where this court stated that the requirement of specific and definite piece of land is intended for certainty and executable decrees emanated from courts.

In his conclusion Mr. Njowoka repeated his earlier submission on pleading arguing that parties in disputes are bound by their pleadings and that the Court of Appeal in the decision of **Samwel Kimaro v. Hidaya Didas** (supra) stated that the parties in disputes must adhere to their pleadings and prove their cases according to the law.

I have had an opportunity to peruse the record of this appeal. The record shows that on 17th April 2020, the Respondent filed a suit against the Appellants and claimed ownership of land situated at Viti within Lushoto District, Tanga Region since independence, as per paragraphs 4 & 7 (a) (i) of the Prescribed Form. The Respondent was silent on sizes, location and demarcations surrounding the land.

During the proceedings, the Respondent had marshalled a total of four witnesses, namely: Eliuza Julius Samwel (AW1), Samwel Julius Shelukindo (AW2), Ayoub Omari Kivatia (AW3), and Idrisa

Abdi (AW4). All four witnesses consistently testified that the disputed land between the parties is 2.5 acres, as shown in the proceedings of the Tribunal at page 4 for AW1, page 7 for AW2, page 8 for AW3 and page 10 for AW4.

However, all four witnesses either differed or remained silent on land boundaries surrounding the disputed land. Witnesses AW1 & AW2 remained silent on land boundaries as depicted at page 4 & 8 of the proceedings, whereas AW3 at page 9 of the proceedings testified that the land in dispute is surrounded with Kiango, Viti Secondary School, Valley and sisal plants whereas AW4 testified at page 11 of the proceedings that the land in disputed is dermacated by Mikaratusi, and sisal plants just grew later.

With all these discrepancies, the record is silent on inquiry in search of the exact sizes and boundaries of the disputed land or visitation in *locus in quo* to ascertain the variances displayed on the record. However, the Tribunal at its page 7 of the judgment held that:

> *Eneo lenye mgogoro ambalo ni ekari 1.5 ni mali ya mwombaji Serikali ya Kijiji cha Viti na wajibu maombi wanapaswa kumiliki eneo lao walilopewa toka awali lenye ukubwa wa eka 1.5 kila mmoja.*

The reasoning of the Tribunal is found at page 6 of the judgment that:

> *Hili linathibitika kutokana na maelezo ya wajibu maombi kuwa ukubwa wa eneo lao kwa ujumla ni eka 4.5 ambapo ushahidi wa mwombaji unathibitisha kuwa wajibu maombi pamoja na wenzao wasiohusika na mgogoro huu walipewa maeneo yenye ukubwa wa eka 1.5 kila mmoja, hivyo ukubwa wa eneo la wajibu maombi kwa ujumla ni eka 3 na eka 1.5 ndio zilizopo katika mgogoro huu.*

It is from the holding and its associated reasoning which dissatisfied the Appellants hence hired legal services of learned counsel, Mr. Njowoka, to draft a total of seven (7) grounds of appeal to protest the judgment of the Tribunal in this court. When this appeal was scheduled for hearing on 29th July 2021, Mr. Njowoka decided to drop a total of five (5) grounds of appeal. He also decided to merge and rephrase the first two (2) grounds of appeal together, to read as follows:

> *That the trial tribunal erred in law and in fact to entitle the Respondent the disputed land while the descriptions and sizes features in the testimonies were never pleaded.*

During the proceedings and consultations in this court between learned minds, Mr. Njowoka and Mr. Rugine, it came to the light that the dispute before this court is whether the land in dispute as per provision in Regulation 3 (2) (b) of the Regulations concerns general descriptions of the land or specific identification of the land with details of sizes, location and demarcations in the Prescribed Form.

It is fortunate that both learned minds registered submissions and authorities. It is privilege that there are precedents on what pleadings or Prescribed Form is supposed to display. To my opinion, page 6 in the precedent of **Romuald Andrea v. Mbeya City Council & 17 Others** (supra) gives directives on the subject:

> *...the law did not make these obligatory provisions for cosmetics purposes. Its intention was to ensure that, the court determines the controversy between the two sides of a suit related to landed property effectively by dealing with specific and definite place of land. The law further intended that, when the court passes a decree, the same becomes certain and executable. I underscored the importance of the requirement mentioned above in various cases including the Daniel Dagala case (supra) and I*

repeat the same in this case at hand as a means of emphasis on the importance of the requirement.

This court in the cited precedent and statement invited a bundle precedents of this court on the subject and struck out the case for want of certainty of the land in dispute. Similarly, for the sake of certainty, prediction and consistency in decisions emanated from this court, I will follow the course. I have therefore decided to allow the appeal with costs, as the Respondent protested the appeal.

Again, I would like to mention only by passing, that the record in this appeal shows that the Prescribed Form is silent on land sizes and demarcations, the proceedings displays variances on the demarcations marks surrounding the land and the judgment is awarding unclaimed size of land *suo moto* without evidence or involving the parties in the dispute. Decisions of this kind cannot remain in our courts' records.

This is the court of record with additional powers of ensuring proper application of the laws by the courts below. It cannot justifiably close its eyes when it sees breach of the law in Regulation 3 (2) (b) of the Regulations or any other laws. I have therefore decided to quash the judgment and set aside proceedings of the

Tribunal in the Application. Any interested party in the dispute may initiate fresh and proper suit in competent forum in accordance to laws regulating land matters.

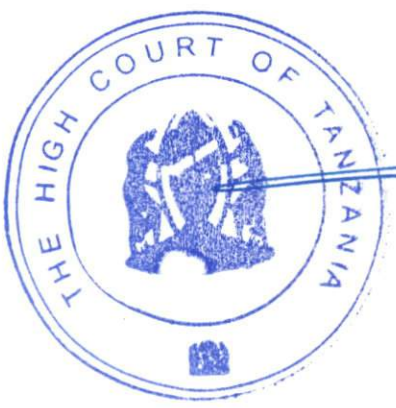
It is so ordered.

F.H. Mtulya

Judge

05.08.2021

This judgment is delivered in Chambers under the seal of this court in the presence of Mr. Eliuza Julius Samwel, Viti Village Council Chairman and Mr. Shafii Rugine, learned Lushoto District Council Solicitor for the Respondent and in the absence of the Appellants, Mr. Hassan Rashid Kingazi & Mr. Kiango Juma Kingazi.



F.H. Mtulya

Judge

05.08.2021