IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA – SUB REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 52 OF 2021

(Originated from Land Case No. BK/22 of 2019 of Bukwe Ward Tribunal Rorya District and Land Appeal No. 111 of 2019 of District Land and Housing for Tarime at Tarime)

JOMBO REUBERN AULO ..... APPELLANT

VERSUS

LEONARD OCHOLA ..... RESPONDENT

JUDGMENT

F. H. MAHIMBALI, J

Jombo Reuben Aulo, the appellant herein, is aggrieved by the decision of the DLHT of Tarime at Tarime which quashed and set aside the decision of the trial Tribunal of Bukwe.

The brief facts of the case can be summarized this way. The appellant successfully sued the Respondent at Bukwe Ward Tribunal on a claim of land trespass by the Respondent. Aggrieved by the said decision, the Respondent successfully appealed to the DLHT of Tarime whereby the DLHT decreed that as the appellant (now Respondent) had been in

occupation of this said land for over 30 years, he differed with the assessors' opinion and thus allowed the appeal by declaring him (now Respondent) as lawful owner of the disputed land.

It is this finding of the DLHT of Tarime which has aggrieved the appellant thus, the basis of the current appeal founded on four grounds of appeal, namely:

1. *That, the District Land and Housing Chairperson Tribunal misdirected himself for introducing a new fact of time limit for claiming land which was not pleaded in the trial tribunal.*
2. *That, District Land and Housing Tribunal erred in law and facts for thinking that the appellant in District Land and Housing Tribunal was the one who has the house in the Land in dispute while the records show that the appellant who was the respondent in the District and Housing Tribunal is the one who is using the said land and he has unexhausted development and the houses therein.*
3. *That the chairman of the DLHT erred in law and in facts thinking that the land in dispute is that which the Respondent with his family stayed for more than 30 years while it is that*

which bordered with the appellant and there is a well which is used by the society but the whole land around belongs to the appellant and they were being using it for rice cultivation for more than 60 years.

4. *That the District Land and Housing Tribunal erred in law and in fact for not showing the opinion of the assessors in reaching the decision of the case as required by the laws.*

Basing on these grounds of appeal, the appellant prays that the decision of the DLHT be quashed and set aside and in its place, the decision of the trial Tribunal (Bukwe Ward Tribunal) be restored as it is at fairness.

During the hearing of the appeal, Mr. John Manyama appeared for the appellant whereas Mr. Onyango Otieno, represented the Respondent.

Opening the submission of the appeal, Mr. Manyama learned counsel for the appellant submitted in the first ground that the DLHT *suo motto* and un-procedurally introduced a new fact of time limit, the fact which was neither pleaded and argued nor was it introduced for

deliberation by the parties. Despite the fact that the issue of jurisdiction can be raised at any time, however it must be in alignment to the provided legal procedure, submitted Mr. Manyama. He argued, since the Appellant was claimant at Ward Tribunal, and it is alleged that the respondent invaded the land in 2009, nevertheless there is no evidence in the trial court's records supporting the assertion.

As regards the 2nd and 3rd grounds of appeal, he prayed that the same be adopted by the court as written.

With respect to ground no 4, it has been submitted that failure of the DLHT in showing the assessors opinion is a legal violation under section 23 (2) of the LDCA and section 24 of the LDCA. Buttressing his argument, he submitted that regulation 19 (2) of the LDCA makes it mandatory that before DLHT gives its judgment, it must have assessors' opinions in hand for consideration in his judgment despite the fact that the same are not binding. In reliance to his submission, he referred this court to the case of **Edna Adam Kibane vs Absolom Swebe (sheli**), Civil Appeal No. 286 of 2017 (CAT – Mbeya unreported). Where it was ruled amongst other things that every assessor must present his/her

opinion in writing, the same must be clearly reflected in the judgment by the DLHT.

Countering the appeal and submission by the appellant's counsel, Mr. Onyango Otieno learned counsel for the Respondent started arguing with ground no 4 lastly argued. He submitted that in his understanding, there is no legal violation of section 24 of the LDCA as claimed by the appellant's counsel. Going through the DLHT's records, the assessors' opinions are intact and same are reflectively read out by the assessors themselves and considered by the DLHT's chairperson in his judgment though he differed from them. In his view, the DLHT's chairperson fully complied with the law.

Responding to the 2nd ground of appeal, the learned counsel submitted that the fact that the respondent did unexhausted development in the disputed land is undisputed. However, not only is he the user but also the developer of it submitted Mr. Onyango.

As regards the third ground of appeal, he replied in his submission that it is true that there are two wells in the said land. However, one as

developed by the Respondent and the other by the village council. Thus, the appellant brings a misconception point in this point.

Responding to the first ground of appeal, Mr. Onyango referred the court to the proceedings of the trial tribunal dated 20th August, 2019 (at page 2) where the claimant responded questions posed by Mr. Leonard Astrarik Ochila, the answer by the claimant (now appellant) tells a lot about the disputed land.

Considering also the testimony by Solas Opiyo Odack, the issue of limitation features very well. As the land in dispute started being used between 1987 and 2008, the issue of limitation is not new though it involved deceased's property by that time, submitted Mr. Onyango. He concluded by referring to the testimony of Joseph Nyando Reuben as questioned/cross – examined by Joseph Dede. The two are in clear boundary. In consideration of all this, Mr. Onyango invited the Court to dismiss the appellant's appeal with costs for being unmeritorious.

In his rejoinder submission, Mr. Manyama learned advocate reiterated his earlier submission and argued that the controversy

between the two is on the boundary between the two plots and that the assessors' opinions do not feature out as per law.

Having heard the submission by both counsel for the parties in this appeal the vital question is whether the appeal is merited.

To start with ground no. 4 of the appeal that the District Land and Housing Tribunal erred in law and in fact for not showing the opinion of the assessors in reaching the decision of the case as required by the laws, in arguing this ground the learned counsel for the respondent referred this court to the case of EDINA ADAM KIBONA VS ABSLOLOM SWEBE, Civil Appeal No. 286 of 2017. I wish to reproduce the relevant part of the said case on what was stated

> *"For the avoidance of doubt, we are aware that in the instant case the original record has the opinion of assessors in writing which the Chairman of the District Land and Housing Tribunal purports to refer to them in his judgment. However, in view of the fact that the record does not show that the assessors were required to give them, we fail to understand how and at what stage they found their way in the court record. And in further*

view of the fact that they were not read in the presence of the parties before the judgment was composed, the same have no useful purpose".

So, it is not the holding of this case; **Edina Adam Kibona (supra)** that the assessors' opinions must be re-written by the chairperson in his judgment but that the records must speak what is their opinion and whether read out to parties in the tribunal and that the same are available in tribunal records. In that case, such a process was not complied with, that's why its judgment was quashed for being a nullity in the eyes of the law, lacking the background behind the assessors' opinion being found in the tribunal record without any corresponding order by the DLHT. The scenario is completely different with the matter at hand where everything seems to be in legal compliance. The said opinions were readout on the scheduled date and the same are filed in tribunal records. This ground of appeal fails.

As regards the first ground of appeal that, the District Land and Housing Chairperson Tribunal misdirected himself for introducing a new fact of time limit for claiming land which was not pleaded in the trial tribunal, I am in agreement with Mr. Onyango that the said issue was not

raised for the first time at appeal, but was also deliberated at the trial tribunal. So the DLHT, rightly ruled on that. What the DLHT did, was just to give an eye what was deliberated at the trial tribunal and made a correct finding of the law.

The available evidence in the trial record supports that not only the respondent is the user of the said land but also the one who did unexhausted improvements in the said land. Considering the fact, he used the said land for over 12 years undisturbed, it is settled that by adverse possession on land acquisition, the appellant is unjustified and precluded from claiming possession of the same unless he had disestablished adverse possession which he failed to do so. This is the response of this court as far as ground number two of the appellant's appeal is concerned (See **Registered Trustees of Holy Spirit Sisters Tanzania vs January Kamili Shayo and 136 others**, Civil Appeal No. 193 of 2016 at page 24).

With ground number three that the chairman of the DLHT erred in law and in facts thinking that the land in dispute is that which the Respondent with his family stayed for more than 30 years while it is that which bordered with the appellant and there is a well which is used by the society but the whole land around belongs to the appellant and they were

using it for rice cultivation for more than 60 years. I agree with the appellant's learned counsel that the triable issue at the trial tribunal was not the whole land, but the bordering land in which the trial tribunal said, I quote:

> *"toka mlalamikiwa alipoonyesha mpaka wake mlimani hadi mlalamikaji alipoonesha mpaka wake ni hatua hamsini na nne (54) hivyo hapo katikati ndiyo eneo lenye mgogoro. Wananchi nao waliweza kupata fursa ya kutoa maoni yao jinsi walivyolifahamu eneo hilo na kama majirani na wazawa wa eneo hilo na viongozi walioshika nyadhifa mbalimbali ngazi ya vitongoji na Kijiji husika na jinsi walivyoweza kusuluhisha na kutoa maamuzi huko nyuma na eneo bado ni lilelile halijabadilika. Uamuzi wa wajumbe wote walidai mshindi halali wa eneo hili la mgogoro ni mlalamikaji aitwae Jombo Reubern"*

I am of the firm observation that the land in dispute is the one measured 54 paces which the same was ruled belonging to the appellant Jombo Reubern Aulo. Thus the finding of the first appellate tribunal in giving verdict over the whole land as belonging to the Respondent is not justified by record.

All said the appeal fails save to the size of the land in dispute restricted to 54 paces only as decreed by the trial tribunal.

It is so ruled

DATED at MUSOMA this 30th day of September, 2021.

F. H. Mahimbali

JUDGE

30/09/2021

Court: Judgment delivered this 30th day of September, 2021 in the presence of Appellant, Mr. Onyango Advocate for the respondent and Miss. Neema P. Likuga – RMA.

F. H. Mahimbali

JUDGE

30/09/2021