

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 02 OF 2021

(Originating from Land Application No. 60 of 2018 in the District Land and Housing Tribunal
for Karatu at Karatu)

DEEMAY KWAANGW.....APPELLANT

VERSUS

WAZIRI JAMES.....RESPONDENT

JUDGMENT

21/09/2021 & 10/12/2021

GWAE, J

The present appeal originates from the decision of the District Land and Housing Tribunal for Karatu at Karatu (hereinafter "trial tribunal") in Application No. 60 of 2018 in which the respondent had filed an application seeking a declaration that, he is the lawful owner of the disputed land and that the applicant be restrained from trespassing into the land in dispute.

The respondent alleged that, he obtained the disputed land from his late father since 1986 until 6th August 2014 when the appellant invaded the land in dispute and started harvesting trees that were planted thereon by the respondent. The matter was referred to the Bashay Village and the

appellant was urged to respect the boundaries; it was further complained that in the year 2017 the appellant reinvaded the disputed land and the matter was referred to the village executive officer where the village council resolved the matter in favour of the respondent.

In his written statement of defence, the appellant contended that he is the lawful owner of the disputed land and that he acquired the same in the year 1974 during operation vijiji. The trial tribunal gave its judgment in favour of the respondent who was declared as the lawful owner of the suit land and the appellant was declared as a trespasser.

Aggrieved by the decision of the trial tribunal, the appellant has now presented his Memorandum of Appeal advancing three grounds of his grievances, namely;

1. That, the District Land and Housing Tribunal erred in law and fact to declare the respondent lawful owner of the suit land without taking into consideration that the appellant lived in the suit land and made development including erecting a building and planting of trees over a long period of time.
2. That, the District Land and Housing Tribunal erred in law and fact as it made wrong reasoning and it failed to properly scrutinize the evidence adduced during trial.

3. That, the District Land and Housing Tribunal erred in law and in fact for, its decision relied on the wrong reasoning when locus in quo was visited.

When this appeal was called on for hearing, both parties appeared in person, unrepresented. Being lay persons, the parties successfully prayed for leave to dispose of their appeal by way of written submission. I shall herein under deliberate the parties' written submissions while determining the grounds of appeal seriatim.

The **1st and 2nd** grounds of appeal herein above were argued together, and in expounding on these grounds of appeal, the appellant submitted that the disputed land is measuring 46x29 meters which he claims to belong to him and that he had planted trees and erected a building over a long period of time. The appellant further contended that the decision of the village land committee was not final and it was improper for the trial tribunal to have relied on it considering the fact that, he had lived in the suit land for over 40 years. The appellant further stated that the trial tribunal ought to have ascertained the size of the land to determine whether the respondent was given 3 acres or 2 acres.

Responding to the appellant's submission, the respondent argued that the oral evidence together with documentary evidence that he tendered before the trial tribunal had proven his claim to the standard required and therefore the decision of the trial tribunal was properly arrived at and well-reasoned.

On his rejoinder, the appellant maintained that, the land in dispute measuring $\frac{1}{4}$ acres where the appellant had planted trees and it is part and parcel of the land owned by the appellant since 1974 during operation vijiji. He further contended that, the tribunal did not visit the locus in quo and therefore it is uncertain as to who is the lawful owner of the disputed land and uncertainty as to its actual size.

Having briefly summarized the competing submissions by both parties, I find that this court is instructed to determine whether the trial tribunal properly evaluated the evidence before it. Before the trial tribunal three issues were framed as follows;

1. Who is the lawful owner of the suit land?
2. Depending to the first issue between the respondent and the applicant who is the invader?

3. What relief (s) the parties are entitled to?

In proving his case the respondent testified that, he had inherited the disputed land from his late father who died in the year 1986. He went further testifying that the appellant herein is his neighbor, however in the year 2014 he invaded his land and built a house claiming that the land in dispute was re allocated to him in the year 1974 during the Operation Vijiji. Following a dispute between the respondent and the appellant, the matter was referred to the village leaders who denied to have re allocated the land in dispute to the appellant. Supporting his testimony, the respondent tendered the minutes of the village council dated 14/12/2017 and 06/08/2014. In exhibit P1 the minutes reveals that and I quote

"katika agenda hii wajumbe baada ya kutembelea eneo hilo walijadili kwa kifupi na hatimaye kuamua kupima eneo hilo. Baada ya vipimo hivyo wajumbe walitoa uamuzi kama ifuatavyo;

1. Kimsingi Halmashauri ya Kijiji imeridhika kuwa eneo hilo ni mali halali ya Waziri James na Deemay Kwaang'w hana haki katika eneo hilo.
2. Halmashauri ya Kijiji imeamua kuwa watu wote katika eneo hilo waheshimu alama zilizowekwa na halmashauri ya Kijiji-minyaa

3. Kwamba Deemay Kwaang'w ametakiwa kuheshimu alama ya mpaka wa barabara ya umma na aondoe miti yake sehemu hiyo.
4. Halmashauri ya Kijiji imewashauri wahusika wote kuwa waheshimu uamuzi wa Kijiji na kwamba kama mtu hajaridhika anaweza kupeleka shauri lake katika ngazi nyingine."

Exhibit P2 on the other hand is a minute of the meeting held on 06/08/2014. According to this exhibit the village council resolved the matter by involving leaders who were alleged to have divided the disputed land to the appellant, who on the contrary denied to have allocated the suit land to the appellant and consequently the suit land was given to the respondent.

On cross examination the respondent stated that the land in dispute belonged to his father even prior to Operation vijiji and the same was not affected by the said operation vijiji hence it remained in the possession of his late father until his demise when the appellant invaded into the suit land.

The evidence of the respondent was corroborated by that of AW2 a member of the village council who attended a meeting that was held on 14/12/2017 to resolve the dispute between the appellant and the respondent. In the meeting it was resolved that the land belonged to the respondent on an account that it belonged to his late father and the same

was not affected by the operation vijiji. However, on cross examination AW2 admitted that in the year 1974 the respondent herein was re-allocated land measuring 3 acres during the operation vijiji. This piece of evidence is corroborated by that of AW3 who was also a member of the village council and had participated in resolving the dispute between the respondent and the appellant. According to him the village council measured the disputed land and found out that the land belonged to the respondent, they subsequently put demarcation to mark boundaries between the appellant and the respondent's land. When questioned by one of the assessors AW3 stated that in the suit land there are boundaries which separated the appellant and the respondent.

When defending his case, the appellant testified that he acquired the disputed land in the year 1974 during the operation vijiji however in the year 1981 he shifted to another piece of land and it is in the year 1996 when the respondent is alleged to have invaded the appellant's land. The two witnesses who testified on behalf of the appellant basically established the boundaries of the disputed land.

After re-evaluating the evidence on record the court finds that despite the evidence on record, yet for the court to arrive at a just decision, in my

view, two things ought to have been ascertained by the trial tribunal which are; **firstly**, the size of the land in dispute and **secondly**, boundaries of the disputed land. This court is further of the view that all these could have been established had the tribunal visited the locus in quo.

This court is alive of the position of the law that there is no mandatory requirement for the court or quasi-judicial body to visit locus in quo, the same should be done at the discretion of the court or tribunal where there need arises in order to authenticate evidence adduced by the parties during trial. This position has been consistently demonstrated by courts for instance in the case of In **Nizal v. Gulamali** (1980) TLR 29, the Court of Appeal held inter alia that;

"Where it is necessary or appropriate to visit a locus in quo the court should attend with parties and their advocates, if any, and such witnesses as may have to testify in that..."

(See also a decision in the case of **Sikuzani Saidi Magambo & another vs Mohamed Roble**, Civil Appeal No. 197 of 2018 (Unreported)


Having gone through the entire proceedings of the trial tribunal, it follows therefore, it was prudent in the circumstances of the case, the trial tribunal ought to have visited the locus in quo taking into account that the

decision and visitation by the village council do not form part of its proceedings since whatever was done by the village council was not more than an attempt to amicably settle the dispute. By properly visiting the locus in quo by the trial tribunal, the size of the suit land and the boundaries would be easily ascertained and eventually fair and just determination of the parties' dispute.

Basing on the above deliberations, the judgment of the trial tribunal is hereby quashed and set aside, the file shall be remitted to the trial tribunal and the parties to visit the locus in quo in order to ascertain the size of the disputed land and its boundaries, thereafter, new judgment shall be composed in consideration of the visit of locus in quo. Each party to bear its own costs.

It is so ordered.




M. R. GWAE
JUDGE
10/12/2021