IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO DISTRICT REGISTRY)

LAND APPEAL NO. 31 OF 2021

(Arising from the decision of The District Land and Housing Tribunal for Kilombero/Malinyi at Ifakara, in Land Appeal No. 177 of 2020; Originating from Lumemo Ward Tribunal in Land Case No. 03 of 2020)

ZETH MOHAMEDI MBASU ..... APPELLANT

VERSUS

ALEX TUMBO ..... RESPONDENT

JUDGMENT

21st April & 31st May, 2022

M. J. CHABA, J.

This is a second appeal. The matter traces its origin from the decision of the Ward Tribunal namely, Lumemo Ward Tribunal at Ifakara in Land Case No. 3 of 2020 where the respondent successfully sued the appellant over a ¼ acre or parcel of land situates at Ihanga village. Discontented with the decision of the Ward Tribunal, the appellant herein filed an appeal before the District Land and Housing Tribunal for Kilombero, at Ifakara (the DLHT) via Land Appeal No. 177 of 2020 where the DLHT (Appellate Tribunal) upheld the decision of the Ward Tribunal by declaring that the respondent (Alex Tumbo) was the true owner of the disputed piece of land. Still aggrieved the appellant knocked the door of this court by way of appeal seeking what she believes to be her rights through substantive justice.

The material background facts to the dispute are briefly as follows: As gleaned from the lower tribunal's record, the appellant obtained 18 acres by clearing forest since 1960. She later gifted one of her relatives

2 acres and remained with 16 acres. She used to cultivate the same ever since. Sometimes in between, some persons trespassed her parcel of land and she sued them, and the matter reached before the High Court of Tanzania, Dar Es Salaam zone where she won the case and declared the rightful owner. In 2016 she was acknowledged by the Village Land Committee upon conducted verification of her documents and finally the Village Land Committee was satisfied that the occupier of the parcels of land was non other than the appellant and accordingly was registered. In the year 2017, the respondent trespassed her land and the dispute was brought before Village Council. Whilst the matter was still at the stage of mediation before the Village Council, the respondent herein filed a case before the Ward Tribunal.

On the other hand, the respondent told the trial tribunal that he got or acquired his 4 acres of land (the disputed ¼ acre inclusive) from his parents who were occupying it since 1980 and he started to use it in 1982 soon when he completed his Primary Education. When his parents passed away, he continued using or cultivating the disputed land up to 2017 when the appellant encroached his parcel of land. He then sued the appellant before the Ward Tribunal as alluded to above.

In a bid to pursue for her rights, the appellant preferred the instant appeal clothed with six (6) grounds enumerated hereunder:

1. *That, the appellate tribunal erred in law and facts by pronouncing the judgment in favour of the respondent without any piece of evidence proving the ownership of land and disregarding documentary evidence of the appellant vide the Village receipt for verification of appellant's sixteen (16) acres.*

2. *That, the appellant Tribunal erred in law and fact for failure to consider the disputed land measures ¼ acres is part of the 16 acres of land owned by the appellant.*
3. *That, the appellant tribunal erred in law and fact for failure to consider that the appellant used the disputed land since 1960 compared to the Respondent who alleged to use the same land from 1982.*
4. *That, the appellant tribunal erred both in law and fact by holding the judgment and proceedings of the trial tribunal which did not follow the procedure of visitation of locus in quo hence resulted into unjust decision.*
5. *That, the Appellate Tribunal erred in law and facts for failing to consider that the tribunal based only on the evidence tendered by the respondent and failed to properly record, analyse and consider appellant's evidence as a result it reached into unjust decision in favour of the respondent.*
6. *That, the appellant tribunal erred in law and fact for failure to compose judgment as per mandatory requirement of the law.*

When the appeal was called on for hearing, the parties appeared in persons, unrepresented and the matter was heard orally. The parties addressed this court in general terms instead of directing their minds specifically on the grounds of appeal. Of course, the reasons are obvious. Parties are lay persons and pleadings were drawn by trained legal mind persons and filed by the parties themselves.

The first four grounds of appeal are based on proof and evidence while the fifth ground is based on recording and analysis of evidence. The sixth ground which was not argued at all, touches the propriety of the DLHT's judgment.

Having considered the oral submissions advanced by both parties and upon gone through the proceedings of both, the Ward Tribunal and DLHT, I see prudent to commence addressing the first four grounds of appeal which touches the issue of evidence. Thus, the following are my observations:

First; The Ward Tribunal and DLHT proceedings shows that the appellant maintained that she acquired the parcel of land in disputes by clearing the bushes since 1960.

Second; The appellant claimed to have been using the same for over 60 years and even in 2016 before arose of this dispute, she was recognised by the Local Government Authorities (Village Land Committee) as the occupier of the ¼ acre as part of the 16 acres.

Third; The respondent claimed to have a root of title from his parents who according to him passed away (date unknown) and were said to have acquired it in 1980, and

Fourth; There is no cogent evidence and indeed it was never stated how the respondent's parents acquired the said parcel of land and it is further silence how the said land passed from the ownership of the respondent's parents to the respondent himself.

While the appellant demonstrated her root of title from clearing virgin bushland, the respondent claims to have acquired it from his parents and partly putting forward adverse possession. I acknowledge that both of the above are known as one among the ways of acquiring land in Tanzania. But it is trite law that whoever desires any court to give judgement as to any legal right or liability dependent on the

existence of facts which he asserts must prove that those facts exist, and the burden of proof lies on that person. See section 110 (1) and (2) of the Evidence Act [Cap. 6 R. E. 2019].

As to the issue of the ways of acquiring land in Tanzania, I got inspiration from the decision of this court in the case of **Masoya Mahemba v. Nyasuma Kihaga,** Land Appeal No. 41, HCT, At Musoma, where the court underscored inter-alia that:

> *"In fact, I am aware that in Tanzania, there are several ways in which a person can acquire land including allocation by the village council, or by grant of right of occupancy, purchase, inheritance and gift. Intrusion to a land by adverse possession is not a formal way of acquiring land, however if one fulfils the legal condition can by chance acquire land though it is so risky."*

I have considered the fact that the land in dispute is ¼ acre which, is part and parcel of a non-surveyed land located in Ihanga Village where Section 20 (2) of The Village Land Act [Cap. 114 R.E. 2019] applies and both ways claimed by the parties are relevant to customary right of occupancy. The said provision brings in the requirement of courts to consider customary law, practice and traditions to the extent of adherence with the National Land Policy.

Fifth; Considering the root of title claimed by the respondent in both tribunals below, even assuming that the respondent's parents were occupiers of the parcel of land in dispute for the sake of reasoning, but on perusal of the lower tribunal's record there was no proof of any

transfer of the land from the said respondent's parents to the respondent himself. It is also vague and unknown how the respondent sued the appellant at first with which locus standi. It is settled in our jurisdiction that, a person bringing a suit in a court or tribunal, must show that his legal rights have been interfered unlawfully. The court must always be certain on the identity of parties in dispute so as to avoid entertaining fictitious suits from dishonest persons. The same way, legal rights granted by a court of law must go to the rightful person and liabilities to the proper responsible persons. In substance, this is what it was interpreted in the case of **Christina Mrimi v. Coca Cola Kwanza Bottlers Ltd,** Civil Appeal No. 112 of 2008, (unreported) when the court echoing the decision of this court. It was stated that the rationale for locus standi being checked properly was also several times insisted by this court. Among the cases is that of **Godwin Edishen Sanga v. Emmanuel Ilomo,** Land Appeal No. 44 of 2019, HCT at Mbeya where (Utamwa, J) held inter-alia that:

> "The rationale for the rule of locus standi underlined above is, in my settled opinion, that, it avoids a situation where a party who is not entitled to a given right sues in court successfully or unsuccessfully, but afterwards the rightful party sues before the court in his own capacity or under the same title for the same claim. The danger of this situation, if not well checked by courts of law is that it will cause inter alia, a serious injustice to persons who are entitled to some rights and chaos in courts for opening flood gates of needless litigations"

It follows therefore that it is very crucial for a court of law to determine an issue of *locus standi* whenever it is raised by a party or whenever the trial court or tribunal discovers it *suo motu.*

In our case, the respondent kept maintaining that the disputed parcel of land belonged to his late parents. He did not labour to establish how his parents whose names are unknown acquired the said parcel of land and how the same passed to him and in which position he stood to empower him filed a land matter against the appellant at Lumemo Ward Tribunal. In my considered opinion, I find that since the matter before hand was a matter of evidence and not a matter of mere allegation and finally bless it. In my settled view, it was wrong for the lower tribunal to entertain the matter which is the subject of this appeal. I say so because none of the lower tribunal's sought to ascertain such a crucial point of law. In my considered opinion, if the above anomaly would have noted by the trial tribunal or even the first Appellate Tribunal, I am certain that either of the two would have reached to a different finding.

My study and scrutiny of the available evidence shows that the appellant gave sufficient evidence to prove her ownership, but as the person who sued was an unknown person in law, the trial tribunal would have dismissed the respondent's application outright. It is further expected, as much as the circumstance of this case is concerned, the first Appellate Tribunal would have set aside the verdict entered by the trial Ward Tribunal.

From the above observations, and to the extent of my findings I see no need to labour on the remaining two grounds of appeal, that is

grounds 5 and 6. Since the appellant's appeal have merit, I allow the appeal and nullify both the proceedings of the Ward Tribunal and the District Land and Housing Tribunal and set aside any orders sprang from such proceedings.

In the final analysis, parties are at liberty to institute a fresh matter in accordance with the laws governing land issues. Each party to bear his / her own costs. **It is so ordered.**

DATED at **MOROGORO** this 31st day of May, 2022.

M. J. CHABA

JUDGE

31/05/2022