IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND APPEAL NO. 17 OF 2021

(C/F The decision of Karatu District Land and Housing Tribunal, Application No. 52 of 2018)

DAUDI GEMU .....1ST APPELLANT

SUZANA DAUDI GEMU .....2ND APPELLANT

VERSUS

HALIMA HAMISI .....1ST RESPONDENT

DANIEL AWAKI .....2ND RESPONDENT

JUDGMENT

13/5/2022 & 7/8/2022

GWAE, J

In the District Land and Housing Tribunal of Karatu at Karatu (Trial tribunal hereinafter) appellants who are husband and wife filed a dispute against the 1st respondent, host and 2nd respondent (invitee) alleging that their area measuring 115 x 70 paces out of 155 x 115 paces had been trespassed.

It was the version by the appellants before the trial tribunal that they were allocated their parcel of land by the Qangdend village authority via Mkwajuni hamlet on the 3rd February 2002 and that they were issued

with allocation letter (letter of offer-PE1). Whereas the 1st respondent's version is that she was allocated her parcel of land measuring about three acres and that she leased the same to the 2nd respondent from 15th day of September 2009 to 15th day of September 2019. The 1st respondent's stand is also to the effect that it was the 2nd respondent who cleared the area which he hired from her.

Upon hearing of the evidence adduced by both parties, the learned chairperson came up with a conclusion that, the appellants had failed to prove to the required standard if the respondents had trespassed the suit land measuring 115 x 70 paces. He eventually declared the respondents to be the lawful owners of the suit land.

Aggrieved by the decision of the trial tribunal, the appellants have knocked the doors by presenting their Memorandum of Appeal containing five (5) grounds of their grievances however upon my due scrutiny, there are only three (3) grounds of appeal as two grounds are nothing but a mere repetition, these are;

1. That, the District Land and Housing Tribunal erred in law and fact by writing judgment in Swahili language contrary to the law

2. That, the District Land and Housing Tribunal erred in law and fact for its failure to properly scrutinize the evidence adduced before it.
3. That, the District Land and Housing Tribunal erred in law and in fact for holding that the appellants did not take any action for 9 years while there was sufficient evidence that the immediate action was taken since 2011.

On the 13th May 2022 when this appeal was called on for hearing, both parties appeared in person, unrepresented. The 1st appellant verbally argued that the trial tribunal erred in law since its decision is not in conformity with the evidence on record whereas the representative for the 1st respondent argued that the trial tribunal's decision was properly founded.

When composing judgment especially when I carefully examined the documents produced and admitted by the parties and the trial tribunal respectively (PE1 & DE1), testimonies by the parties and their respective witnesses, I have come up with an observation that, the 1st appellant was allocated a piece of land measuring 155 x 115 paces whose boundaries are indicated in the offer but nothing like a piece of land owned by either the 1st respondent or 2nd respondent is mentioned save Anapa Joseph-East, Ramadhani Amri-West, mosque-South and Mangola road-North

whereas the boundaries of the parcel of land owned by the 1st respondent and rented to the 2nd respondent has the following boundaries (See DE1), from north- there is a farm owned by the 1st appellant, South, mosque, East-Tatu Nyerere and from west there is a farm owned by Ally Kidole.

That being the court's observation, it is therefore my considered view as correctly argued by the 1st appellant that there was a need of visiting the locus in quo by the trial tribunal so that it can ably verify as to the extent of part of the land owned by the appellant is said to have been trespassed by the respondents taking into account that not the whole piece of land allocated to the appellants which is alleged to have been encroached and the fact that the boundaries of the parties' pieces of land from south and north are contradictory. I am saying so for a simple and clear logic that, if the boundary of the respondents' parcel of land from North is the farm owned by the appellants it would clearly follow that the boundary of the appellants' land from south is the land owned by the respondents.

I am sound 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 when need arises in order to confirm or clear doubts on the evidence adduced by the

parties during trial. This position has been consistently emphasized by our courts for instance in the case of **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...*"

Also, the Court of Appeal of Tanzania in the case of **Avit Thadeus Massawe vs. Isidory Assenga,** Civil Appeal No. 6 of 2017 (unreported) which adopted the principle in the decision by the Nigerian High Court of the Federal Capital Territory in the Abuja Judicial Division in the case of **Evelyn Even Gardens NIC LTD and the Hon. Minister, Federal Capital Territory and Two Others,** Suit No. FCT/HC/CV/1036/2014 Motion No. FCT/HC/CV/M/5468/2017 in which various factors to be considered before the courts decide to visit the locus in quo were well elaborated. In the said case, the court in its ruling relied on the decision in the case of **Akosile vs. Adeye** (2011) 17 NWLR (Pt. 1276) p. 263 which summarized the factors as follows:

> "*The essence of a visit to locus in quo in land matters includes location of the disputed land, the extent, boundaries and boundary neighbor, and physical*

features on the land. The purpose is to enable the Court see objects and places referred to in evidence physically and to clear doubts arising from conflicting evidence if any about physical objects on the land and boundaries."

Having documentary evidence on record as explained herein above, I am of the firm opinion that it was prudent in the circumstances of the case, the trial tribunal ought to have visited the locus in quo considering the variance of the boundaries of the parties' parcels of land from south and north in order to dispense justice fairly. Had the trial tribunal closely considered pieces of evidence adduced by the parties together with their exhibits, it would have noticed that there was a necessity of visiting the locus in quo. Having determined the 2nd ground of appeal to that effect, I am not therefore supposed to be curtained determining other grounds of appeal.

Basing on the above deliberations, the judgment and decree of the trial tribunal are hereby quashed and set aside, the file shall be remitted to the trial tribunal for it to visit the locus in quo together with the parties and advocates, if any, in order to ascertain the disputed piece of land and its boundaries. Thereafter, the tribunal's judgment shall be re-composed

in consideration of the tribunal's visitation of locus in quo. Each party shall bear its own costs of this appeal

It is so ordered.

DATED at **ARUSHA** this **8th July, 2022**

M. R. GWAE
JUDGE
8/07/2022