IN THE HIGH COURT UNITED REPUBLIC OF TANZANIA

(TANGA DISTRICT REGISTRY)

AT TANGA

LAND APPEAL NO. 08 OF 2022

(Arising from LAND APPLICATION NO. 13 OF 2014, THE DISTRICT LAND AND HOUSING TRIBUNAL OF KOROGWE)

BISCUIT NJAU----------1ST APPELLANT
FRANCIS MBOWE----------2ND APPELLANT

VERSUS

HARITH HANAFI MHINA---------- RESPONDENT
(NEXT FRIEND OF HANAFI OMARI MHINA)

JUDGEMENT

Mansoor, J:
Date of JUDGEMENT- 24TH JUNE 2022

Briefly, facts of this case are that the respondent Harith Hanafi Mhina was allocated the land described as Plot No. 62 Block V in Korogwe in 2010, but in 2013 without any color of right the property was invaded by Biscuit Njau, the 1st Appellant herein. Biscuit Njau said he is a mere contractor having been contracted by Francis Mbowe, the 2nd appellant herein to build the house. The Land officer who testified at the Tribunal as RW2 said the land belongs to Harith Hanafi Hamisi and said

the 2nd Appellant was never granted the right to own that piece of land. The 2nd Appellant did not defend and never tendered any documents to prove his ownership despite being afforded the chance to do so by the Tribunal. The Tribunal pronounced the Judgement in favour of the respondent, and the property in dispute was declared to be the property of the respondents. The Appellants were ordered to pay costs.

Aggrieved, the Appellants filed the appeal the appeal before the High Court raising three grounds:

1. That the Tribunal erred in ordering the 1st appellant responsible to pay costs as he was only the contractor contracted by the 2nd appellant to build the house at the disputed plot.
2. The 2nd appellant was denied a chance to produce documentary evidence.
3. The Tribunal grossly erred to close the 2nd defendant's case and erred denying the 2nd appellant a chance of hearing.

Without further ado, I agree on the 1st ground that the 1st Appellant being the mere contractor and who clearly stated so before the Trial Tribunal, he was dragged in the case without justifiable cause, and the Tribunal ought not to have ordered him to pay costs to the respondent. Thus, the appeal on the first ground is successful, and the order for payments of costs to the respondent by the 1st Appellant is hereby quashed and set aside.

Although the Appellants insists in their submissions that the Tribunal condemned the Appellants herein to pay specific damages to the tune of Tshs 7,000,000 and general damages to the tune of Tshs 10,000,000, but I perused the Judgement as well as the Decree, and there is no such order made by the Tribunal ordering the Appellants herein to pay specific or general damages. The Judgment and Decree stated, and I quote: The Judgement at page 3 reads:

"Finally, this honorable Tribunal basing on the records at the Korogwe Town Council's land office, as testified by the land

officer, Mr. Nyatto, the lawful owner of the suit plot as described above is the Applicant who has given documentary evidence through Exhibit marked P1.

Therefore, the Applications is granted with costs. Costs of this suit to be borne by the 1st and 2nd respondents to the Applicant."

Page 2 of the Decree reads:

The Applications is granted with costs. Costs of this suit to be borne by the 1st and 2nd respondents to the Applicant."

What is clear from the Judgement and Decree is that the Tribunal granted two orders only, a declaration that the Land in Dispute is the property of the Respondent, and that the 1st and 2nd Appellants were ordered to pay costs of the suit to the respondent.

I, however, agree that although the Tribunal did not mean to grant the specific damages and general damages as prayed in the application, when the Tribunal gave a decree which was to

declare that the Applications were granted, it could have meant that even the prayers for specific damages and general damages were also granted. This kinds of Decree and Judgements needs to be discouraged, the lower Courts as well as lower Tribunals are again and again reminded to issue an unambiguous decree, the Decrees must be clear, it must specifically and in clear language give the relief sought, after recording the issues, and receiving the evidence of both sides.

I have perused the judgment of my learned brother; with respect, I entirely agree with his reasonings and conclusions regarding as to who is the owner of the land. But he never determined whether the respondent herein had suffered any specific damages, and whether the specific damages have been proved on the required standards. When the Judgement is meant to grant a relief on specific damages, it must clearly state so, after giving the reasons as to why the court or Tribunal believes that the complainant had suffered those damages. The judgement also should state clearly if it had granted general damages, and at what rate. The tremendous

responsibility that is casted upon the court while rendering the decision which will have grave and serious consequences upon the rights of parties, and this task must be done carefully and with dignity and in clear language, the reliefs granted must be specifically stated. It is wrong to say, the applications are granted while the applicant has prayed for several reliefs, without saying specifically which relief was granted. A judgement must specifically state which relief is granted and which relief is not granted. For the reliefs which are granted, the reasons for granting such reliefs must be stated.

The result is that the judgment of the learned Chairperson being defective judgement is quashed and set aside. The question of appropriate relief which would meet the ends of justice on the peculiar facts and circumstances of the case poses a problem. I regret saying that the case must be tried de novo, and a clear judgement with clear reliefs must be issued. I am aware that dispute between the parties took a long time to be resolved and the respondent is made to suffer for the inevitable delay of Court proceedings and this Court

taking the final decision in his favor, setting aside the erroneous judgement and decree held up till now. The maxim actus curiae neminem gravabit "An act of the Court shall prejudice no man" has been applied in varying context so that no party suffers any prejudice through the instrumentality of the Court and the Court proceedings.

Consequently, since the judgement and decree of the Trial Tribunal is ambiguous, and did not meet the requirement of a proper judgment, the judgment and decree and all orders passed are quashed and set aside. The Land Application shall be heard De Novo before the Trial Tribunal presided by a different Chairperson. The Trial of the case must be done expeditiously.

Each party to bear his/her own costs.

DATED at TANGA this 24TH day of JUNE 2020

THE HIGH COURT OF TANZANIA

MANSOOR
JUDGE,
24th June,2022