

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF TANGA)

AT TANGA

LAND APPEAL NO. 39 OF 2020

*(Arising out of Judgment in Land Application No.20/2017 of the District Land and Housing Tribunal
for Korogwe at Korogwe delivered on the 11th of November, 2020)*

BETWEEN

HANDENI DISTRICT COUNCIL

GOLE VILLAGE COUNCILAPPELLANT

VERSUS

GIBSON BLASIUS MESEYEKI.....1st RESPONDENT

LOSERIAN EMMANUEL LEKOKO.....2nd RESPONDENT

REHOBOTH AGROVERT (T) LTD.....3rd RESPONDENT

JUDGMENT

MRUMA, J.

Parties in this appeal are batling over ownership of farms located at Gole Village of Handeni District in Tanga Region namely; farm No. 1434; farm No.1435; farm No. 1440; farm No.1441; farm no. 1443 farm no.1444; farm no. 1446; farm no.1448, farm no;1449; farm no.1439 and farm no. 1445.

The Respondents Gibson Blasius Meseyeki Loserian Emmanuel Lekoko and Rehoboth Agrovert (T) Ltd sued the present Appellants Handeni District Council and Gole Village Council for declaratory orders that they were the rightful owners of the disputed farms and for eviction of the Appellants from the said farms.

After hearing of evidence from both side the District Land and Housing Tribunal for Korogwe District ruled in favour of the Respondent. The District trial tribunal held that on the evidence adduced the present Respondents had been in the land for over 17 years, and had intensively developed them and that in terms of item No. 22 of the 1st scheduled to the Law of Limitation Act (Cap 89 R.E. 2019] time to redeem land which is 12 years had elapsed. The tribunal concluded that it would be unjust to interfere with the peacefully ownership and long term uses of the land by the Respondents. The Appellants were aggrieved by that decision and they have appealed to this court on the following grounds:

1. That the trial learned chairperson and gentlemen assessors misdirected themselves in holding that the disputed lands were lawful owned by the Respondents basing on the doctrine of

adverse possession without delving deep into the authenticity of the letters of offer in support which were submitted by the Respondents as exhibits to prove their legal ownership of the disputed land.

2. That the trial learned chairperson and the gentlemen assessors misdirected themselves in holding that the disputed land belong to the Respondents notwithstanding discrepancies of their / respondent's) documents in support of the application.
3. That the trial learned chairperson and the gentlemen assessors misdirected themselves in holding for the Respondents notwithstanding that Negero Village Council was not joined as a necessary party to the suit after having being alleged to have allocated the disputed land to the Respondent.
4. That the trial learned chairperson and gentlemen assessors misdirected themselves in holding that the disputed land belong to the Respondent on the basis of exhaustive development made by the Respondents.

When the appeal was called for hearing on 19.2.2021, Mr. Mangesho (Council Solicitor) who was accompanied by Mr. Bahari Village Chairman of Magole appeared for the Appellants. The Respondents were absent. For the sake of justice court directed the appeal to be argued by

way of written submissions and made a schedule for the parties to present their respective submissions. I am grateful to the parties counsel for their prompt compliance.

In their submissions in support of the appeal the Appellant's counsel concentrated on the illegalities allegedly on the letters of offer tendered by the Respondents in their bid to prove ownership of the disputed land. According to the Appellant's counsel the coordinates of the complained farms amounting to 4, 135 acres show that they are allocated at Gole Village Council and not Negero Village Council as shown in purported letters of offers.

Responding to the Appellant's submissions Mr. Switbert Rwegasira, counsel for the Respondents dismissed the Appellant's complaints on this ground saying that there was no evidence to support the Appellant's complaint's that letters of offers tendered by the Respondents in evidence were tainted with illegalities or that they were forged.

On my part, I would I agree with Mr. Rwegasira that there was no evidence to prove that the offer letters tendered in evidence by the Respondents were forged and/or tainted with illegalities. No evidence was tendered to prove that there were farms numbers in respect of farms located at Negero Village which corresponded with farm number in

respect of the land in dispute. The mere fact that two or more letters of offers may have similar or corresponding numbers does not necessarily mean that they are forged or that they are tainted with illegalities. The burden to prove forgery in civil cases is heavier than the burden to prove other alleged elements in those cases. There are several elements which have to be proven before court can find that there is forgery. The person alleging forgery must prove that the documents are false documents. This has not been established in this case therefore the trial tribunal was correct to rely on the letters of offers to declare the Respondents lawful owners of the farms.

Secondly, while still on the issue of ownership of the disputed land there is evidence that has not been disputed by the Appellants that the Respondents have been in possession of and have been developing the suit land since 2000. The Appellants who are local government authorities were all along present but did not take any action to stop the Respondents from developing the suit land.

In my view it is not fair to allow them to take over the land after more than 17 years have elapsed on the ground that the Respondents offer letters are tainted with illegalities. Offer letters are mere piece of papers evidencing ownership but the best evidence in the circumstance

of this case is physical occupation and possession of the land for over 17 years without any disturbance from the Appellants or any other person whatsoever. The Appellants being government authority may now or at any time take over the land not by an order declaring the Respondents letter offers illegal but by acquiring it through laid down procedures. In other words even if the tribunal would have dismissed Respondent's claim of ownership based on letter offers, so long as they have been in physical occupation and possession of the suit land for more than 12 years, the only legal and fair way to dispose them of the land was by way of acquisition under the laid down legal processes.

That said, I find no reason to discuss remaining grounds of appeal. The Appellants being local government authorities and therefore the government cannot have any other justifiable means to disposes its citizens of the land they have possessed, occupied and developed for seventeen (17) years without any caution from the authority. The appeal has therefore no merits and it is dismissed. Each party shall bear own costs.



A. R. Mruma

Judge

7/2/2022

7/2/2022

Coram : Hon. A. R. Mruma, J

For the Appellant : Mr. Rashid Mohamed State Attorney (In High Court
premises at Tanga)

For the Respondent : Mr. Rwegasira Advocate (on line)

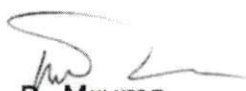
Cc: Delphina

Court:

Judgment delivered through video conference (on line) this 7th
February 2022

R. A. Explained.




A. R. Mruma

Judge

7/2/2022