

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

MISC. LAND APPEAL NO. 74 OF 2021

(Arising from the decision of the District Land and Housing Tribunal for Mara at Musoma in Application No. 09 of 2014)

BETWEEN

GEBAN HEZRON WINANI..... APPELLANT

VERSUS

MSAFIRI YUSUF MARO.....1ST RESPONDENT

AMIR ZUBERI2ND RESPONDENT

JUDGMENT

10th Nov & 14th December, 2022.

M. L. KOMBA, J.:

This appeal traces its origin from the decision of the District Land and Housing Tribunal (DLHT) of Mara at Musoma in Land Application No. 09 of 2014 in which the appellant Mr. Geban Hezron Winani (then Applicant) unsuccessfully claimed for exclusive ownership and occupation of a disputed land at plot No. 166 situated in Bweri, Musoma Municipality. He claimed to own the said land since 1994 and that he fulfilled all conditions set by the Municipal including of the payment of compensation to outgoing occupier (respondent).

DLHT while dismissing application it ordered the appellant to pay compensation to outgoing occupier before claiming for vacant possession. Undeterred, appellant decided to file the instant appeal which raises three grounds to wit;

- 1. That since the respondents came into the appellant's land unwelcome and the same having been surveyed, the trial Tribunal erred in law to order that they should be compensated despite the fact that they are trespassers.*
- 2. That since the applicant was allowed the legally, and that his evidence was not controverted by the respondents, the trial Tribunal Chairman misdirected himself on point of law and facts to deny him victory and entitlement to ownership of the land in dispute.*
- 3. That the authenticity and legality of the certificate of occupancy its procurement not challenged anyhow, it was an error on part of the trial Chairman to find that there was no compensation in view the evidence produced.*

The parties were consulted on the subjects to cherish the right to be heard, the appellant was enjoying the service of Ms. Helena Mabula while the respondent consulted the legal services of Mr. Christopher Waikama both are advocates. Ms. Mabula on the first ground submitted that Chairman of DLHT erred to order compensation to respondent while they are trespassers and that the appellant has a title issued by the Musoma Municipal

Council (MMC). According to her, it was not possible for the MMC to issue offer over a land which has encumbrances and that the appellant has all qualification to be granted certificate of title that's why they gave it to appellant.

On the second ground it was her submission that testimony of the appellant was not objected during trial and the issue of compensation was not objected neither adduced by respondents while testifying in court. She further submitted that the tribunal erred to discuss the issue of compensation without giving appellant right to be heard claiming that Tribunal raised the issue *suo motto*.

The last ground which is about the certificate of title which was tendered and admitted at DLHT. Ms. Mabula submitted that it was wrong for the Chairman to observe there was no compensation because the appellant has certificate then, he is the lawful owner of the disputed land and supported her submission by citing the decision of Court of Appeal in the case of **Amani Maulidi Ambali and another vs. Ramadhani Juma**, Civil Appeal No. 35 of 2019 at page 6 by Mwarija, JA that if the person has title and the title was obtained through legal process that person is considered a rightful owner. She prayed the court to allow the appeal basing on the cited case,

the appellant to be declared a lawful owner and the respondent to be trespassers.

Mr. Waikama in responding on the first ground he submitted that record of the judgement of DLHT at the first page show that respondents used the piece of land since their parents were alive, they cannot be termed trespassers. More over according to him the appellant was given a condition to pay compensation to previous owner of the land and that there was a need the MMC to be joined as necessary party but was not done.

On the second ground that evidence was not objected it was submission that 1st respondent disputed the issue of ownership and explained that the area belongs to his late father and there is administrator who manage estates of the late owner and the family is still in occupation of the said land.

Mr. Waikama did not dispute the issue of certificate of occupancy as offered to appellant as raised in the third ground of appeal, he said the appellant has to abide with the conditions given by MMC. He submitted further that respondent family occupied the area before the appellant was given right of occupancy and there was no evidence tendered during trial in respect of the compensation weather to respondents or relatives of respondents showing

that compensation was paid to previous owner. It was his submission that the DLHT was right to order compensation. He finally insisted that MMC was supposed to be joined as party in DLHT so that they can inform the court what was the directives.

In rejoinder Ms. Mabula insisted that the issue of compensation was not discussed during trial and that because his client has right of occupancy is enough to be rightful owner.

In handling this appeal I had time to peruse the record of the Tribunal and read the judgement. I read records and testimony of witnesses. All three grounds of appeal centered in the issue of compensation. Ms. Mabula complained that the Chairman discussed the issue of compensation *suo motto* and did not give parties rights to address the Tribunal. This being the first appellate court its duty bound to re – evaluate the entire evidence in objective manner and arrive at its own finding of facts, if necessary.

I have read part of the judgement and proceeding. It is in record that on 28/11/2016 the 1st respondent (DW1) informed the tribunal about compensation issue who was supposed to be paid weather is the MMC or individual. Moreover, the appellant was aware of the non-completion of

compensation requirements as rightly quoted by Chairman at page 3 of the judgement, counsel for the appellant at the trial Ms. Mlowa on 30/01/2017 informed the Tribunal her anxiety over payment of the compensation by the MMC. Her anxiety accompanied by the prayer and I quote for easy of reference.

'It appears the Municipal Council did not pay to the respondents the money they were supposed to be paid. So, we pray for another date to find out the way forward'

Unlike what Ms. Mabula was insisted, the issue of compensation was raised by 1st respondent and then confirmed by the appellant and promise to make a follow up. Till the time of composing the judgement, appellant did not inform the Tribunal the way forward as promised. This promise by the appellant makes me believe, and it is the fact that, Chairman decision was premature on the fact that there is no formal communication made to the Tribunal about compensation as promised.

Records further show that the Musoma Municipal Council (MMC) has been mentioned to be the one who issue the certificate of occupancy, it was supposed to be joined as necessary party to guide the Tribunal to reach its decision.

Due to shortcoming as analysed in above, I quash and set aside decision of the District Land and Housing Tribunal on Land Application No. 09 of 2014 and orders resulted from that decision. Any party so wishes to lodge a suit should sue proper party and join necessary parties before a court with jurisdiction.

No order as to costs.

Dated at **MUSOMA** in 12 December, 2022.

M. L. KOMBA

Judge

Judgement Delivered today in chamber in the presence of Advocate Makowe who was connected from his office, for the appellant and in the presence of Advocate Waikama for respondent.



A. V. Tarimo
Ag. Deputy Registrar

14th December, 2022