

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND APPEAL NO. 53 OF 2022

(Arising from the Decision, Judgment and Decree in Land Application No. 75 of 2020 of the District Land and Housing Tribunal for Morogoro, at Morogoro)

BETWEEN

BEATRICE PHINEAS..... APPELLANT

VERSUS

MBWANA RASI MBWANA..... RESPONDENT

JUDGMENT

19th December, 2022

CHABA, J.

In the District Land and Housing Tribunal for Morogoro, at Morogoro (the DLHT) the respondent, Mbwana Rasi Mbwana successfully sued the appellant jointly with Sylvester Mchemba, Nassoro Awadhi and Lenard Mabula, not parties to this appeal, claiming for the following orders, I quote: -

- 1. Baraza litamke kuwa mleta maombi ni mmiliki halali wa eneo bishaniwa na wajibu maombi 1 and 2 ni wavamizi;*
- 2. Amri ya kubomolewa majengo yaliyojengwa na wajibu maombi 1 na 2 pamoja kuondolewa "bikoni";*



3. *Kwamba Baraza limuamuru mjibu maombi kulipa fidia ya jumla itakayoamriwa na mahakama;*
4. *Gharama za kesi zitolewe; na*
5. *Amri nyingine yoyote itolewe Baraza itakayoona inafaa.*

The background which gave rise to this appeal can be briefly summarised as follow: The respondent, Mr. Mbwana Rasi Mbwana sued the appellant, Ms. Beatrice Phinias before the DLHT jointly and together with others who are not party to this appeal namely, Mr. Sylvester Machemba, Mr. Nassoro Awadhi and Mr. Leonard Mabula, over unsurveyed parcel of land measuring five (5) acres situated at Nguvukazi area at Kihonda Ward within Morogoro Municipality.

The record from the DLHT reveals further that, the respondent claimed that the appellant featured as the first respondent trespassed into his parcel of land (farm) and inserted bicornes destroying the available demarcation marks.

The respondent who appeared and featured as the applicant before the trial Tribunal/DLHT, prayed the trial tribunal to award him the following reliefs; Declaration that he is a lawful owner of the suit land in dispute (farm) and that the first and second respondents are trespasser to the land in dispute, that eviction and demolition orders be issued

against the respondents and the bicornes inserted therein be removed accordingly, that respondents be condemned to pay general damages, costs of the application and any other reliefs that the trial Tribunal may deem just and fit to grant, as hinted above.

After full trial, the DLHT decided in favour of the respondent / applicant by declaring him as the lawful owner of the suit disputed piece of land. Aggrieved with the findings, decision and orders of the trial Tribunal, the appellant preferred an appeal to this Court armed with seven (7) grounds of appeal as follows: -

- 1. That, the learned Chairman erred in law by entertaining an application whose property in dispute was not clearly specified.*
- 2. That, the learned trial Chairman erred in law and in fact by admitting in evidence and relying on a sale agreement whose stamp duty was not properly paid hence violated the provision of section 47 (1) of the Stamp Duty Act, [Cap.189 R. E, 2019].*
- 3. That, the learned trial Chairman erred in law and in fact by failing to draw a negative inference against the applicant for failure to call a material witness who attested his sale agreement without any reason disclosed before the tribunal.*
- 4. That, the learned trial Chairman erred in law and in fact by failing to properly scrutinize, weigh and evaluate evidence on record hence due to*

such misapprehension proceeded to rule in respondent's favour herein who nevertheless failed to prove his case to the required standard.

- 5. That, the learned trial Chairman erred in law and in fact by invalidating Exhibit RE1 on the reason that one John Jackson did not testify in court hence disregarding the reason by the Appellant as to John Jackson's whereabouts (Sic).*
- 6. That, the trial Chairman erred in law and in fact by entertaining the matter without a necessary party.*
- 7. That, the learned trial Chairman erred in law and in fact by disregarding the long-continued occupation of the land in dispute by the appellant who had occupied the same since 2006.*

At the hearing of this appeal, the appellant enjoyed the legal services of Mr. Jovin Manyama while the respondent had the service of Mr. Faraji Mangula both legal trained minds.

With the parties' consensus, it was agreed that the appeal be disposed of by way of written submissions. Both parties submitted at lengthy. I will however, not reproduce their written submissions as they are already in the court records, but I appreciate their arguments for and against this appeal. I will endeavor to refer their useful submissions in the course of addressing substantive issues.



On the first ground of appeal, the learned counsel for the appellant submitted that the learned Chairman erred in law by entertaining an application whose property in dispute was not clearly specified.

Mr. Manyama contended that, reading the descriptions of the disputed land at paragraph 3 of the amended application at the trial Tribunal, one will observe that it is too general for lack of specific boundaries/features surrounding the area, as the disputed land is un-surveyed area. To reinforce his argument, Mr. Manyama cited the case of **Daniel Dagala Kanuda** (As Administrator of the Estate of the Late Mbalu Kushaha Buluda) **vs. Masaka Ibeho and Others**, Land Appeal No. 26 of 2015, High Court of Tanzania at Dar Es Salaam (Unreported), where Utamwa, J., (As he then was) had the following to say at page 5 of the typed Judgment: -

"However, regarding un-surveyed land, specifications of boundaries and or permanent features surrounding the land at issue are very important particulars for purposes of identifying the land from other pieces of Land neighbouring it..."

Mr. Manyama submitted further that, it was fatal for the trial Tribunal to act on an incompetent application. To buttress his contention, he referred this Court to the case of **Mwanahamis Habibu and 7 Others vs.**

Justin Ndunge Lyatuu (As Administratrix of the Estate of the Late Justine Aitalia Lyatuu) & **173 Others**, Land Case No. 130 of 2018, High Court of Tanzania (Land Division) at Dar Es Salam (Unreported), wherein the Court held: -

"In other words, non-description of the suit property renders the case incompetent before the court. In that case, overriding objective rule as suggested by the plaintiff's counsel in my settled opinion is inapplicable. The defect is fatal as it goes to the root of the case itself".

On the other hand, opposing this ground of appeal, Mr. Faraji Mangula, learned counsel for the respondent contended that, the suit land/area has been quite described as an un-surveyed farm measuring 5 acres located at Nguvukazi Street, within Kihonda Ward in Morogoro Region.

As regards to the allegations that, at paragraph 3 of the amended application he didn't clearly state the boundaries for his neighbours, Mr. Mangula averred that this is contrary to the provision of Order VI, Rule 3 Of the Civil Procedure Code [Cap. 33 R. E, 2019] which provides that: -

"Every pleading shall contain, and contain only, a statement in concise form of the material facts on which the party pleading relies for his claim for defence, as the case may be, but not the evidence



by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively; and dates, sums and numbers may be expressed in figures”.

He underlined that, neighbours surrounding the disputed suit land cannot be included in the pleadings as including them will be including evidence in the pleadings.

To bolster his argument, he cited the case of **Mbwana M. Chuma and 2 Others vs. Dar Es Salaam Park Land Holding Limited**, Land Appeal No. 34 of 2022, High Court of Dar Es Salaam, wherein this Court was faced with the issue of description of the suit land, and stated inter-alia that: -

"The duty of the party is to give a description sufficiently to identify, in my view as long as the appellants have stated their location in the pleading, I find it is sufficient to locate the surveyed suit land, it is located at Kiziza Street, Kibada in Dar Es Salaam and the description of the suit land is stated under paragraph 6 (a) (iii) of the application, that there are graves. In my view, for un-surveyed land, this is clear description. I have considered the fact the appellants will have an



opportunity to tender their documentary evidence to support their allegations during the hearing of the case."

He concluded that, the appellant's argument is baseless and lacks merit.

In a brief rejoinder, Mr. Manyama basically reiterated that the purpose of specific identification is to know whether or not the suit land was subject to previous litigation also to procure future litigation in respect of the same property.

To fortify the above point, Mr. Manyama cited the decision of this Court in the case of **Laurent Mbwila & 6 Others vs. Kinondoni Municipal Council and Attorney General**, Land Case No. 11 of 2021, High Court of Dar Es Salam, wherein it was held: -

"the party is duty bound to give descriptions sufficient to identify the properties in dispute so that if a decree is passed concerning it, it shall be workable. The court need to pass a decree which can be executed, so without proper specification of the land, the decree passed is unexecuted".

I have gone through the submissions of both parties in respect of the first ground of appeal. In determination of this ground of appeal, I will maintain the jurisprudence already in place as far as proper description(s)



of the subject matter in land disputes is concerned. The logical basis of the provision of Order VII, Rule 3 of the CPC (Supra) stated by the counsel for the respondent, can simply be said that, the purpose of proper description of the subject matter is just to distinguish a suit land from other parcels of land in the same area, and afford courts with a chance to make certain and executable orders as stated in the case of **Daniel Ndagala Kanuda**, (Supra).

I had ample time to examine the plaint presented before the trial Tribunal on the noted paragraphs, in particular paragraphs 7 (i), (ii), (iii), (iv), (v) and (vi). I agree with the arguments put forward by the learned counsel for the appellant that the description of the suit land/disputed parcel of land is very vague and the descriptions narrated therein are not sufficient at all to identify the disputed land. Under paragraph 4 of the plaint, the property in question has been described as follows: -

***"Location and address of the suit premises /land:** The land in dispute is known as un-surveyed farm (shamba) consisting of 5 acres, Located at Nguvukazi Street, Kihonda Ward within Morogoro Region".*

Looking at the wording of paragraph 4 of the plaint, in my considered opinion, this description even if allowed to stand, will make the decree of the court, if passed in favour of the respondent/applicant, it would be

hard and difficult as well to execute the purported decree. The proper way to describe the subject matter in a case like this, is to give full details of each parcel of land involved in disputes in terms of the owner, size, location, boundaries and every mark available which distinguishable from other parcel of land owned by other persons in the locality as it was expounded in the case of **Mwanahamis Habibu and 7 Others** (Supra).

From the foregoing analysis of the parties' submissions in line with the first ground of appeal, I tend to agree with the counsel for the appellant that, the trial Tribunal determined the matter based on an incompetent plaintiff. It follows therefore that non-description of the suit property (Shamba) it renders this appeal incompetent before the Court. Hence, in the circumstance of this case, the overriding objective principle as suggested by the counsel for respondent, in my settled view, is inapplicable. Indeed, the defect is fatal as it goes to the root of the case itself.

As noted above, since the defect is fatal and it goes to the root of the matter itself, and to the extent of my findings, I see no reasons to proceed with the determination of the remaining six grounds of appeal for a reason that the first ground of appeal is sufficient and capable of disposing of the appeal in its entirety.

In view of the foregoing, I find that the appellant's appeal is meritorious. Accordingly, the proceedings and the impugned judgment of the District Land and Housing Tribunal for Morogoro, at Morogoro are hereby quashed, and the decree and orders stemmed in Land Application No. 75 of 2020 are set aside.

In the final event, the appellant's appeal is allowed with no orders as to costs, **I so order.**

DATED at **MOROGORO** this 19th day of December, 2022.



A handwritten signature in blue ink, appearing to read "M. J. Chaba", is written over the printed name.

M. J. CHABA

JUDGE

19/12/2022