

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 124 OF 2021

*(Arising from the decision of District Land and Housing Tribunal for Mara at
Musoma in Land Case No. 130 of 2020)*

CATA MINING LIMITED..... APPELLANT

VERSUS

OBETHO JOSEPH WEREMA..... RESPONDENT

JUDGMENT

17th & 23th February, 2023.

M. L. KOMBA, J.

Origin of this appeal is a land dispute. Respondent was claiming in the District Land and Housing Tribunal for Mara at Musoma(the Tribunal) Land case No. 130 of 2020 that he is the lawful owner of the disputed land which appellant occupied without compensation. Further, respondent testified to the effect that he bought the disputed land from one Makoye Madimilo, producing his contract for sale and confirmed that the sale was blessed by the village council. He said the disputed area is now occupied by the appellant.

The appellant is a Mining Company which started mining activities in Kataryo village in 2015. In response to respondent assertion, the appellant

confirmed that the disputed land did not belong to the Company (the appellant) neither to the respondent but it belongs to Mr. Makoye Madimilo. From this submission the Tribunal decided in favour of the respondent.

Undeterred, appellant decided to file the instant appeal which raises nine grounds of appeal that constitute the gravamen of this complaint. The grounds read as follows;

- 1. That, the Honourable Chairman grossly misdirected himself by state that appellant admitted that the dispute land belongs to one Makoye Madimilo*
- 2. That, the trial tribunal erred in law and fact to rely on the false evidence of respondent that the disputed land was used by appellant's security guards without sufficient proof.*
- 3. That, the trial tribunal erred in law and fact for failure to consider the heavier evidence adduced by appellant and rely on weak evidence of respondent*
- 4. That, the trial court grossly erred in law and fatal for delivered judgment on favour of respondent without proper valuation of entire evidence.*

5. *That, the trial tribunal erred in law and fact for delivered Judgment on favour of respondent while only one assessor visited locus quo contrary to the law.*
6. *That, the trial tribunal erred in law and fact to award respondent amount of Tshs. 50,000,000/= as general damage without showing how he arrived to that amount.*
7. *That, the trial tribunal erred in law and fact for failure to observe proper procedure of visiting locus quo before and after contrary to the law.*
8. *That, the trial chairman erred in law and fact for failure to consider that the respondent's evidence implicated other person whom was supposed to be joined as necessary part to the proceedings.*
9. *That, trial tribunal erred in law and fact to admit exhibit P1 as evidence while the name appeared is not the name of respondent.*

On 26th October 2022 when the appeal was fixed for hearing, the respondent, through Raphael Lukindi, learned Advocate presented a preliminary objection against the appeal on one point of law that the appeal is lodged out of time. The Objection was overruled and it was directed the appeal to be determined on merit.

During hearing of this appeal, the appellant decided to change the counsel, this time it was represented by Ernest Mhagama, while respondent

continue to benefit from the legal service of Raphael Lukindi this time was Assisted by Mwita Emmanuel both advocates.

The appeal has hit a snag. It was Mr. Mhagama who started to make the ball roll, he informed this court grounds number 1,2,3 and 8 will be argued jointly, then ground 4, 6 and 9 will be argued separately and he decided to drop the 5th and 7th ground. It was his submission that the chairman of the trial tribunal did not consider the evidence of both sides, that is applicant (respondent in this appeal) and the respondent (appellant in this appeal) who were PW1 and DW1 respectively.

He further informed the court that during trial, the issue was eviction and the respondent informed the tribunal he was evicted by the appellant and then he said he was evicted by one Mahuza who is not party of the management at appellants company rather he is the service provider as testified by DW1. That witness proceeded to mention names of the decision makers who if at all there was the issue of compensation they are the one who make decision. Counsel for appellant insisted that appellant is not the one who evicted the respondent over the disputed land and disagree with the content of the judgement that appellant did not deny to own the disputed land rather, according to the counsel, during trial

appellant admitted the land belong to one Makoye Madimilo who was compensated but according to him it was different piece of land.

On the other side Mr. Mwita Emmanuel responding to ground 1,2,3 and 8 submitted that counsel for appellants submission is misplaced and is at variance comparing what was said in court the statement under oath in WSD. He explained further that the issue is whether the disputed land was and is occupied by the appellant. It was his submission that during trial the respondent claimed to be forceful evicted by appellant officers and in WSD the appellant replied the fact was not true, to him this is the aversive denial which is like admission and principle of parties are bind by their own pleadings should apply and what is submitted by respondent is after thought.

He further pin pointed variance from applicant's submission that they acknowledge the land belong to Makoye Madimilo and they compensated him. It was Mr. Mwita's submission that the disputed land is only one and it is that land which the respondent (the applicant) instituted the suit against and ownership was proved via Exh. P1 and was prescribed in pleadings. He was not fascinated to discuss Mahuza claiming that the disputed land is currently occupied by appellant and it is normal for companies to hire

security companies and that his client bought the said from Makoye Madimilo and developed it.

Having carefully considered the submission, I will now embark on determination of the grounds of appeal fronted by the appellant. This being a first appeal, I will preface my determination with the position of the law as to the duty of the first appellate court as held in **The Registered Trustees of Joy in The Harvest vs. Hamza K. Sungura**, Civil Appeal No. 149 Of 2017, CAT at Tabora (Unreported) thus; it is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision.

The finding whether these grounds as combined are meritorious, this court will have a closer look and thorough read pleadings and submission while bearing in mind that this is the first appeal. From record, it is clear that the respondent bought the said land from Makoye Madimilo on 9/02/2015. The appellant started its operation in that village in 2015 though the month is not well communicated. This court finds that when the appellant starts its activities he found the respondent in that village, specifically, in the disputed land.

There is the issue of eviction as raised by Mr. Mhagama. Respondent manage to prove he once owned that piece of land from Makoye Madimilo then the incoming occupier, who is the applicant was supposed to compensate respondent and not any other person as was admitted by DW1 during trial and further submitted by Mr. Mhagama at this appeal that the land in dispute belong to Makoye Madimilo. It was raised at the trial court among other things that respondent was evicted by Mahuza and the same witness admit to pay compensation to one Makoye Madimilo in order for the appellant to possess the said disputed land. This court finds that issue of eviction is of less weight so far, the disputed land is owned by the appellant.

During this appeal counsel for respondent informed the court during his submission that the disputed land is currently occupied by the appellant who conducts its affairs. This fact was not attacked in any way by the counsel for the appellant. I am satisfied that the Chairman of trial tribunal was correct to arrive to that conclusion over the ownership and therefore I find these first batch of grounds are devoid.

On the 4th ground Mr. Mhagama was of the view that the Chairman of the trial tribunal summarized evidence in his judgement instead of evaluating it

and that he did not provide reason for his decision. He buffers up his argument by citing the case of **Kaimu Said Vs. Republic**, Criminal. Appeal No. 392 of 2019 CAT at Mtwara that failure to evaluate evidence may render the whole trial nullity and the case should start afresh.

Mr. Mwita submitted that in civil case, meaning of judgement and its composition is provided under Order 20 rule 4 and that style of writing it may differ from one Magistrate to another. He further submitted that the Chairman of the trial tribunal issued six pages judgement which comprise of every essential ingredient. If at all the judgement lack some of its contents, then the remedy is redrafting and not nullification of proceedings and judgement. It was his submission that authority relied by appellant is criminal and that there is different standard of proving criminal case and civil and therefore the case is distinguishable.

Civil Judgement is governed by Civil Procedure Act, Cap 33 as rightly submitted by Mr. Mwita. The relevant provision which is Order 20 rule 4 provides;

'A judgment shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons for such decision.'

It is settled that if contents of judgment are not compatible or does not have all requirement of a judgement, remedy therein is to order the Magistrate or Judge as the case may be to re-compose judgement in line with the requirement of the law. **Abubakari I. H. Kilongo and Another vs. The Republic**, Criminal Appeal No. 230 of 2021 CAT at Dar es Salaam.

Having look at the trial tribunal judgement, learned chairman raised three issues for determination in that application, he determined in favour of the applicants and he explained that appellant through DW1 said the disputed land did not belong to him but it belong to Makoye and the same information has been narrated in WSD that the land belong to Makoye and the Appellant paid compensation to Makoye. At page 3 of the judgement Chairman came to the reasoning that even if the disputed land does not belong to Makoye, the appellant knew and informed the tribunal he was not owning that piece of land too. Basing on the testimony that respondent bought disputed land from Makoye, the tribunal declared respondent as the rightful owner of the disputed. Remember that pleadings are part of the evidence, sworn evidence; in this case apart from words of DW1 also WSD was considered. This court finds the requirements of Order 20 Rule 4 was

observed and adhered and therefore this ground is found to be non-meritorious.

Going to ground 6 of this appeal. Mr. Mhagama submitted that it is the requirement of the law, when awarding general damage the court must assign reasons for that award. He said chairman did not give reasons for awarding 50 million to respondent as a general damage and refer this court to the case Of **Trade Union Congress of Tanzania (Tucta) Vs. Engineering System Construction and 2 Others**, Civil Appeal No. 51 of 2016. In reply Mr. Mwita said general damage is awarded at court discretion and the same should be exercised judiciously but Magistrate or judge cannot be faulted on his wisdom. He said 50 million is a fair compensation bearing in mind that Chairman of the trial tribunal had opportunity to see witnesses and the pain respondent went through. He said the **Trade Union Congress of Tanzania** (supra) case as referred by the counsel for appellant is distinguishable that it was a commercial case and it discussed compounding interest and pray this court to ignore that authority.

From the record, judgement of the trial Chairman awarded the general damage to respondent. This forces me to have literature on general damage and finds that the law requires the court to assign reasons for awarding general damages. It was decided in the case of **Alfred Fundi v. Geled Mango and Two Others**, Civil Appeal No. 49 of 2017 at Mwanza (unreported), the court said the following on general damage;

'The law is settled that general damages are awarded by the trial court after consideration and deliberation on the evidence on record able to justify the award. The judge has discretion in awarding general damages although the judge has to assign reasons in awarding the same'.

In the appeal at hand, the learned trial Chairman did not assign reasons for the award just as submitted by Mr. Mhagama. The chairman did not provide reasons for the award of general damages, but this being the first appeal, this court has powers to re-evaluate the evidence step into the shoes of the trial court. Since 2016 respondent was deprived his rights over the disputed land and since 2020 the respondent is seeking for his rights in courts of law. The disputed land had 28 furnished rooms operated as guest house and had a liquor store which was evidenced via exhibit P1 and P2.

There was clear evidence of deprivation of right of use of the disputed land in this case, the land was used for commercial purposes and that was sufficient to justify grant of general damages. See the **Trade Union Congress of Tanzania** case (supra). Respondent prayed for Tsh. 150,000,000/ as general damage and the tribunal award only Tsh.50,000,000/. Thus, I uphold the finding of the trial tribunal that there was justification to award general compensation. Consequently, I find the whole of the sixth ground to be devoid of merit and I dismiss it.

On the last ground, Mr. Mhagama submitted that the trial Tribunal erred to admit and rely on exhibit P1 because it does not show that the respondent was not the owner of the disputed land because Exh P1 (sale agreement) has the names of Werema Joseph Obeto while the respondent name in this appeal (and during trial) was Obetho Joseph Werema. According to him these are different persons and the exhibit was erroneously applied and the respondent did not inform the tribunal that his names are used interchangeably. He prayed this court to allow the appeal, to set aside judgment and decree of the tribunal and issue other relief deem fit by this court.

In contest, Mr. Mwita said the ground is misplaced and submitted that in law, there are two steps when someone wants use document in court; admission and relevance. It was his further submission that different in names can be used in relevance and the relevance is in connection with evidential value. With current liberalization, trivial issues are left behind and that the one who serves summons is the one who appeared in court. He said writing of name is just design and prayed this court to dismiss the appeal with costs.

This ground should not take me long. Important issue in connection with the Exh. P1 to this appeal is the fact that Makoye Madimilo is and was not in occupation of the said piece of land when evaluation and compensation was done. Exh. P1 was among the evidence to show how the title passed from the first occupier to respondent. This court finds, it is just a design of writing names. When I looked at the petition of appeal, specifically whom to be served a copy of a petition, I find even the appellant write the name of respondent in a style different from the two mentioned above (Obetho Werema Joseph). Bearing in mind that the village chairman who witnessed the sale testified in the tribunal that the disputed piece of land was sold to

respondent, I agree with respondent counsel that what was used is just a style and find this ground to be baseless.

As such therefore, no grounds were established for this Court to interfere with the finding by the trial tribunal. That said and done, this court finds that the appeal lacks merit and is hereby dismissed with costs.

Order accordingly.

DATED at MUSOMA this 23th day of February, 2023.

The seal of The High Court of Tanzania, Musoma, is circular with a blue border. Inside the border, the text "THE HIGH COURT OF TANZANIA" is written at the top and "MUSOMA" at the bottom, separated by two stars. The center of the seal features a shield with a scale of justice and a book, flanked by two figures. To the right of the seal, the name "M. L. Komba" is written in a handwritten style, with "NK" above it. Below the name, the word "Judge" is printed in a bold, black font. At the bottom of the signature area, the date "23rd February, 2023" is printed in a bold, black font.

M. L. Komba
Judge
23rd February, 2023