

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA**

**(TANGA DISTRICT REGISTRY)**

**AT TANGA**

**LAND APPEAL NO. 39 OF 2022**

(Arising from LAND APPLICATION NO. 88 OF 2015, THE DISTRICT LAND AND HOUSING TRIBUNAL OF TANGA)

**SUDI ALFRED KIRITA-----APPELLANT**

***VERSUS***

**FATUMA NAMALECHE-----RESPONDENT**

**JUDGEMENT**

**Mansoor, J:**

**Date of JUDGEMENT- 22<sup>ND</sup> FEBRUARY 2023**

Briefly, facts of this case are that the Appellant, Sudi Alfred Kirita claims to be the owner of the land known as Plot no. 203/1, Block LL, Duga Area, within Tanga City, having purchased it from one Mzee Haji Ally Maloko in 2005 but he did not develop it. He claims that he only poured gravel stones on it and he could not develop it since there was water and needed to drain the water before he started construction. The Appellant claims that the respondent Fatuma Namaleche is her neighbour who owns Plot No. 204/1, Block LL, Duga Area, within Tanga City, but the respondent had constructed a



building at Plot no. 203/1; he claims that the respondent had encroached the appellant's land by 3.87 meters and prayed before the Tribunal to declare him the owner of Plot No 203/1 which is the disputed area, and also prayed for demolition of the building constructed on plot No. 203/1 by the respondent. He also prayed for vacant possession.

After full trial the Tribunal declared that the respondent had built on her land which is Plot No. 204/1, Block LL, Duga Area, and she did not encroach the land of the Appellant which is Plot No. 203/1, Block LL, Duga Area, within Tanga City, as the respondent had built within her boundaries, and within the plan.

Aggrieved by the decision pronounced by the District Land and Housing Tribunal (DLHT) of Tanga, in Land Application no. 88 of 2015 delivered on 22 June, 2022, the appellant filed an appeal before this Court raising six grounds of appeal as follows:

- i. That the Tribunal erred in law and facts in holding that the land in dispute was **Plot No. 204/1 Block 'LL' Duga Area in Tanga City** while the evidence given

proved that the Land in dispute was **Plot No. 203/1 Block 'LL' Duga Area in Tanga City.**

- ii. That the Tribunal erred in law and facts for failure to find that the evidence given proved that the Respondent who owned **Plot No. 204/1 Block 'LL' Duga Area in Tanga City** had extended her building and covered the appellant's **Plot No. 203/1 Block 'LL' Duga area in Tanga City.**
- iii. That the Tribunal erred in law and facts in holding that the owner of **Plot No. 202/1 Block 'LL' Duga Area in Tanga City** who was not called to testify, was an important witness to prove the appellant's case.
- iv. That the Tribunal erred in law and facts in finding that the parties purchased and built at that area, before the areas were surveyed.
- v. That the Tribunal erred in law and facts in dealing with **Plot No. 202/1 Block 'LL' Duga Area in Tanga City** which was not in dispute and the owner of the plot was

not a party instead of dealing with **Plot No. 203/1 Block 'LL' Duga Area in Tanga City** which was in dispute.

- vi. That the Tribunal erred in law and facts for giving judgements in favour of the Respondent instead of the Appellant whose evidence was heavier than Respondents, which proved the case on the appellant's side.

In response thereto, the respondent filed a reply to the memorandum of appeal and disputed the claims. The appeal was disposed by way of written submissions and parties filed their respective submissions on time. The appellant was represented by Mr Obediendom S. Chanjarika, learned counsel, whereas the respondent was represented by Mr Atranus Method, learned counsel.

Mr Obediendom S. Chanjarika combined all the six grounds and insisted that, the appellant gave evidence which proved that the appellant is the rightful owner of the suit land and that he purchased it from one Mzee Haji Ally Makoko. Mzee Haji Ally



Makoko sold to the appellant Plot No. 203/1, Block 'LL', Duga Area in Tanga City. The same Mzee Haji Ally Makoko had sold to the respondent the piece of land, which is Plot No. 204/1, Block 'LL' Duga Area in Tanga City. The Appellant went to Plot No 203/1 for he wanted to start construction and he found the Respondent had already built her house at Plot No. 204/1 but she had also used or encroached the appellant's plot. Thus, the appellant submits that the respondent built her house on the land of the appellant which is Plot no. 203/1, Block LL, Duga Area in Tanga City.

The Appellant submits that during trial he produced Exhibit A2, which is a letter with Ref No TCC/10997 dated 27<sup>th</sup> October 2015 written by Tanga City Council which shows that the respondent had encroached the land of the appellant by 3.87 meters. Again, there was AW2, who was the Land Surveyor, who confirmed before the Trial Tribunal that the respondent owns Plot No. 204/1, but had built on Plot No. 203/1 without observing the building plans.

In determining this appeal, I have considered all the arguments put forward by the Counsels for the Appellant, Learned Counsel

Chanjarika, and Counsel Atranus Method who appeared for the respondent. I also went through the proceedings as well as the Judgement passed by the Trial Tribunal.

The main issue to decide is whether there exist two plots i.e. Plot No. 203/1 and Plot No. 204/1. There is no doubt that the two plots exists and are adjacent to each other. The Trial Tribunal visited the locus in quo and made some measurements. The Trial Tribunal found that there exist Plot No. 204/1, and this plot belongs to the respondent, the fact which is not disputed even by the appellant. The Appellant however claims that the respondent has built her house on Plot No. 203/1, but again the appellant led the evidence which shows that his plot No. 203/1 still exists but the respondent had encroached it by 3.87 meters, and he has remained with only part of his plot. The evidence led by the Appellant contradicted his own pleadings as in the pleading he claims that in 2013 the respondent had illegally and or wrongfully trespassed on Plot No. 203/1 protruded and engulfed the whole disputed land. Reading the pleadings one will find that the appellant claims that the respondent did not build on Plot No. 204/1 but she had built her house on Plot no. 203/1. The pleadings were contradicted by the evidence on record as the evidence during trial

led by both parties including the surveyors shows that Plot No. 202/1 203/1 and 204/1 exists, plots 202/1 and 203/1 are not developed but there was an encroachment by 3.87 meters as these plots were to measure 30 meters but during the visit on locus in quo by the Trial Tribunal it was discovered that the two plots i.e. Plot N 202/1 and 203/1 which are not yet developed, they measure 27 meters instead on 30 meters. However, as rightly observed by the Trial Tribunal, the appellant failed to lead evidence to show exactly and to what extent his land which is Plot No 203/1 was encroached and who had encroached his land. It is also in evidence that Plot No. 204/1, was developed and there is the house of the respondent, on it.

It is well settled that in the absence of pleading, evidence, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its pleading and that all necessary and material facts should be pleaded by the party in support of the case set up by it. The object and purpose of pleading is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that



the party should state the essential material facts so that other party may not be taken by surprise.

However, in this case, there was no pleading by the appellant that states that the appellant did encroach only a certain part of Plot 203/1 but there was a claim that the respondent has built her house on plot No. 203/1 instead of plot no. 204/1. The appellant failed to establish that the respondent had built her house on plot no 203/1. It is only at the time of tendering evidence, the appellant came forward with such a plea that the respondent had built her house on plot no 204/1 but had encroached or extended her building on plot no 203/1 or some part of it. The evidence, however strong could not be considered as the facts were not pleaded.

To the contrary, there was ample evidence led by the respondent that she owns plot No. 204/1 which neighbours Plot No. 203/1, and she had built her house within her boundaries, and this was confirmed by the sketch map, the visit on locus in quo as well as the evidence of the land surveyors and the evidence of the neighbours and the street leaders.



The Trial Tribunal made a correct finding that the Appellant's land which is Plot No 203/1 is still there undisturbed and undeveloped. The Trial Tribunal was also right when it observed that the appellant had a duty to disclose to the Tribunal the owner and the boundaries of Plot No. 202/1 which neighbours plot No. 203/1 on the east, and this was for purposes of identifying the boundaries, as it was not clear which neighbour had actually encroached the land of the appellant.

I agree with the finding of the case cited by the Counsel for the respondent in his written submissions, the case of **Andason Makeula and another vs. Andrew Hongoli, Land Appeal No. 14 of 2020** in which it was emphasised that in land matters, "*the legal requirements for disclosure of the address or location of land is not cosmetic, it is intended to inform the Tribunal of a sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it*". The appellant failed to identify his land, he failed to produce a map before the Trial Tribunal which would have helped the Tribunal to observe the measurements, the boundaries, the demarcation of the disputed land, and whether there was a road passing across or neighbouring his




land. It is therefore correct as observed by the Trial Tribunal that the appellant failed to discharge his duties on proving his case on the balance of probabilities as required. The appellant could not produce the site plans or drawings of his land for proving his case. For proper determination of the core issue in the appellant's case, the issue whether his land was encroached and by who and to what extent, the appellant was duty bound to give enough evidence such as site plans and drawings which would have helped the Trial Tribunal to sufficiently identify his land, borders and demarcations. He completely and miserably failed to prove his case.

From the forgoing, the appellant's appeal lacks merits and it is hereby dismissed with costs. The decision of the Trial Tribunal in Land Application No.88 of 2015 delivered on 20/06/2022 remains undisturbed.

Appeal dismissed with costs.

DATED at TANGA this 22<sup>nd</sup> day of FEBRUARY 2023

  
**L. MANSOOR**  
**JUDGE,**  
**22<sup>ND</sup> FEBRUARY 2023**

