IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TABORA DISTRICT REGISTRY)

AT TABORA

LAND APPEAL NO. 02 OF 2021

(Arising from Tabora District Land and Housing Tribunal, Land Application No. 44 of 2017)

MWAJUMA RAMADHANI SONGORO..... APPELLANT

VERSUS

CHAIRMAN USULE STREET & 21 OTHERS..... RESPONDENTS

Date of Last Order: 07.12.2022
Date of Judgment: 03.03.2023

JUDGMENT

KADILU, J.

This is an appeal against the decision of the District Land and Housing Tribunal for Tabora over a piece of land measuring twenty-five (25) acres. The land in dispute is located at Mbugani Ward, Usule area, within Tabora Municipality and its estimated value is Tshs. 25,000,000/=. In the DLHT, the appellant lost the case in Land Application No. 44 of 2017. Aggrieved by that decision, she filed this appeal armed with six (6) grounds which may be paraphrased into one ground that, *the District Land and Housing Tribunal erred in law and fact by declaring the respondents as lawful owners of the disputed land without considering the weight of the appellant's evidence.*

Brief background of the dispute is that, the appellant's father occupied the land in dispute for a very long time up to the year 2011 when he passed

away. It is unknown as to when and how the appellant's father acquired the said land but after his death, the appellant was appointed the administratrix of estate of her deceased father. The appellant claims that, before the respondents had encroached to the disputed land in 2014, it consisted of crops such as mango trees, cashew trees and Jamun trees (*mizambarau*). She also stated that they used such land as a family/clan grave yard.

The respondents' story is that the appellant is not a resident of Usule. She used to live in Tambukareli Ward, Usagara Street while the land in dispute is located at Mbugani Ward, Usule area. They asserted that they were allocated the suit land by the Village Authority between the year 2000 and 2007 following the District Commissioner's directive after citizens' complaint that the land became a forest and shelter for criminals. After the respondents had acquired the land in dispute, the appellant's family is said to have requested to be allocated a portion of that land by the Village Authority for cultivation. However, before the same was allocated to them, the appellant filed a land dispute in the DLHT accusing the respondents of trespass.

After having set out the background of this matter, I now turn to resolve the issue as to who is the rightful owner of the disputed land. Before doing so, I wish to observe *albeit* in passing that, the case in the DLHT was filed in the wrong names. In the respondents' joint written statement of defence, their Counsel issued a notice of preliminary objection to the effect that, the application was defective for suing a wrong person, to *wit* the 2nd

respondent. When the case was called for hearing, the learned Advocate withdrew the notice of preliminary objection for the reason that he wanted to save time.

Starting with the appellant, it is elementary rule of law that a person with capacity to institute any civil suit is either that person himself as the owner, his agent or legal representative as an administrator/administratrix of the estate, if the owner is dead. Thus, after a person has passed away, it is only the administrator or administratrix of estate who has *locus standi* to bring and defend a suit on behalf of the deceased. In the present case, the appellant claims to be the administratrix of estate of her late father, one Ramadhani Majaliwa Songoro. She attached a letter of appointment. Nevertheless, she filed the present case in her personal capacity and throughout the proceedings, she kept on mentioning that the suit property belonged to her.

Regarding the preliminary objection by the learned Advocate for the respondents, I agree with him that the Chairman, Usule Street who was the 2nd respondent was a wrong party. Under the law, a Village is a legal person with power to sue and to be sued. So, the Chairman was not supposed to be sued in his personal capacity. The suit ought to have been filed in the name of the Village namely, Usule Village. The rationale for this is simple. The Chairmen come and leave, but the Village has perpetual succession. Therefore, it is possible the Chairman may not be there all the time, but the Village will always be. Another reason is that, any order and/or decree issued

in the case must necessarily be in the name of the Chairman in which case, execution will have to be done in the same name. The execution would then be difficult if at that time, the same person was no longer the Chairman.

The question that I have to consider now is, what effect do these errors have to the proceedings? In answering this question, I will be guided by the decision of the Court of Appeal in the case of ***Hamis Bushiri Pazi & Others v Saul Henry Amon & Others***, Civil Appeal No. 166 of 2019 where it was stated that, the court will only look into matters which came up in the lower courts and were decided; and not new matters which were neither raised nor decided by the trial court. Since the parties avoided to raise these points at the DLHT and I am satisfied that they have not occasioned any miscarriage of justice, the error was thus not grievous and I so hold.

I now fucus on the determination of the rightful owner(s) of the disputed land. The appeal was disposed by way of written submissions. The appellant was represented by Mr. Ally Maganga, the learned Advocate and the respondents were represented by Mr. Lucas Ndanga, also the learned Counsel. I appreciate the efforts by the learned Advocates who filed written submissions as scheduled. Mr. Ally submitted that declaration by the DLHT that the respondents are the rightful owners of the suit land violates the appellant's right to own property as stipulated under Article 24 of the Constitution. The learned Advocate contends further that his client was as well deprived of the right to adequate compensation after her land was acquired by Usule Village.

Responding to this point, Mr. Ndanga argued that, there was no violation of any constitutional right in this case as the land in dispute was idle and a bush where criminals used to hide and harm citizens. He stated that the land was allocated to the respondents in an effort by the Government to maintain peace and security of its people. With due respect to the learned Advocate for the appellant, I do not agree with the assertation that the present case involves violation of right to property because the dispute is not about acquisition of land under the Land Acquisition Act rather, land ownership under the Land Act.

Section 4 (1) of the Land Act, [Cap. 113 R.E. 2019] stipulates categorically that, all land in Tanzania is public land vested in the President as trustee for and on behalf of all citizens of Tanzania. It follows that the citizens' interest over land is limited to the right to occupy and use the land while the actual ownership remains in the President. Occupier of the land in Tanzania is thus, required to effect unexhausted improvement or rather develop the land he/she occupies. In the event where the occupier fails to develop the land, his/her occupation becomes less important. See Nyalali, C.J., (as he then was) in ***A.G. v Lohay Akonaay & Joseph Lohay***, [1995] TLR 80.

Mwalimu Nyerere in his book *"Freedom and Unity"* published by Oxford University Press in 1966, states:

> *"When I use my energy and talent to clear a piece of ground for my use, it is clear that I am trying to transform this basic gift from God so that it can satisfy a human need. It is true however,*

that this land is not mine, but the efforts made by me in clearing the land enable me to lay claim of ownership over the cleared piece of ground. But it is not really that, the land itself belongs to me but only the cleared ground which will remain mine as long as I continue to work on it. By clearing that ground, I have actually added to its value and have enabled it to be used to satisfy a human need. Whoever then takes this piece of ground, must pay me for adding value to it through clearing it by my own labour."

In the case at hand, the appellant never developed the land until it became a bush and a threat to security of citizens. All witnesses for the respondents testified that the land in dispute was a bush, that is why the then District Commissioner directed Usule Village authority to allocate it to the needy citizen. The appellant did not state in anywhere that the land was developed. From page 11 to 12 of the typed proceedings of the DLHT, the appellant merely indicated that the land consisted of wild trees which she named as crops. Being a bush, the land in dispute was allocated to the respondents with a condition that each should develop his/her parcel. It is on record that those who were unable to develop their pieces of land sold the same to other individuals who managed to develop it.

The record shows further that the appellant's father occupied the disputed land for a very long time, but there was nothing to show the exact year in which the deceased father acquired such land. Moreover, a person from whom the appellant's late father had derived his ownership over the disputed land was not named. The appellant did not as well explain the mode of land acquisition which was used by her deceased father to get the suit

land. When she was cross examined as to whether she has any document evidencing her ownership of that land, she could not respond. On the other hand, some respondents have documents evidencing their ownership of the disputed land. For example, on page 38 of the proceedings, DW2 stated as follows:

> *"I have the document to show that I was duly allocated or given the land by Kitongoji Government. When I was given the area, there was no indication that the area was in use, but the mango trees were there as they are all over in Tabora. The whole area of Usule has mango trees."*

DW3 explains as follows on page 41 of the proceedings:

> *"I got the plot after sending an application to the Village Government in 1998, but I was given the document in the year 2000... Before the dispute in 2014, there was no person in the disputed land and we were given the area as a big pori (bush). Since it was a bush, the Government advised the area to be allocated to the people."*

DW4 testified in the same way as shown on page 46 of the proceedings, DW8 on page 58 and DW11 on page 67 of the proceedings narrated similar stories. Mr. Ally Maganga, the learned Advocate argued that it is not true that the appellant has no evidence of ownership of the disputed land as she was able to identify all her neighbours from North, West, East and South. With all respect to the learned Advocate, I do not think that mere identification of neighbours is sufficient proof of ownership of land in our jurisdiction. In Tanzania, one may acquire land through allocation, purchase, inheritance, or through a gift. As such, ownership of land is usually evidenced

by title deed (granted right of occupancy), customary right of occupancy, residential licence, deed of gift or sale agreement.

Section 110 of the Evidence Act, [Cap.6 R.E 2019] places the burden of proof on the party wishing the court to believe his testimony and pronounce judgment in his favour. Section 110 (1) of the Act provides:

> *"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist."*

Similarly, in the case of ***Hemedi Said v Mohamedi Mbilu*** [1984] TLR 113, it was held that *"he who alleges must prove the allegations."* In the instant appeal, the appellant has failed to prove her ownership of the disputed land by documentation. She has only asserted that her late father occupied the land in dispute since his childhood and that, the land consisted of mango trees, cashew trees and *mizambarau*. I do not consider the existence of those trees alone as amounting to development of the land within the meaning of the National Land Policy and the Land Act.

One of the objectives of the National Land Policy of 1997 is to ensure that land is put to its most productive use to promote rapid social and economic development of the country. The policy objective has been translated into statutory provisions under Section 3 (1) (e) of the Land Act [Cap. 113 R.E. 2019], which stipulates that the objectives of the Act are *inter alia*, to ensure that land is used productively and that any such use complies with the principles of sustainable development. It is not disputed that the

land under enquiry was left idle and became a bush. In my opinion, that condition cannot be regarded as the use of land in the most productive way in order to promote sustainable development as contemplated.

In the final analysis, I find that the appellant has not proved her ownership of the disputed land to warrant this court to quash and set aside the decision of the DLHT for Tabora. Consequently, the appeal is hereby dismissed with costs. The respondents are declared the lawful owners of the disputed land.

Order accordingly.

KADILU, M.J.,

JUDGE

03/03/2023

Judgement delivered on the 3rd Day of March, 2023 in the presence of Mr. Ally Maganga, Advocate for the Appellant also holding brief for Mr. Lucas Ndanga, Advocate for the Respondents.

THE HIGH COURT OF TANZANIA

KADILU, M. J.

JUDGE

03/03/2023.