THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
LAND APPEAL NO. 79 OF 2022
(Originating from Civil Review Application No. 134 of 2021 at the District Land and Housing Tribunal of Mbeya at Mbeya)

ELIA MALAMLA.....APPELLANT

VERSUS

DANIEL CHARLES MYUKI.....RESPONDENT

JUDGMENT

Dated: 17th & 31st May, 2023

KARAYEMAHA, J.

The proceedings which bred the instant appeal were commenced by the respondent in the District Land and Housing Tribunal (hereinafter the trial tribunal) of Mbeya at Mbeya. In the said proceedings, the applicant (respondent) prayed for declaration that he is a lawful owner of the disputed shamba (suit land); for a restraint order against the respondents and his agents from a continued use of the suit land; costs of the suit and other reliefs this Court deemed fit and just to grant.

Facts constituting the instant appeal are not complex. They roll back to 2019, when the respondent claimed that the appellant

trespassed in the suit land measuring 35 acres. The respondent alleged that the suit land belonged to his late father one Charles Myuki (the deceased) who was allocated the same by the village government in 1991 after the process of villagization. It was alleged further that in 2003 the deceased gave the suit land to the respondent. The respondent stated further that the suit land belonged to him and the appellant has no any right over it. Since the appellant had taken control of the suit land, the respondent enlisted the intervention of the trial tribunal.

The appellant fervently disputed all the allegations. Apart from putting the respondent on strict proof of all allegations, he averred that it was the deceased who trespassed in his father's land. He, therefore, asked the trial tribunal to dismiss his application with costs.

The trial tribunal found credence in the respondent's evidence and declared him the lawful owner of the suit land after reviewing its earlier decision. The appellant apparently was found a trespasser and was condemned to pay costs of the suit. This decision sparked the appellant's fury. He has moved this Court through a six-ground memorandum of appeal, reproduced as follows:

1. That, the trial tribunal miserably erred in law when it nodded positively to an application for review without considering the fact that the application which was before it did not meet the conditions for the power of review to be exercised.
2. That, the ruling of the tribunal for review is erroneous for holding that the tribunal was functus officio to determine the main suit on the pointy of *res judicata* while the proceedings and its earlier judgment all have it clear that it was correct to determine the point of *re judicata* in the main suit.
3. That, the Honourable trial tribunal seriously erred in law and in fact for its failure to specifically assign reasons (s) how the judgment it had pronounced earlier fittingly fitted to be revied than being appealed against when disjunctively weighed in the balance of view conditions.
4. That, the tribunal erred in law when it wrongly received documentary evidence of the appellant, failed to record the proceedings in favour of the appellant, mixed up evidence of the parties, failed to identify which evidence is of which side, failed to properly analyze and examine the evidence on record as a result it occasioned serious injustice on the part of the appellant.

5. That, the tribunal seriously erred in law for its failure to agree with the appellant that the land claimed by the respondent (applicant by then) is unknown.
6. That, the trial tribunal seriously erred in law for its failure to visit *locus in quo*

After carefully examined the grounds of appeal and the application instituted on 13/12/2019 by the respondent, I called upon parties to first submit on ground number five (5) which faults the trial tribunal for not agreeing with the appellant that the suit land was unknown.

Hearing of the appeal pitted Mr. Samson Suwi, learned counsel for the appellant, against Ms. Jenifa Silomba, learned advocate for the respondent.

Hitting the first punch was the Mr. Suwi, counsel for the appellant, who contended that paragraph three (3) of the application stating that the suit land's location was a *'farm located at Igava village in Mbarali District'* was an insufficient description. Mr. Suwi submitted further that in terms of Regulation 3 (2) (b) of the Land District Disputes (the District Land and Housing Tribunal) GN. No. 174 of 2003 (hereinafter the Regulation), it was mandatory for the location of the

suit land to be sufficiently described by pointing out its boundaries, neighbours and peculiar features to differentiate it from other pieces of land around it. He argued adding that failure to describe efficiently the location of the suit land, the trial tribunal was denied jurisdiction. He invited this Court to visit the decisions in **Daniel Dagala Kanuda (as administrator of the estate of the late Mbalu Kushaha Buluda) v. Masaka Ibeho and 4 others**, Land Appeal No. 26 of 2015 HC-Tabora (unreported) and **Martin Fredrick Rajab v. Ilemela Municipal Council and another**, Civil Appeal No. 197 of 2019 CAT-Mwanza (unreported).

In her reply, Ms. Silomba conceded that it is the requirement of law that the location of the suit land must be properly described. She recited regulation 3 (1) (b) of the Regulations, the case of **Daniel Dagala Kanuda** (supra) and **Martin Fredrick Rajab** (supra). She was candid enough to submit that the application initiates the case and in the instant case it indicates under paragraph three (3) that the suit land is located at Igava Village in Mbarali District. She submitted that PW4, Steve Myuki, expounded the location by mentioning boundaries in his evidence and that other witnesses mentioned neighbours. She cited page 35 to cement her contention.

The learned counsel submitted further that even if the location of the suit land is not properly described in the pleadings, it was enough if it was described in the evidence. Her position was supported by the case of **Daniel Dagala Kanuda** (supra).

Ms. Silomba accredited the principle that parties are bound by their pleadings. Contrariwise, she argued that this case is exceptional because both parties in this case described the features of the suit land.

When this court pressed her hard on the foregoing principle and after a long discussion, Ms. Silomba changed her mind and submitted that the pleadings did not sufficiently describe the location of the suit land. She, therefore, travelled in Mr. Suwi's prayers that proceedings should be nullified and the ruling and decree be quashed. She prayed further that this matter be ordered to be tried *de novo*.

In his succinct rejoinder, Mr. Suwi substituted his prayer of this matter to be tried *de novo* to a strike out order and any interested party to file a fresh application.

With regard to costs, Mr. Suwi prayed this court to grant them because this issue is the subject of ground five. Ms. Silomba argued

that this issue was raised by this court *suo mottu* so no costs should be awarded.

Briefly those are the arguments presented by the parties learned counsel. Now, the issue is whether the location of the suit land was sufficiently described.

On reading the application filed in the tribunal, I have discovered that the respondent filed the same on 13/12/2019. The notable irregularity is through paragraph 3 of the application which is couched to disclose the location and address of the suit land. It describes the location of the suit land to be in *Igava Village in Mbarali District*.

A common ground tells that an application is an instrument which normally initiates proceedings before the District Land and Housing Tribunal as per Regulation 3 (1) of the Regulations. This instrument replaces the pleadings (a plaint) in suits under the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC). Paragraph 3 of the application in the present matter purported to comply with the mandatory provisions of the law which require an application to disclose the address or location of the suit land. The paragraph under subject, however, only indicates that:

"Location and address of suit premises: a farm located at Igava Village in Mbarali District."

My take is that the description of the land provided for under paragraph 3 of the application was insufficient for determination of a dispute. Apart from mentioning the village and district, it is difficult to know in which hamlet and ward it is located, his neighbours and peculiar features were not mentioned given the fact that the suit land in not surveyed. In addition, it is gathered from the respondent's evidence at pages 25 and 26 of the typed proceedings that his farm is located at Igava. He then mentioned his neighbours to be Elia Malamla and Regina Nade Myuki. This, conspicuously, contradicted his pleadings. His evidence was not founded on the pleadings (application).

The principle that parties are bound by their pleadings was not articulated as a mere decoration but to ensure that no new matters or extraneous matters are brought in during the hearing stage hence taking the adverse party on surprise. See the case of **Yara Tanzania Limited v. Ikuwo General Enterprises Limited**, Civil Appeal No. 309 of 2019 (unreported). In line with the above principle, the Court of Appeal has, from time to time, refused to place reliance on evidence not founded on pleadings. For instance, in **Barclays Bank (T) Ltd v.**

Jacob Muro, Civil Appeal No. 357 of 2019 (unreported), the Court of Appeal made the following observation:

> *"We feel compelled, at this point, to restate the time-honoured principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at the variance with the pleaded facts must be ignored- See* ***James Funke Ngwagilo v. Attorney General*** *[2004] T.L.R. 161. See also* ***Lawrence Surumbu Tara v. Hon. Attorney General and 2 Others,*** *Civil Appeal No. 56 o f 2012 and* ***Charles Richard Kombe t/a Building v. Evarani Mtungi and 3 Others,*** *Civil Appeal No. 38 o f 2012 (both unreported)".*

Equally, in **National Insurance Corporation v. Sekulu Construction Company** [1986] T.L.R. 157, it was stated that; *parties to dispute are not, during trial, allowed to depart from pleadings by adducing evidence which is extraneous to the pleadings.*

Guided by the foregoing authorities, it was wrong for the trial tribunal to rely on extraneous matters that were not pleaded but excessively contradicted the pleadings.

It is a common knowledge that the legal requirement for disclosure of the location or address in the pleadings was not put in place for decoration purposes. It was intended to inform the tribunal of

a sufficient description so as to specify the suit land from other farms where the suit land stands. In respect of un-surveyed land, like in the present case, specification of boundaries, neighbours and/or permanent features surrounding the suit land is important for the purpose of identification. This is what is envisaged by regulation 3 (2) (b) of the Regulation when it talks of the term *location*. The Black's Law Dictionary, 9th Edition, West Publishing Company, St. Paul, 2009 at page 1024 similarly defines the term *location;*

> *"As a specific place or position of a thing; and in land matters (real Estate) it means the designation of the boundaries of a particular piece of land, either on the record or land itself."*

In view of the foregoing definition, it was thus derisory for the respondent to simply mention that the suit land was in Igava Village in Mbarali District. My view is based on the fact that the totality of the pleadings (the application) does not make an impression that the suit land stands in the land which covers the whole of Igava Village. It was thus imperative on the respondent to disclose the hamlet, the boundaries, neighbours and permanent peculiar features (if any) surrounding the area holding the suit land. The respondent's blanket

description of the suit land in the pleadings denied the tribunal jurisdiction to determine the matter.

The importance of making detailed description of suit house in resolving disputes cannot be over emphasized. The law, through all amendments, has been constantly underscoring the significance of describing the location of the suit land because it establishes the territorial jurisdiction. The provisions of Order VII Rule 3 of the CPC, for instance give lucid wording of the requirement. It guides as follows:

> *"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number".*

In my settled opinion Rule 3 (2) (b) of the Regulation should be construed to mean what is envisaged by Order VII Rule 3 of the CPC. The essence of this provision needs not be over stressed, it helps the court in establishing the territorial jurisdiction and most importantly, assists in issuing executable orders as well. The legal requirement highlighted above is indeed intended for the purposes of an authentic identification of the house in dispute. The intention of the law is to ensure that, the Court determines the controversy between the two

sides of a suit related to landed property effectively by dealing with a specific and definite land. The law intends further that, when the court passes a decree, the same becomes certain and executable.

Facing the same scenario, my brother Hon. Utamwa, J remarked in the case of **Ramadhan Omary Humbi and 58 others v. Aneth Paulina Nkinda and another,** HC Land Case No. 99 of 2013 at DSM (unreported) that:

> *"It is the law that Court orders must be certain and executable. It follows thus where the description of the land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it".*

This was his position in the case of **Daniel Dagala Kanuda** (supra). This was also the position of the court of appeal as pronounced in the case of **Martin Fredrick Rajab** (supra).

Owing to the above reasons, it cannot be argued that the appellant complied with the law in the instant matter when he made a blanket description of the location of the suit land by calling it a disputable property located at was Igava Village in Mbarali District. The insufficiency in describing the suit land could not enable the tribunal to effectively resolve the controversy between the parties.

This anomaly was not detected by the trial Chairman. He tried the matter and determined it lacking the requisite jurisdiction. To the contrary, given the discussion above, the matter was incompetent before the Tribunal for the uncertainty of the matter. It is a common knowledge that Courts and Tribunals of law do not have jurisdiction to entertain incompetent matters, that is, disputes on uncertain matters.

This irregularity, therefore, vitiates the proceedings and verdict of the trial tribunal and any order passed could not be effectively executed.

In the upshot of the foregoing, I find that the suit was incompetent for want of proper description and sufficient identification of the suit land. The proceedings of the trial tribunal are quashed and ruling and orders thereto are set aside. As per law, in matters of this nature, any interested party is at liberty to institute the case a fresh. Therefore, the appeal is allowed with costs.

It is so ordered.

Dated at **MBEYA** this 31st May, 2023

J. M. Karayemaha
JUDGE