

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)**

AT ARUSHA

LAND APPEAL NO. 77 OF 2022

(C/F District Land and Housing Tribunal for Mbulu at Dongobesh, Land Application
No. 77 of 2020)

SAFARI GEJE..... APPELLANT

VERSUS

LUCIA GABRIEL.....1ST RESPONDENT

YORAM TANGO.....2ND RESPONDENT

JUDGMENT

30/05/2023 & 26/06/2023

MWASEBA, J.

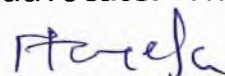
The epicenter of the dispute between the parties herein emanates from a piece of land measuring 13 and 35 meters located at Dongobesh Ward at Dongobesh Village within Mbulu District in Manyara. Before the District Land and Housing Tribunal (herein DLHT) for Mbulu at Dongobesh, the appellant sued the respondents over ownership of a piece of land, claiming that the disputed land was his property and the respondents trespassed into it.



Having heard the parties, the Tribunal on 31/05/2022 dismissed the appellant's application and declared the respondents as the lawful owners of the suit land based on the evidence and exhibits tendered before it. Undeterred, the appellant filed the instant appeal having four grounds of appeal that constitute the heart of his complaint as hereunder:

- 1. That the Trial Tribunal erred in law by declaring the appellant to respect boundaries without stating the size of the disputed area, which the Appellant deserved, and the Respondent deserved as well.*
- 2. That the Trial Tribunal erred in law and fact by relying on testimonies of SB1, whose testimonies are in contradiction to the root core of the dispute.*
- 3. That the trial Tribunal erred in law and fact to rule the dispute relies on the boundaries without visiting locus in quo and identifying the dispute portion of the land in dispute.*
- 4. That the trial Tribunal erred in ruling the Appellant to demolish his structure (toilet) in the suit land.*

At the hearing of the appeal, the appellant was represented by Mr. Ephraim Koisenge, learned advocate, while the respondents enjoyed the legal service of Mr. John Lundu, learned advocate. The appeal was



disposed of by way of written submissions with the consent of both parties.

Submitting in support of appeal, Mr. Koisenge learned counsel argued the 3rd and 4th grounds jointly that it was wrong for the trial tribunal to order the appellant to demolish the structure (toilet) without visiting *locus in quo* to identify boundaries of the suit land. It was his further submission that, at the trial court, AW2, who was once a member of the Village Committee, testified that in 1999, they went to the disputed land, and after surveying, they found the disputed land in possession of the appellant herein.

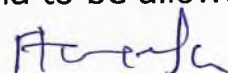
When he was cross-examined by the assessors, AW2 submitted that the appellant's area was 25 to 35 meters, and the appellant submitted that the trespassed area was 13 to 35 meters. He argued further that if the tribunal could have visited the *locus in quo*, they could have ascertained the boundaries of the suit plot. He referred this court to the case of **William Mahengela vs Cosmas Mwandole**, Land Appeal No. 103 of 2019 (HC at Dar es Salaam, Unreported), where the court emphasized the need to visit the *locus in quo*.

Opposing the appeal on the 3rd and 4th grounds, Mr. Lundu submitted that there was no need to visit *locus in quo* as the tribunal called the land

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Officer to resolve the dispute since the dispute was on the surveyed plots. He argued further that SB1 made it clear that the appellant was allocated Plot No. 85 Block B, and he was given a letter of offer dated 16/11/2015 which was admitted as exhibit "B1". He testified further that the 1st respondent owns Plot No. 68 and 83 Block "B" and that the appellant built a toilet in Plot No. 83 Block B which is not his landed property. Mr. Lundu argued further that the appellant and his witnesses differed regarding the boundaries and the people whom they bordered with the appellant. Further to that, while the appellant said he bought the house from Daudi Hilu, AW2 said the appellant bought the house from Masong Maghariye.

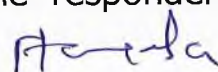
On the 2nd ground of appeal, Mr. Koisenge submitted that the trial tribunal failed to solve the contradictions raised by SB1 regarding the real plot in dispute between Plot No. 83 and 68, and when he testified, he submitted that Plot No. 83 "B" does not belong to the appellant herein. He submitted further that SB1 failed to direct the tribunal regarding the property in dispute, and the 2nd respondent referred the suit in dispute as Plot No. 68 Block "B" as an officer from the Municipality SB1 was supposed to explain clear boundaries of the parties herein and which part was trespassed if any. Therefore, his evidence did not resolve the dispute between the parties herein. So, they prayed for this ground to be allowed.



Responding to this ground, Mr. Lundu submitted that there was no contradiction in the evidence given by the 1st respondent as she made it clear in her written statement of defence that she was given two plots; No. 68 and 83, which the appellant trespassed. Further to that, SB1, the Land Officer from Mbulu District Council, testified without any malice. Mr. Lundu argued further that the appellant was just trying to create his contradictions regarding the evidence adduced by SB1 when he made it clear that the appellant owns Plot No. 85 and not 83. He argued that this ground has no merit.

On the 1st ground of appeal, Mr. Koisenge submitted that the appellant herein owns plot No. 85 Block "B" and is bordered by Baraza Giiyang (North), Police Station (East), Musa Yonatha (South) and Road (West). However, the 1st respondent said she owns Plot No. 83 Block B and 68 Block B, while the 2nd respondent stated that he owns Plot No. 68 Block B. Neither of them stated the boundaries of their plots, and they bordered with whom, the facts which could have helped the tribunal in reaching a just decision. In the end, he prayed for the appeal to be allowed with costs.

Responding to this ground, Mr. Lundu submitted that the trial tribunal was correct to enter judgment in favour of the respondents herein. He



submitted further that at the tribunal, the appellant merely said his plot Measured 25 to 35 meters without any proof. It was his further submission that the 1st respondent proved that after her land was measured, she was given Plots No. 68 and 83, and the appellant's plot was 85, the facts which were also testified by the Land Officer that each plot has its beacon.

In a brief rejoinder, the appellant's counsel reiterated what had already been submitted earlier.

I have given a keen eye to the submissions for and against the instant appeal and the record, the main issue for determination is whether there was sufficient evidence adduced in the trial Tribunal to declare respondents as the legal owners of the disputed land.

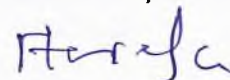
Starting with the 3rd and 4th grounds of appeal, the appellant alleged that it was wrong for the trial tribunal to order the appellant to remove his structure (toilet) on the disputed land without visiting *locus in quo* to ascertain the boundaries if it was the appellant or respondent who trespassed into the disputed land. On his side, the respondents argued that as long as the land officer was called and made it clear as to which plot belonged to whom, there was no need to visit *locus in quo*.

I have gone through the records of the trial tribunal and noted that on 30/03/2022, the tribunal decided to call the land Officer to solve the

dispute instead of visiting the *locus in quo*. Thereafter on 09/05/2022, the Land Officer from Mbulu District Council testified and said that the appellant's plot is Plot No. 85 Block "B" Dongobesh and the 1st respondent was given Plot No. 83 and 68 Block "B" Dongobesh, and later on in 2019 she sold Plot No. 68 Block "B" to the 2nd respondent. SB1 testified further that they once solved the dispute between the appellant and the 1st respondent, and they found that the appellant built a toilet on the 1st respondent's plot, and the council ordered him to remove his structure therein. Thus, based on the evidence, the tribunal declared that the disputed land belongs to the 1st respondent and ordered the appellant to remove his structure (toilet) on the disputed land.

Looking at the evidence on record, there is no dispute as to the ownership of land regarding the respective plot numbers. The dispute is based on the boundaries in which it was alleged that the appellant built his toilet on the 1st respondent's plot. In my view, this can not be determined blindly. It is where exceptional circumstances fall for the need to visit *locus in quo* to ascertain the issue of boundaries. See the case of **Nizar M. H. vs Gulamali Fazal Janmohamed** [1980] TLR 29.

I am aware that visiting the *locus in quo* is not mandatory, rather it falls within the discretion of the court or tribunal. However, the essence of

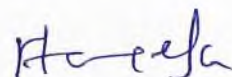


visiting *locus in quo* was laid down in a Nigerian case of **Akosile vs Adeye** (2011) 17 NWLR (Pt. 1276) p. 263 cited with approval in the case of **Avit Thadeus vs Isidory Assenga**, Civil Appeal No. 6 of 2017 (CAT at Arusha, Unreported) where the court summarized the need of visiting *locus in quo* as follows:

"The essence of a visit to locus in quo in land matters includes the location of the disputed land, the extent, boundaries and boundary neighbour, and physical features on the land. The purpose is to enable the Court to physically see objects and places referred to in evidence and to clear doubts arising from conflicting evidence about physical objects on the land and boundaries."

See also the case of **Nizar M. H. vs Gulamali Fazal Janmohamed** [1980] TLR 29.

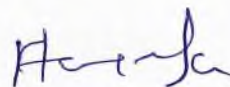
In our case, the appellant made it clear that he was given Plot No. 85 Block "B" Dongobesh, and the 1st respondent made it clear that she was given Plot No. 83 and 68 Block "B". The same was submitted by the SB1, a Land Officer from Mbulu District Council. However, as both parties claim to have right over the disputed land which is within the mentioned plots, in my considered view there was a need to visit the *locus in quo* together with SB1 to solve the dispute regarding the boundaries as to who invaded



the other one's land. Therefore, I concur with the counsel for the appellant's assertion and find merit on the 3rd and 4th grounds of appeal.

As for the 2nd ground of appeal, the appellant argued that it was wrong for the trial tribunal to rely on the evidence of SB1, whose evidence was full of contradiction which goes to the root of the case. However, having gone through the trial tribunal's records, this court noted that SB1 made it clear that the appellant was given Plot No. 85 Block "B" and the 1st respondent was given two plots; Plot No. 83 and 68, both Block "B" Dongobesh. The statement which was made during cross-examination that Plot No. 83 Block "B" does not belong to the 1st respondent was just a slip of tongue as he had already made it clear that Plot No. 83 Block "B" belongs to the 1st respondent. This contradiction is minor and does not go to the root of the case. Thus, there is no merit in this ground.

Coming to the last ground of appeal, the appellant complained that it was wrong for the trial tribunal to order the appellant to respect the boundaries without stating the boundaries of each one. However, this claim goes together with the 3rd and 4th grounds of appeal, which also deal with boundaries that could have been resolved if the tribunal could have visited the *locus in quo* as submitted above. Thus, this ground has merit.

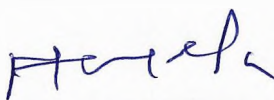


As alluded to herein above, the appeal is hereby allowed based on the 1st, 3rd and 4th grounds of appeal. The case file is hereby remitted to the trial tribunal for visitation of the *locus in quo* and subsequent drafting of a new judgment parallel to the finding of the visitation in quo.

It is so ordered.

DATED at **ARUSHA** this 26th day of June 2023.




N.R. MWASEBA

JUDGE