IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB -REGISTRY

AT ARUSHA

LAND APPEAL NO. 169 OF 2022

(Originating from the District Land and Housing Tribunal for Manyara at Babati, Land Application No. 29 of 2019)

ALFRED NGENI .....APPELLANT

VERSUS

REGISTERED TRUSTEES OF THE FREE PENTECOSTAL CHURCH OF TANZANIA ..... RESPONDENT

JUDGMENT

04th May & 27th July 2023

KAMUZORA, J.

Before the District Land and Housing Tribunal for Manyara at Babati (hereinafter to be referred to as the "Trial Tribunal") the appellant herein instituted land case against the respondent herein claiming for 11 acres of land. The appellant claimed that in the year 2011 the respondent trespassed into his land which he was owning since 1989. In her defence, the respondent denied allegation for trespass and claimed to own the suit land since 1985.

After hearing parties' evidence, the trial tribunal made a finding that the suit land belonged to the respondent as rightful owner of the same. Being aggrieved by that decision, the appellant preferred this appeal on the following grounds: -

1. *That, the Honourable Chairman erred in law in deciding in favour of the respondent herein as the lawful owner of the land in disputed without considering the strong evidence of the appellant.*
2. *That, the trial tribunal erred in law in admitting and relying on the invalid evidence of the respondent.*
3. *That, the Honourable Chairman erred in law in deciding in favour of the respondent as the lawful owner while the respondent's witness had no power to give evidence.*
4. *That, the Honourable trial tribunal erred in law and in fact in deciding that the appellant did not prove the size of the land in dispute.*
5. *That, the Honourable trial tribunal erred in law and in fact in deciding the land in dispute measuring 14 acres belonged to the respondent while there is no evidence to prove the same.*
6. *That, the Honourable trial tribunal erred in law and in fact in not considering the procedure for tendering exhibits.*
7. *That, the Honourable trial tribunal erred in law and in fact in delivering prejudiced judgment.*

When the matter was called for hearing, Mr. Erick Shauri, learned advocate appeared for the appellant while on the respondent's side,

Pastor Julius Darash, board member appeared on behalf of the respondent.

Arguing in support of appeal, the appellant submitted that the evidence is clear that the appellant cleared and settled in the disputed land for 22 years since 1989. That, in 2011 the respondent started to interfering with the appellant's peaceful enjoyment of his land. Referring his evidence and that of his witnesses, the appellant insisted that he was able to prove that he is the lawful owner of the suit land. That, the evidence reveal that the appellant started to live in the suit land in 1988 when he cleared the bush and cultivated the said land and by that time, there was no village council to distribute land. That, the trial tribunal failed to consider that the appellant has been in full occupation and use of the disputed land for a period of 22 years without any interference. He referred the case of **Stephen Sokoni Vs Million Sokoni,** (1967) HCD 46, **Jibu Sakilu Vs. Petro Miumbi,** (1993) TLR 75 and GN No. 311 of 1964, Customary Law (Limitation of Proceedings) Rules to cement that he has been in occupation of the disputed land for more than 12 years.

On the second ground, the appellant submitted that the trial tribunal did not consider that the respondent's evidence was weak and

contradictory. That, while the witnesses claimed that the respondent occupied the disputed land in 1985 after being allocated by the village Council, they also claimed that the land was registered in 1992. He was of the view the respondent's evidence was hearsay hence, unreliable.

On the third ground, the appellant submitted that since the respondent is the registered trustees of free Pentecostal church, the person responsible to handle case on respondent's behalf are Board Members or a full authorised representative. That, neither of the respondent's witnesses introduced himself as board member or having power of attorney to represent the respondent. Referring the case of **Bugere Coffee Grower Ltd Vs. Sebaduka and others,** (1970) EA 147, the appellant insisted that the respondent was supposed to have Board resolution before commencing the suit. That, in the absence of that resolution, the respondent could not be declared lawful owner of the suit land.

On the fourth ground the appellant submitted that the appellant knew the size of the suit land as it was 11 acres. On the fifth and sixth grounds the appellant submitted that all exhibits tendered by the respondent do not reflect 14 acres of land mentioned by the respondent. he added that, the exhibits were not read in court after being admitted

hence, contravening the parties' right to fair hearing. He referred the case of **Bulungu Nzungu Vs. The Republic**, Criminal Appeal No. 39 of 2018.

On the 7th ground, the appellant submitted that the trial tribunal's decision is unjustifiable and unreasonable for it was made while knowing that the respondent's witnesses had no powers to testify. That, the exhibits tendered did not follow procedures. He thus urged this court to quash and set aside the decision of the DLHT and declare the appellant as lawful owner of the disputed land.

In reply, the respondent submitted that the respondent proved her case while the appellant failed miserably to prove his allegation. It was explained that while in his pleadings before the trial tribunal the appellant claimed that he was allocated the suit land by the village authority, in his testimony, he changed the story and claimed that he was given the suit land by Mzee Musa Hassan departing from his own pleadings. The respondent insisted that parties are bound by their pleadings and are not allowed to depart from their pleadings and raise new claim during evidence. He referred the case of **National Insurance Corporation Vs Sekulu Construction Company,** [1986] TLR 157.

Referring the decision in **Magambo J. Masato & 3 others Vs. Ester Amos Bulaya & 3 others**, Civil Appeal No. 199 of 2016, the respondent submitted that he who alleged must prove. He insisted that the trial tribunal properly analysed evidence and was satisfied that the respondent's evidence was much stronger thus, decided in her favour as it was so done in the case of **Hemedi Said Vs. Mohamedi Mbilu,** (1984) TLR 113 and **Jeremiah Shemweta Vs Republic**, (1985) TLR 228.

The respondent further submitted that appellant's story on how he came into possession of disputed land is not clear and it is not even backed by any documentary evidence. That, while at one point the appellant claimed to be the owner of the suit land since 1989, he came with another version of the story that he started to occupy the suit land in 1988. The respondent was of the view that those inconsistencies in appellant's evidence goes to the root of the case. The respondent added that the appellant has never occupied or used the disputed land. That, the evidence is clear that he only travelled to Gisambala village to work as a pastor in 1989 and he was accommodated in the church house which was built in the disputed land.

On the appellant's argument that he had lived in the disputed land for more than 22 years hence lawful owner of the same, the respondent submitted that the respondent failed to prove how he came into possession of the disputed land. That, the appellant failed to cite proper provision of the law relating to time limitation. He added that the case of **Jibu Sikalu** (supra) relate to redemption of clan land hence, irrelevant to the matter at hand.

On the second ground that the trial tribunal relied on invalid evidence, the respondent submitted that the same is not maintainable. It was explained that, the respondent's witness Julius Darash testified that the church was allocated the disputed land in 1985 and the same was officially registered in 1992 as per the exhibits tendered which was not disputed by the appellant. That, there is clear evidence that at one point of time the village requested the respondent to release part of the disputed land to them for purpose of constructing bus stand and a public market. That, the exhibits tendered reveal that the respondent released 1¼ acres of land to the village authority. The respondent was of the view that such evidence proves that the respondent was rightful owner and was even recognised by the village.

On the third ground, the respondent submitted that being a Registered trustee does not mean that the respondent is governed by Board of Directors like a normal company. In their view, since Julius Darash introduced himself from the beginning as respondent's representative, and he signed the pleadings and has been appearing all times and no objection was raised, the same cannot be raised at this stage.

On the fourth ground the respondent submitted that the size of the disputed land was mentioned in the pleadings but not in appellant's evidence. On the fifth and sixth grounds the respondents submitted that the evidence is clear on the size of land allocated to the respondent. That, the respondent was allocated 14 acres which however part of it was encroached by neighbours and other part was released to the village authority to for constructing bus stand and market. That, all exhibits proving those facts were tendered and admitted before the trial tribunal.

On the seventh ground the respondent reiterated his submission that parties are bound by their pleadings. He prayed for this court to disregard this ground and other grounds of appeal and dismiss the entire appeal with costs.

In rejoinder the appellant restated what he submitted in chief and insisted that the proceedings do not indicate if respondent's witnesses introduced themselves as representatives of the respondent. He added that those witnesses did not even witness the suit land being handled to the respondent thus, they testified on hearsay. He urged this court to consider the appellant's evidence and find that the appellant proved his case as opposed to the respondent.

I have considered records from the trial tribunal, grounds of appeal and rival submissions for and against the appeal. While the appellant claim that he was in full occupation and use of the disputed land since 1989, the respondent claimed that he was in full occupation and use of the same since 1985. This entails second scrutiny of evidence and judgment of the trial tribunal to assess the following issues; **1)** whether the appellant's evidence was considered, **2)** whether the trial court relied on invalid evidence of the respondent, **3)** whether the respondent's witnesses had no power to give evidence, **4)** whether appellant's evidence proved the size of disputed land, **5)** whether procedure for tendering exhibits were followed, **6)** whether the trial tribunal gave prejudiced judgment and **7)** who is the lawful owner of the disputed land.

In discussing the 1st, 2nd and 6th issues I will consider the judgment of the trial tribunal and in discussing the 3rd, 4th 5th and 7th issues consideration will be on the proceedings and evidence before the trial tribunal.

Starting with the first issue on whether the appellant's evidence was considered, it is clear from the trial tribunal judgment especially page 4 of the typed judgment that the appellant's evidence was considered by the trial tribunal which however made a conclusion that it was not strong as compared to that of the respondent.

On the 2nd issues as to whether the trial court relied on invalid evidence of the respondent, this court find that issue baseless. It cannot be said that there was contradiction in stating that the respondent occupied the disputed land in 1985 and registered the land in 1992. It is clear from the evidence that when they were allocated land by the village Council in 1985 the same was not registered until 1992. I do not see any contraction in that.

On the 3rd issue that the respondent's witnesses had no power to give evidence, I find the same baseless. It was never an issue before the trial tribunal hence cannot be an issue at this stage. Apart from that the record shows that the respondent was represented by an Advocate by

the name of Mr. Machuwa and he led witnesses for the respondent including Pastor Julius Darash. Thus, the appellant's contention that the witnesses had no authority to testify is baseless. Being or not being the board members does not preclude them from testifying in court much as they meet the criteria of a witness. It is true that Pastor Julius Darash was appearing on behalf of the respondent but all pleadings and hearing were led by advocate. Even in this appeal the submissions were drafted by Advocate Erick Machua.

On the argument that the respondent did not obtain Board of resolution before commencing the suit, I find it baseless. The suit was filed in court by the appellant and not respondent. The respondent was only responsible to file defence and he complied to that requirement by filing the defence.

On the 4th issue that the appellant's evidence did not prove the size of disputed land, this court finds that the size of the disputed land was well proved. The respondents' witnesses clearly stated that formerly, the respondent was allocated 14 acres of land which however, part of the land was encroached by people and another part was released to the village authority for construction of bus stand and public market. The respondent remained with 11 acres which is land in dispute.

Regarding the 5th issue on whether procedure for tendering exhibits were followed, I agree with the appellant that as per the records, exhibits which were admitted before the trial tribunal were not read to the parties. I however do not see how the omission to read the exhibits prejudiced the appellant.

I understand that the requirement to read exhibits after being admitted is a principle established by case laws. In my research for case laws, I have only encountered criminal cases and not civil cases. It must be noted that in criminal cases, save for trials before the High court where substance of evidence intended to be relied upon are supplied to the adverse party, the charge is usually filed in court without attaching documents intended to be relied upon. Similarly, the accused does not have chance to file written defence thus, the intended documents for defence are usually not part of record. The document may be listed but they are viewed by parties when being tendered in court. Thus, the reason behind a requirement to read documentary exhibits after being cleared for admission is to acquaint the adverse party with the contents of the documents admitted so that a party against whom the documents are tendered can properly cross examine the witness on the documents and prepare sound defence. In my view, that is different from civil suit

where a party is supplied with all copies of documents intended to be tendered when served with the pleadings. Thus, a party cannot claim not to be aware of facts contained in the documents which were served to him/her and had time to read, do research and prepare defence before hearing.

The circumstance in this case is different from the case of **Bulungu Nzungu** (supra) that was cited by the appellant. The court in that case was discussing the circumstances in criminal case. Even the authorities that were referred by the court at page 11 of its judgment to cement on the requirement to read contents of exhibits, are all criminal cases.

In the case at hand, it is clear that the documents were attached to the respondent's defence that was also served to the appellant. The original documents were also tendered before the trial tribunal and not objected by the appellant. The appellant had chance to cross examine the witness who tendered the documents and he exercised his right. Since the appellant was availed with all documents prior to hearing, he had chance to prepare sound defence. I therefore find that exhibits were properly tendered and admitted by the trial tribunal.

Apart from those exhibits, there is clear evidence of the respondent's witnesses which is cogent proving on how the respondent

got the land and used the same from 1985. The evidence is even clear that it is the respondent who has been in occupation and use of the disputed land until now. The evidence also reveal that the appellant was invited into the suit land to work as pastor, thus, he cannot claim ownership of the suit land by virtue of being there for a long time.

The 6th and 7th issues will be discussed jointly, it was contended by the appellant that the trial tribunal gave prejudiced judgment by not declared him the lawful owner of the disputed land. The appellant claims that the trial tribunal failed to analyse evidence hence reached to unjust decision. I have perused the record and judgment of the trial tribunal and I observed the opposite. The trial tribunal briefly discussed the evidence of both parties and reasoned before it came to the conclusion that the respondent's evidence was strong as opposed to that of the appellant proving that the suit land was the lawful property of the respondent. For purpose of clarity, I will expound the evidence from both parties to eliminate doubts on the conclusion made by the trial tribunal.

In my perusal to the appellant's evidence, I discovered contradictions and inconsistencies as I will demonstrate hereunder; while in his pleading the appellant claimed that he was allocated land by

the village authority in 1989, he testified before the trial tribunal that he was given the disputed land by Mzee Musa and his family in 1988. His witnesses Juma Ramadhan Chuha (SM2), Issa Mohamed (SM3) supported the appellant's evidence on the year he got the land but Dia Hussein (SM4) claimed that the appellant is the owner of the land since 1995 as he was given the same by Musa Hassan. It is clear that the above evidence does not support the pleadings which shows that the appellant occupied land in 1989 after being allocated by the village authority. Thus, the appellant's evidence rises doubt on what this court should consider as true fact.

Again, while appellant claim that in 2011 he has a conflict with one Aminieli Gitaweta over the disputed land and the Ward tribunal declared the appellant as lawful owner of the disputed land, nothing was presented before the trial tribunal to verify that fact. If there was a case that was referred to the ward tribunal and determined, it was expected for the appellant to present documents relevant to that case. since no document was tendered, the trial tribunal could not have relied to mere allegation by the appellant for fact which could be proved by documentary evidence.

While the appellant's witness Juma Ramadhan Chuha (SM2) claimed that the appellant became into conflict with the church thus the church decided to rob his land, that is not the evidence by the appellant. The appellant gave a different account of his story by claiming that the church trespassed into his land. He did not allege conflict leading to the church robing his land. SM2 also claimed that there was tribal conflict between the parties as the appellant was from Singida, but that was not disclosed in appellant's evidence. While SM2 claimed that the appellant was given land by Mzee Musa, he also mentioned that he was give by a Mzungu. He however admitted that he never witnessed the appellant being given the said land.

Turning to the respondent's evidence by RW1, RW2, RW3 and RW4, it reveals that the church occupied land since 1985 after being allocated by the village authority. They started to operate church services under the leadership of Pastor Elias Sinto. Even the appellant's witness admitted in his evidence that the church occupied land in that area although he mentioned in the year 1988. The respondent's evidence also reveal that the appellant was working as a pastor and he went to work at Gisambala village work as pastor with the respondent in 1989. The appellant was invited to live in the church house located in the suit land.

In the year 1996, the respondent's ownership was approved by the village authority and they were issued with ownership document. From their evidence, this court is satisfied that they proved respondent's ownership over the suit land as opposed to the appellant.

In the upshot, the trial tribunal rightly pronounced the respondent as the owner of the disputed land. I therefore find that this appeal is devoid of merit and I hereby dismiss the appeal with costs.

DATED at **ARUSHA** this 27th July, 2023.

D.C. KAMUZORA

JUDGE