IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IRINGA REGISTRY

AT IRINGA

LAND APPEAL CASE NO. 60 OF 2023

(Originating from the decision of the District Land and Housing Tribunal for Iringa at Iringa in Land Application No. 70 of 2019)

RASHID MALANGALILA .....APPELLANT

VERSUS

SERIKALI YA KIJIJI CHA MIBIKI MITALI .....RESPONDENT

JUDGMENT

Date of the Last Order: 09.08.2023

Date of the Judgment: 15.09.2023

A.E. Mwipopo, J.

Serikali ya Kijiji cha Mibiki Mitali, the respondent, sued Rashid Malangalila, the appellant, at the District Land and Housing Tribunal for Iringa at Iringa (DLHT) in Application No. 70 of 2019, claiming that the appellant trespassed to the land bordered to the land owned by the Mibiki Mitali village valued Tshs 180,000,000/=. The respondent claimed that he

used the said land peacefully until 2016, when the appellant trespassed in the suit land. After hearing evidence from the parties, the DLHT declared the respondent to be the rightful owner of the disputed land. Following the decision of the District Land and Housing Tribunal for Iringa District, the appellant preferred this appeal with a total of six (6) grounds of appeal as follows:-

1. *That, the learned honourable Chairman erred in law when he entertained the matter in favour of the respondent without a proper description of the land in dispute.*
2. *That, the learned trial Chairman erred in law when he failed to address the issue of adverse possession, which the appellant raised.*
3. *That, the learned trial Chairman erred in law when he failed to address the issue of time limitation, which the appellant raised.*
4. *That, the Tribunal erred when it entertained the matter purportedly filed by the Village Council while the said Village Council never showed up to prosecute the case as per the court record.*
5. *That, the learned trial Chairman erred in law when it decided the matter in favour of the respondent without evidence on record.*
6. *That, the Tribunal erred in law when it granted prayers/reliefs sought without jurisdiction.*

Ms. Esta Shoo, learned Advocate, represented the appellant in this appeal, whereas Ms. Stella Makali, learned State Attorney, appeared for the

respondent. The appeal was heard through written submissions following the prayer from both sides.

In the submission, the counsel for the appellant informed the Court that they had abandoned ground of appeal no.4. They argued ground of appeal No. 2 and 3 together and ground No. 1, 5 and 6 separately. She submitted regarding the 1st ground of appeal that section 51(2) of the Land Dispute Courts Act, Cap. 216 R.E. 2019 allows the District Land Housing Tribunal to apply provisions from the Civil Procedure Code Act where the Regulations are inadequate. Order VII rule 3 of The Civil Procedure Code [CAP 216 R.E 2019] provides that the plaint, where the subject matter of the suit is immovable property, shall contain a description of the property sufficient to identify it and, in case such property can be identified by a tittle number under the Land Registration Act, the plaint shall specify such tittle number. In this case, the description of the suit premises/land was insufficient to identify it as required by the law. Mibiki Mitali Village has a vast land that might differ from the land in dispute. The respondent failed to specify the description of the suit land through the boundaries, neighbours or even the size of a disputed land before the Tribunal. It was wrong for the trial Tribunal to proceed with determining a dispute over the

land, which is not known for its exact location. Even witnesses brought by the respondent did not describe the suit land. Nothing in record is stated on the suit property's location, size and neighbours. The respondent was duty bound to prove her claim as per section 110(1) of The Evidence Act, Cap. 6 R.E. 2022.

The appellant cited in support of the position the case of **Martin Fredrick Rajab vs. Ilemela Municipal Council and Another,** Civil Appeal No. 197 of 2019, Court of Appeal of Tanzania at Mwanza (unreported), where on page 13 of the judgment it was held it was not proper not to mention the size or neighbours of a disputed land as it is against the requirement of Order VII rule 3 of the Civil Procedure Code, Cap 33 R.E 2019.

As to the 2nd and 3rd grounds of appeal, it was the appellant's submission that the Law of Limitation Ac, Cap 89 R.E. 2019, provides in Item 22 Part One to the schedule thereto for the time limitation for a suit to recover land is twelve years. In paragraph four of the written statement of defense, the appellant pleaded to have owned his land from 1977 until 2017, when the dispute arose. She submitted that it is forty years that the appellant have used the land for forty years and he cultivated timber trees,

built a house and operated his usual life without any disturbance. Respondent has seen the appellant developing the land without interference or disruption for 40 years. The respondent said in her evidence she could not disturb the appellant from the suit land for about forty years because they believed he was the lawful owner. Thus, they are barred by the doctrine of adverse possession as they saw the appellant and chose not to disturb the developments. The statutory time to evict the appellant from the land after he used it for about forty years has expired.

Regarding the 5th ground of appeal, she submitted it is a requirement of law under section 110 of the Evidence Act, Cap. 6 R.E 2019, that whoever asserts must prove. To support the position, she cited the case of **Tanzania Ports Authority & Attorney General versus Kabeza Multi Scrapper Ltd and Another**, Civil Appeal No. 72 of 2022 CAT at Kigoma (unreported). She said the respondent's evidence shows that she got the suit land after the Mhindi deserted it, and the appellant was given a parcel of land measuring ten acres. But, there is no proof the respondent allocated the ten acres to the appellant. The respondent failed to prove that the appellant encroached into a suit land. The trial chairman shifted the burden of proving the land size in dispute to the appellant on page 3 of

the judgment. At the same time, the application/plaint and respondent's witnesses failed to state neither the land size nor the specific location of a disputed land. The respondent also failed to prove specific damages of Tshs. 30,000,000/=, but the trial tribunal granted the same. Specific damages must be specifically proved, as stated in the case of **Zuberi Augustino versus Anicet Mugabe [1992] TLR 137**. Determining the case in favour of the respondent from assertion from a bare statement at the bar is unacceptable, as it was held in the case of **Francisca Mbakileki versus Tanzania Harbours Authority**, Civil Application No.17 of 2002 Court of Appeal of Tanzania at Dar Es Salaam, (unreported), at page 3.

The appellant's submission on the 6th ground of appeal is that the trial Tribunal had no jurisdiction to grant a declaratory order that the respondent is the lawful owner of the disputed land. She said the settled position of the law is that a suit seeking declaratory relief has to be filed within six years. Declaratory orders fall within the ambit of item 24 of part I of the schedule to the Law of Limitation Act. She also bolstered her argument by citing the case of **Latifa Said Ganzel (as legal Attorney of Ramadhani Mohamed Ngedere) vs. Abdallah Mohamed Ngedere and Ahmed Salman Bin Taher**, Land Appeal No. 119 of 2022, High

Court at Morogoro (unreported), on page 13. She added that the respondent prayed in the relief to be declared lawful owner of the suit land. Hence, the suit was for declaratory orders. To support the argument, the appellant cited the case of **Juma Jaffer Juma versus Manager PBZ LTD and Two others**, Civil Appeal No. 07 of 2002, Court of Appeal of Tanzania at Zanzibar (unreported).

In reply, Ms. Makali said on the 1st ground of appeal that the description of the disputed land given by the respondent herein before the DLHT was sufficient enough to identify the disputed area as required by the law. The respondent evidence shows that the land in dispute is located at Mibiki Mitali Village, at Ifunda Ward within Iringa District in Iringa Region, and not at Iringa Municipality, as contended by the counsel for the appellant. All witnesses brought by the respondent described the land in dispute. All land in Tanzania is public land vested in the president as trustee for and on behalf of all citizens of Tanzania.

Concerning the 2nd ground of appeal, the respondent contended that the law did not allow any person to be entitled to an estate or interest in any public land by adverse possession as per section 38(a) of the Law of Limitation Act, Cap. 89 R.E 2019. Section 37 (1) of the Law of Limitation

Act requires a person who claims to have become entitled by adverse or for any other state or interest to apply to the High Court for an order that he should be registered under the relevant law as the holder of the right of occupancy or such other Estate or interest. The appellant has not done so. The appellant testified that he acquired the land in dispute after one person of Indian descent abandoned it. But, the appellant tendered no document to prove the assertion. The respondent's evidence established that the appellant was given 10 acres of land in 1994, but he trespassed on the other land used for grazing. The standard of proof in civil cases is on a balance of probabilities, and the respondent proved that the land in dispute belongs to her.

Regarding the 5th ground of appeal, the respondent said that the respondent's evidence was stronger than that of the appellant, and the appellant did not reveal the evidence which was disregarded in the decision of the trial District Land and Housing Tribunal. Thus, the ground has no merits.

On the issue of the trial Tribunal declaring the respondent to be the lawful owner of the suit land, the respondent said that the respondent prayed for several reliefs, including being declared the legal owner of the

suit land. She said to the trial tribunal that granting those reliefs to the respondent was correct.

In rejoinder, Ms. Shoo reiterated her submission in chief and further insisted that this appeal be allowed.

Having read the respective submissions by the parties, the issue for determination is whether this appeal has merit.

The appellant submitted on the 1st, 2nd, 3rd, 5th, and 6th grounds of appeal and abandoned the 4th ground of appeal. On the 1st ground of appeal, the appellant averred that the respondent failed to describe the suit land in the application and evidence adduced at the trial Tribunal. The description of the suit land provided was insufficient to identify it as required by the law. The respondent and her witnesses did not state the boundaries, neighbours or even the size of the disputed land. It was wrong for the trial Tribunal to proceed with determining a dispute over the land, which is not known for its exact location. In contention, the respondent said that the description of the disputed land given by the respondent herein before the DLHT was sufficient to identify the disputed area as required by the law. The application filed before the trial Tribunal shows that the land in dispute is located at Mibiki Mitali Village, at Ifunda Ward

within Iringa District in Iringa Region, and not at Iringa Municipality as contended by the counsel for the appellant. All witnesses brought by the respondent described the land in dispute.

As the appellant states, Order VII Rule 3 of the Civil Procedure Code Act, Cap. 33 R.E. 2019 provides that where the subject matter in the suit is immovable property, the plaint shall contain a property description sufficient to identify it. The Court of Appeal stated the exact position in the case of **Martin Fredrick Rajab vs. Ilemela Municipal Council and Another,** (supra) that it was improper not to mention the size or neighbours of a disputed land as it is against the law's requirement. In the case of **Emmanuel Mwakibinga vs. Kelvin Mwampasi and Another**, Land Appeal No. 9 of 2019, High Court Mbeya Registry (unreported), on page 10, it was held that:-

> *"The law mandatorily guides that parties involved in the land dispute should properly identify the land at issue sufficiently enough to differentiate it from other pieces of land adjacent to it."*

In the case of **Martin Fredrick Rajab vs. Ilemela Municipal Council and Another**, Civil Appeal No. 197 of 2019, Court of Appeal of Tanzania at Mwanza (unreported), it was held on page 13 of the judgment that:-

"From what was pleaded by the appellant, it is glaring that the description of the suit property was not given because neither the size nor neighbouring owners of the piece of land, among others, were stated in the plaint. This was not proper, and we agree with the learned trial judge and Mr. Mrisha that it was incumbent on the appellant to state in the plaint the description of the suit property, which is in terms of the Order 7 rule 3 of the Civil Procedure Code (supra)."

Persuaded by the above cited decisions, I agree that parties appearing in Court in land dispute are bound to identify the suit land by providing specific descriptions such as location, size and boundaries. The purpose of the description is for the Court to be able to determine the land dispute and give the executable order.

In this case, the description of the disputed land given by the respondent herein in the District Land and Housing Tribunal was not sufficient to identify the disputed area as required by the law. The application filed by the appellant shows the following in paragraph three (3):-

*"3. **Location and address of the suit premises/land:** the land is located at Mibiki Mitali Village, Ifunda Ward within Iringa District."*

The description of the suit land provided in the application was insufficient to identify it. The size of the suit land and boundaries or neighbours were not provided. The respondent in the filled application provided the location of the suit land that the land is located in Mibiki Mitali Village within Ifunda Ward and Iringa District. The said location provided by the respondent does not show the boundaries, neighbours and size of the land. With such a description provided, it is not possible to identify the suit land. Also, all respondent's witnesses failed in their evidence to describe the land. They stated that the size of the land in dispute to be 443 acres. This evidence is found in the testimony of Zabron Elon Ndendya (SM1), Wilbert William Myovela (SM2), Sebastian George Malata (SM3), and Idilfonce Sales Mhangilolo (SM4), This Court in the case of **Romuald Andrea vs. Mbeya City Council and 17 Others**, Land Case No 13 of 2019, High Court of Tanzania at Mbeya, (unreported), it was held at page 6 of the judgment that:-

> *"It follows thus that, 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."*

From the above cited case, it is only possible to execute the order of the Court where the description of the land in dispute is provided. It means

that even in this case, executing the order of the trial District Land and Housing Tribunal is impossible as the boundaries and neighbour of the suit land were not disclosed. This ground alone disposes of the appeal.

Therefore, the appeal has merits and is allowed to the extent discussed herein. The judgment and orders of the trial District Land and Housing Tribunal are quashed and set aside. As I found that the suit land was not identified and the trial Court failed to guide the respondent in describing the suit land, each party shall bear the own costs of the suit. It is so ordered accordingly.

A.E. MWIPOPO

JUDGE

15/09/2023