IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF SUMBAWANGA

AT SUMBAWANGA

LAND APPEAL NO. 46 OF 2022

(Originating from Application No. 15 of 2021 in the District Land and Housing Tribunal for Rukwa at Sumbawanga)

DANIEL VELUS MWANANDENJE.....APPELLANT

VERSUS

OBADI COLONEL SILUNGU.....RESPONDENT

JUDGMENT

MWENEMPAZI, J:

The appellant filed an application in the trial tribunal against the Respondent herein named claiming that the Respondent has trespassed into his land, measuring one acre. That piece of land was being utilized as a garden. The appellant who was the applicant in the trial tribunal alleged that the respondent trespassed into the land in 2016. The dispute land is said to be located at Malagano in Pito Ward.

The application was contested by the respondent who alleged the claims are vexatious and without merit. He prayed the same be dismissed with cost.

Upon hearing of both parties, the trial tribunal found that the applicant, appellant in this appeal, has failed to prove his claims and therefore dispute land belongs to the respondent. It was also ordered each party to bear his own costs.

The appellant is aggrieved by the decision. He has filed this appeal registering three grounds of appeal as follows:

1. That the chairman erred both in point of law and fact when it (sic) failed to consider the oral evidence and as a result it reached at the wrong decision.
2. That the chairman erred both in point of law and fact when it (sic) did not take into consideration of the evidence given by the appellant that his father used the dispute land from 1957 up to 1986 when he decided to give him (appellant) the suit land.
3. That the chairman erred both in point of law and fact when it (sic) did not take into consideration of the evidence given by the appellant that the appellant have been using the suitland since 1986 up to 2016 when the dispute arose.

At the hearing of this appeal, parties were unrepresented. Their submissions were brief and the litigants seemed to be satisfied with what they said in the brief account of their cases.

In the submission in chief the appellant prayed that this Court considers the grounds of appeal which in essence referred back to the evidence tendered in the trial tribunal. The argument are based on a long use of land and that assessment of evidence by the trial tribunal chairman was not effective leading to a wrong decision. In the first ground of appeal, the appellant allege that the oral evidence by the appellant was not considered. The second ground of appeal alludes to the long use of the farm by his father and the third ground that the appellant personally used the farm for almost over thirty years from 1986 – 2016 when the dispute arose.

This Court being the first appellate Court is empowered to re-assess the evidence and come up with its own finding. Though the appellant and respondent have kept referring to the Village Council and Ward Tribunal, still the two fora are empowered only to mediate and reconcile the parties.

The ward tribunal has been stripped off with the powers to enquire into and determine disputes arising under the Land Act and the village Land Act. Section 13(4) of the Land Courts Dispute Act, [Cap 216 R.E 2019] provides that the District Land and Housing Tribunal to assumes power to hear and determine after the attempts to mediate and reconcile the

parties at the Ward Tribunal has failed. That is in accord to the amendment introduced by Act No. 5 of 2021.

In have had an ample time to read the record of the trial tribunal and my observations are that parties at the trial in the evidence have several times referred to the dispute land as "Eneo gombewa" or 'eneo lenye mgogoro'. In the defence evidence, particularly the testimony by Obardi C. Silungu (SU1) he has described the dispute and shows there was once an attempt to mediate by the Village Land Council where parties were required cultivate their respective areas and or farms without crossing borders to their neighbours. However, it has not been described sufficiently to identify with certainty exact area of each party's property in terms of size and location. In my imagination I get a picture that the applicant and respondent are neighbours. However, where it has not been stated so by the testimony I cannot assume that to be a situation in reality.

The account of the conflict as discerned from the testimony by the applicant shows the area in dispute is one and the same farm, the respondent trespassed and sort of displaced the appellant and or applicant in the trial tribunal. But that changes when one reads the evidence by the respondent. The latter shows there is trespass by encroaching beyond the borders of neighbour's farm. My take is that the description of the

property has not been sufficient enough to include details as to allow the identification of the dispute area. In the case of **Lupembe Village, Ikolo Ward Kyela District and Another Vs. Bethelehamu Mwandefwa & 5 Others** (Civil Appeal No. 377 of 2020) [2023] TZCA 17313 (9 June 2023) it was held:

> *"Order VII Rule 3 of the Civil Procedure Code states: 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".*

I have read the application form No. 1, item 3 of the form shows "*Eneo na anwani ya ardhi inayobishaniwa Malagano – Kata ya Pito".* That, in my view, is not sufficient description.

In the case of **Martin Fredrick Rajab Vs. Ilemela Municipal Council and Another,** Civil Appeal No. 197 of 2019 [2022] TZCA 434 (18 July, 2022) at page 8 it was observed that: -

"It is a cherished principle of law that generally in Civil Case, the burden of proof his on the person who alleges anything in his favour"

The Court observed that the principle is derived from the provision of section 110 of the Evidence Act, [Cap 6 R.E 2022]. After quoting the provisions of law, the Court went on to observe that: -

"In civil proceedings a party who alleges anything in his/her favour also bears the evidential burden and the standard of proof is on the balance of probabilities which means that, the Court will sustain and uphold such evidence which is more credible compared to the other on a particular fact to be proved".

According to the holding in that decision it is the duty of the plaintiff to discharge that duty on evidential burden. The question is whether in the present case the appellant who was the applicant in the trial tribunal discharged his burden of proof. The circumstances of the case as shown above show that the answer is negative. In the case of **Martin Fredrick Rajab (supra),** a suit was dismissed for failure to avail the description of the suit property be it in the pleadings or the evidence. In our case, the pleadings (form No. 1) and also in the plaintiffs' evidence the

description has not been availed with necessary details. The description of the suit property was not given because neither the size nor neighbouring owners of pieces of land among others were stated in the application form No. 1.

Under the circumstances the applicant and now appellant failed to discharge his duty to prove the allegations that he owns the land on balance of probabilities. The appeal therefore is dismissed with costs.

It is ordered accordingly.

Dated and signed at Sumbawanga this 21st September, 2023.

T.M. MWENEMPAZI
JUDGE

Judgment delivered in Judges Chamber this 21st September, 2023 in the presence of the appellant and respondent.

T.M. MWENEMPAZI
JUDGE
21/09/2023

Right of appeal explained.

T.M. MWENEMPAZI
JUDGE
21/09/2023