IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOROGORO SUB-REGISTRY
[AT MOROGORO]

CIVIL APPEAL NO. 27078 OF 2023
(*Arising from Civil Case No. 4 of 2022 in the District Court of Mvomero at Mvomero*)

HASSAN BAKARI ..... APPELLANT

VERSUS

SUNGURA AMANI ..... RESPONDENT

JUDGEMENT

26/02/2024 & 27/03/2024

KINYAKA, J.:

At the District Court of Mvomero at Mvomero *Vide* Civil Case No 4 of 2022, the appellant together with one, Ramadhani Selemani, who is not a party to the present appeal for the reasons to be provided herein below, were sued by the respondent for trespass to the disputed land and malicious damage of properties belonging to the respondent. The respondent claimed against the appellant and Ramadhani Selemani payment of TZS 63,074,000, being compensation for loss as a result of trespass and malicious damage to the properties, including paddy, and trees, as well as throwing away compost manure distributed on the farm.

At the trial court, hearing was conducted to establish four issues, namely, whether the respondent was in possession of the farm measured 25 acres at Msufini village within Mvomero District in 2021/2022 season; whether the appellant trespassed the said farm; whether the respondent suffered any damage; and to what reliefs are the parties entitled.

Upon conclusion of hearing, the trial court found all issues in favour of the respondent and against the appellant. The trial court ordered the appellant to pay, TZS 4,024,000 being specific damages, TZS 18,000,000 being general damages, and costs of the suit. Aggrieved by the decision, the appellant preferred three grounds of appeal as follows:-

1. That the Honourable court erred in law and fact for deciding the case in favour of the respondent which was out of its jurisdiction;
2. That the Honourable Magistrate erred in law and fact by deciding the matter in favour of the respondent for failure to evaluate evidence properly the evidence adduced by the appellant during trial; and
3. That the trail magistrate erred in law and fact by deciding the matter in favour of the respondent without taking into consideration that there was no any evaluation report to justify the respondent claims/damages.

On 26/02/2024, when the matter came for hearing, Mr. Christopher Mgalla, learned Advocate appeared to represent the appellant, and Mr. Baraka Lweeka, learned Advocate represented the respondent. On the same date, Mr. Lweeka raised preliminary objection, among other points that the then first appellant, Ramadhani Selemani did not file his written statement of defence at the trial court and was therefore not qualified to prefer the present appeal.

On 06/03/2024 when the point of objection was heard, Mr. Mgalla admitted to the point of objection and further contended that he was instructed by the appellant herein and not Ramadhani Selemani. Based on Mr. Mgalla's concession and upon the Court's finding that before the trial court, the said Ramadhani Selemani testified as a witness for the appellant (DW2) and the orders of the trial court was made against the appellant and not Ramadhani Selemani, this court ordered the striking out of the name of Ramadhani Selemani as one of the appellant in the present appeal. It follows that, the proceedings read as between the appellant versus the respondent as they appear herein.

Upon prayer by the parties, I granted an order for disposition of the appeal by written submissions. The appellant was ordered to file his submissions in

chief by 13/03/2024, the respondent's reply submissions by 20/03/2024 and appellant's rejoinder, if any, by 25/03/2024 and judgement was scheduled to be delivered on 28/03/2024. While Mr. Mgalla lodged his submissions on time, Mr. Lweeka, the respondent's counsel lodged the same on 26/03/2024, 6 days after the deadline as revealed in the receipt issued to him after the payment of the respective fees for filing the submissions. In composing the judgement, I will not consider the respondent's reply submissions for being filed out time as his omission to file the same on time is tantamount to his failure to enter appearance and defend his case. **[See the case of Famari Investment T Ltd Vs Abdallah Selemani Komba, Misc. Civil Application No 41 of 2018 (Unreported) on page 3]**

Submitting in support of the firs ground of appeal, the Mr. Mgalla contended that, at the trial court, the appellant raised preliminary objection that the parties had a pending land dispute before the District Land and Housing Tribunal of Morogoro at Morogoro, hereinafter "the Tribunal", which was yet to be determined. He stated that the ruling on the preliminary objection was overruled on 12/04/2023 without the trial court adducing any reason for disregarding the documentary evidence tendered which included, the stop order issued by the Tribunal to restrain both parties from occupying or using

the dispute land, and correspondence letter from the Chairman of the Tribunal which evidenced that the dispute was yet to be resolved. He argued that the best approach for the respondent would have been to address his grievances before the trial tribunal instead of a civil case if at all he had a right to possess, occupy or use the land. He relied on the case **of Goodluck Kyando v. R. (2006) TLR 363** which held that every witness is entitled to credence and must be believed and his testimony accepted unless there are good and cogent reasons for not believing a witness.

Mr. Mgalla submitted in support of the second ground that the improper and failure to evaluate evidence, renders injustice relying on the case of **Jackson Stephano Magesa and Another v. R., Criminal Appeal No. 130 of 2020** where on page 16, the Court of Appeal cited the case of **Leonard Mwasonoka v. R., Criminal Appeal No. 226 of 2014** (unreported) where it was held that it is one thing to summarize evidence and another to subject the same to evaluation in order to separate chaff from grain, and it is one thing to consider evidence and another not to consider it at all in the evaluation and analysis. Mr. Mgalla, further cited the case of **Yusuph Amani v. R., Criminal Appeal No. 255 of 2014** on page 17 where it was held

that failure to evaluate evidence inevitably leads to a wrong and/or biased conclusion and inferences resulting in miscarriage of justice.

He submitted that if the trial magistrate considered and well evaluated his evidence, she could have decided in favour of the appellant. He stated that the appellant testified about the existing land dispute, the blood relationship between him and the respondent, and that the respondent and his witnesses were blood related rendering their evidence untruthful as they tried to hide their blood relation. He contended that the appellant cultivated the disputed land after he wrote a request to plant seasonal crops on the farm to the Chairman of the Tribunal, and later, the Tribunal issued stop order against both parties not to deal with the disputed land, which revealed that nothing was planted in the farm by then. He blamed the trial court for its failure to consider and evaluate evidence leading to unfair and unjust decision.

In respect of the third ground of appeal on lack of evaluation report to justify the respondent's claims or damages, Mr. Mgalla submitted that during cross examination regarding the subject, the respondent testified that he did not tender any evaluation report to prove that his farm produces 15 bags of paddy for each acre. He contended that the respondent further testified that he knew his farm and had experience on its production and that there were

agricultural officers but he did not call them because of his knowledge and experience in agricultural activities.

He submitted that despite the respondent's failure to prove his claims and to submit expert report from agricultural officers, the trial court, without adducing any legal basis, ordered the appellant to pay the respondent TZS 4,024,000 and TZS 18,000,000, being specific damages and general damages, respectively. Relying on the case of **Harith Said & Brothers Ltd Vs Martin S/O Ngao** (1981) TLR 327 on page 18, Counsel argued that special damages must be strictly proved and corroborated the assertions with documentary evidence. He added that in the case of **George Mbushi Vs Mniko Magesa,** Pc Civil Appeal No 62 of 2019 on page 6, where the High Court held that the appellant's claims were not proven on the required standard because the agricultural officer was not called to testify on the value of destroyed crops and valuation report was not tendered in evidence. He concluded that the evidence to prove the claimed TZS 1,398,000 was wanting. He prayed for an order to quash and set aside the proceedings, judgement, and orders of the trial court with costs.

At this stage, I am enjoining to determine whether the decision of the trial court was arrived without jurisdiction, without proper evaluation of evidence, and without evaluation report to justify the respondent's claims.

I will begin with the appellant's 1st ground of appeal on lack of jurisdiction of the trial court. I agree with the appellant that there was a land dispute before the respondent knocked doors of the trial court. According to the proceedings of the trial court, the dispute began at the Ward Tribunal of Hembeti whose decision was in favour of the respondent herein. The trial court admitted the decision of the Ward Tribunal as Exhibit PE1. The dispute escalated to the District Land and Housing Tribunal through and appellant's Appeal No. 139 of 2019 where the appellant failed to file written submissions resulting to the Tribunal's dismissal of the suit for want of prosecution on 29/09/2019. The dismissal order was admitted in evidence by the trial court as Exhibit PE2. Subsequently, the appellant preferred Land Application No. 588 of 2021 seeking to set aside the dismissal order on 29/09/2021, followed by his Application No. 04 of 2022 for temporary injunction which he withdrew on 31/05/2022.

At the time the respondent filed Civil Case No. 04 of 2022, the question of possession of the disputed land was concluded by the Ward Tribunal of

Hembeti *vide* its decision admitted by the trial court as Exhibit PE1 which was in favour of the respondent. In my view thereof, although the decision of the Ward Tribunal was not final, as long as the same was not reversed, reviewed or revised, the decision remained final and conclusive. Further, through Exhibit PE2, it was proven that the appellant's attempts to challenge the decision of the Ward Tribunal was in vain meaning that the land dispute was concluded by ordering the appellant to return the land to the respondent for him to hand over the same to the heirs of the late Somba.

In the suit before the trial court, the respondent did not move the court to decide on the ownership or possession of land, but a claim for compensation arising from trespass of the farm and unlawful destruction of properties in the farm. As such, I am therefore compelled to determine, whether the said dispute was a land dispute from the wording of section 167(1) of the Land Act, Cap. 113 R.E. 2019. The provision provides for courts vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land. Notably, there is no expressly definition of the phrase "*land dispute*" in our laws, but this Court, through various case laws have attempted to provide meaning of the same. For instance, in the case of **Baddi Twaha Ally v. CRDB Bank Plc & Another, Land Case No.**

175 of 2023 (unreported) on page 4 through to 5 in which I find inspiration, this Court had this to say on what constitutes a land dispute;

> *"In order to properly determine whether or not this court has jurisdiction over the matter at hand, first we must resolve the question as to what constitute a land dispute. A "land dispute" involves conflicting claims to rights in land by two or more parties, focused on a particular piece of land, which can be addressed within the existing legal framework. The parties to a land dispute must have conflicting interests/claims on either ownership, usage or possession of land."*

Much similar, in the case of **Levina Theodory Vs Dismas Nyibago Marwa,** PC Civil Appeal No 122 of 2022 (unreported) on page 6 through to 8 this Court made the following observations;

> *".....there is no doubt that for a matter to be considered a land dispute, such matter must involve a right on land or interest thereon. Deducing from that definition, a right on land or interest thereon relates to the ownership or possession of the land. Any issue beyond ownership or possession of the land is not a matter concerning land."*

Having the above authority in mind, it is my considered opinion that the claims before the trial court was not on a land dispute but claim for compensation for trespass and destruction of properties which the trial court had jurisdiction to entertain as it was held in the case of **Anderson Chale**

v. Abubakari Sakapara, Civil Appeal No. 121 of 2004 (unreported) where like in the present case, this Court was called to determine as to whether the District Court of Temeke had jurisdiction over the matter in Civil Case No. 89 of 2003. In that case, the respondent was claiming for compensation for damage/loss caused by the appellant due to unlawful act of trespassing into the respondent's property and causing severe damage to development on the said property. In resolving the issue, the High Court on page 19 through to 20 underlined as follows:-

> *"The issue therefore is whether trespass to land and damage caused as the result or in the course of the trespass, makes such a dispute a matter under the Land Act or a "dispute concerning land".....The Land Act on the other land, deals with rights and interests in land and the Land Disputes Settlements Act, deals with how disputes arising for the interest in land, will be settled and the institutions having jurisdiction to settle them. There is nothing in the Land Act or in the Land Disputes Settlements Act, which ousts the jurisdiction of the ordinary courts in suits based on tort and in particular, the tort of trespass to land. I would therefore disagree with the appellant and his counsel that the District Court of Temeke lacked jurisdiction to entertain the suit based on trespass, by virtue of the Land Disputes Courts Act Cap 216 R.E. 2002."*

In addition to the holding in the authority above which I fully subscribe, it is also worthy to note that the jurisdiction of the trial court cannot be ousted based on previous submission of the parties to the land adjudicating forums on a dispute over ownership or possession of land. In view of the above, the first ground of appeal is dismissed for lack of merit.

In the second ground of appeal, the appellant attacked the trial court for its failure to properly evaluate evidence. I have read the evidence of the parties adduced at the trial court. The evidence of PW1 was clear that he was in possession of the land after he won the case at the Ward Tribunal and that the appellant's appeal was dismissed by the Tribunal. He testified that he planted paddy and trees but the appellant destroyed them.

PW2, the supervisor of the respondent at the farm, whose evidence corroborated the evidence of PW1, testified that the appellant planted teak trees which he participate in planting. He testified to witness the tractors with registration number T681 DMA and T356 AXT cultivating the farm and destroying everything on it including four acres of teak trees. PW3 testified that he was one of the 10 labourers who participated in planting the teak trees and they were paid by the respondent TZS 4,024,000. The testimony of DW1, the appellant herein was to the effect that the respondent was

declared the owner of the disputed land, and was in possession of the land in 2021/2022 season. On his part, DW2, the driver of the tractor, admitted to have been instructed by the appellant to dig the farm and complied with the instructions by digging 18 acres of the farm using tractor with registration number T356 AXT.

Form the above evidence, it is clear to me that the respondent managed to establish on the standard required in civil cases that the appellant trespassed the farm that was in his possession and destroyed the paddy and teak trees that he cultivated. I find the trial court's decision was arrived at after proper evaluation of evidence on record.

At this point, I wish to deliberate on Mr. Mgalla's arguement that the appellant was given the right to use the farm. I have read the entire record of the Tribunal. However, I have not found anywhere in the records indicating that there was such an order granting the appellant the right to use the land.

Mr. Mgalla argued further that the trial court found the case in favour of the respondent without considering that there was an order for temporary injunction that restrained both parties from cultivating the farm. He argued that although there was no evidence of the properties alleged to be

destroyed, but if there was any, the same could not be claimed in existence of an injunctive order. On my part, I won't pose and allow myself detained in endeavoring to discuss this argument, as I have already held earlier on above that there was sufficient evidence to prove that the respondent planted paddy and teak trees in the farm.

It is also worthy of explanation that, when the appellant applied for temporary injunction, the respondent had already filed Civil Appeal No. 04 of 2022 before the trial Court on 02/11/2022. The oral application for temporary injunction was made by the appellant on 29/11/2022 through his Land Application No. 588 for of 2021 for setting aside the dismissal order. It should be noted that The Tribunal's order to restrain parties to use the disputed land was made on 13/12/2022 when it was aware that there was a dispute pending before the trial court. The Tribunal held that:

> *"Kulingana na kumbukumbu, wadaawa walikuwa na kesi iliyofutwa na kwa sasa hivi wanaomba irudishwe* ***na kesi iliyo katika mahakama ya wilaya ni kuhusu uharibifu wa mali/mazao pamoja na zuio lake****. Hii inamaanisha si mdai wala mdaiwa ambae ameshatamkwa kuwa mmiliki wa ardhi. Kwa kuwa wadaawa bado wana kesi zinazoendelea na mdaiwa anatumia eneo lenye mgogoro inamaanisha mdai anapata*

hasara ya kutotumia eneo hilo na ndio sababu na yeye ameomba aruhusiwe kulima katika msimu huu wa kilimo. Kupitia maelezo ya baraza hili halikubaliani na maombi ya mdai yanayosema anaomba aruhusiwe kulima msimu huu lakini baraza hili "suo moto" kupitia amri ya XXXVII ya Civil Procedure Code Cap 33 linatoa amri ya zuio kwa wadaawa wote yaani mdai na mdaiwa kutotumia eneo lenye mgogoro kwa shughuli yoyote ile ikiwemo kilimo, ufugaji na kadhalika mpaka shauri juu yao litakapokuwa limesikilizwa na kutolewa maamuzi." [Emphasis added]

The above extract of the Tribunal's order for temporary injunction confirms that the respondent's Civil Case No. 04 of 2022 for trespass and destruction of properties was lodged prior to the appellant's oral application for temporary injunction and the Tribunal's injunctive order. The order for temporary injunction was intended to restrain the parties after the filing of Civil Case No. 04 of 2022 and after the appellant was sued for compensation arising from his trespass and destruction of properties. It follows that Mr. Mgalla's argument that the respondent was not entitled to the claims at the trial court because there was a stop order to cultivate the land, has no basis. The records speak clearly that the trespass and destruction of property was committed by the appellant and the respondent sued the appellant for

compensation as a result of the trespass and destruction of properties before the temporary injunction order of the Tribunal.

All that said, I find Mr. Mgalla's argument that the evidence of the respondent and his witnesses were untruthful because they were blood related, a misconception. In my understanding, there is no law that bar witnesses who are blood related to each other or with the party to the suit to testify. Section 127(1) of the Evidence Act Cap. 6 R.E. 2022 provides:-

> *127(1) Every person shall be competent to testify unless the court considers that he is incapable of understanding the questions put to him or of giving rational answers to those questions by reason of tender age, extreme old age, disease (whether of body or mind) or any other similar cause.*

As clear as the wording of the above provision is, for as long as PW1, PW2 and PW3 were competent witnesses, I do not find the any reasons to fault the decision of the trial court for relying on the evidence of the respondent's witnesses. The second ground of appeal fails to the extent that the trial court properly evaluated evidence and arrived at a justiciable decision. The second ground is also bound to fail.

As for the third ground, I find both the ground and the submissions in support of the same a total misconception on part of the appellant. In

awarding special damages, the trial court found that except for TZS 4,024,000 which the respondent managed to prove through the evidence of PW3, the rest of special damages were not proven. The TZS 4,024,000, awarded by the trial court was in respect of costs incurred by the respondent in paying labourers as pleaded in paragraph 6 and consolidated in paragraph (a) of his prayers for general damages. The amount of special damages awarded did not relate to the quantity of the harvest or paddy which would or would not require evidence or report from agriculturalists or similar experts. It would have been different if the appellant argued that there was no documentary evidence submitted to prove payment of the TZS 4,024,000 by the respondent to the labourers.

Similarly, the trial court's award of general damages were not related to quantity of paddy expected to be harvested. In awarding damages, the trial court considered the deprivation of the respondent from using the land due to trespass, and the duration of intrusion by the appellant into the respondent's land, to award the respondent general damages of TZS 18,000,000. It is a trite law that the award of general damages is at the discretion of the court which should be exercised judiciously **[See the case of Mr. Erick John Mmari v. M/s Herken Builders Ltd, Commercial**

Case No. 138 of 2019 (unreported) on page 61. As the trial court provided reasons for the award of general damages, I do not find any justifiable reasons to interfere with the orders. The third ground is dismissed for lack of merit.

My above observations demonstrate that the present appeal is unmerited. I uphold the decision of the District Court of Mvomero at Mvomero in Civil Case No. 4 of 2022 in its entirety, and accordingly dismiss the present appeal with costs.

It is so ordered.

DATED at MOROGORO this 28th day of March 2024.

H. A. KINYAKA

JUDGE

28/03/2024

Court:

Judgment delivered in this 28th day of March, 2024 in the presence of the Mr. Christopher Mgalla Learned Counsel for the1st and 2nd Appellant, and Ms. Susana Mafwere for the Respondent.

F.Y. Mbelwa

DEPUTY REGISTRAR

28/03/2024

Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.

F.Y. Mbelwa

DEPUTY REGISTRAR

28/03/2024