IN THE HIGH COURT OF TANZANIA

DODOMA SUB-REGISRTRY

AT DODOMA

LAND APPEAL NO. 113 OF 2023

(Arising from the decision of the District Land and Housing Tribunal for Singida at Singida in Land Application No. 48 of 2021)

AMINA HAMISI KITIKU.....APPELLANT

VERSUS

CHAUSIKU HUSSEIN MAJENGO.....RESPONDENT

JUDGMENT

28th March & 12th April, 2024.

MUSOKWA, J.

The brief background to this appeal is that the appellant herein was the applicant in the District Land and Housing Tribunal at Singida (DLHT), alleging trespass to land by the respondent herein in Land Application No. 48 of 2021. The suit land is located at Ikunji Township within Singida Region. After determination of the matter, the decision was issued in favour of the respondent. Being aggrieved with the decision thereof, the appellant preferred the present appeal relying on the following grounds:

1. *That, the Trial Tribunal erred in law and in fact for trying a dispute which it had no jurisdiction to try as it was not referred to the ward tribunal.*

2. *That, the trial Tribunal erred in law and fact by entertaining the dispute without a crucial or necessary party which allocated the suit property to the appellant.*
3. *That, the trial tribunal erred in law and fact on deciding on the matter basing on erroneous analysis of evidence.*
4. *That, the trial Tribunal erred in law and fact on deciding the matter by delivering judgement that is inconsistence to the evidence on record.*
5. *That, the trial tribunal erred in law and fact for failure to conduct site visit to verify information received as evidence hence wrongly arrived (sic) into judgment it reached.*

On 20th February, 2024, when the appeal was scheduled for mention, parties prayed to dispose this appeal by way of written submissions. The prayer was granted and a scheduling order was issued. The appellant complied with the court order for filing the submissions in chief timely. Similarly, the reply was filed by the respondent as scheduled. However, the rejoinder by the appellant was filed out of time without leave of the court.

On 28th March 2024, this appeal came for mention in view of issuing necessary orders. On the said day, the respondent was present and the appellant was absent without notice. The respondent prayed for the court to expunge the rejoinder from the records for non-compliance to the scheduling order without leave of the court. To that effect, before

proceeding to the merits of this appeal, I will determine the status of the rejoinder that was filed out of time.

The scheduling order required the appellant to file the rejoinder if any, on or before 26th March, 2024. Instead, the appellant filed the same on 27th March 2024, one day later and without leave of the court. In the circumstances, I hereby expunge the appellant's rejoinder from the record of this appeal. Therefore, in determining this appeal, I remain with the submissions in chief and the reply to the submissions.

The appellant was represented by Mr. Amon Ndunguru, learned advocate, and the respondent's advocate was Mr. Godwill Benda. The first ground of appeal as argued by advocate for the appellant in the submission in chief, relates to the jurisdiction of the trial tribunal in entertaining the land application before it. It was the submission of Mr. Ndunguru that the trial tribunal erred in adjudicating upon a dispute that did not initiate from the Ward Tribunal. The learned advocated cited section 45 of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2021, further stating that the said section amended section 13 of the Land Disputes Courts Act Cap. 216, R.E 2019. The amendment introduced sub-section (4) which requires certification of a successful mediation or otherwise, before a land dispute is referred to the DLHT.

In support of the assertion, reference was also made to the case of **Issa Iddi Kauzu vs. Ally Abdallah Mkoko and Al-Juma Mosque, Land Appeal No. 8 of 2022,** (unreported) High Court at Mwanza. Stressing that the suit should have commenced at the Ward Tribunal, the advocate for the appellant stated that it was not clear whether the suit was instituted at the DLHT as a fresh suit or as an appeal. Elaborating further, Mr. Ndunguru averred that section 19 of the Land Disputes Courts Act, Cap. 216 R. E 2019, clearly provides that an aggrieved party who is not satisfied with the outcome of the proceedings at the Ward Tribunal may appeal to the DLHT.

In concluding the first ground of appeal, the appellant submitted that the DLHT erred in entertaining the matter before it, without first ascertaining the value of the suit land, and in consideration thereof, whether it had pecuniary jurisdiction. In the matter before the DLHT, the value of the suit land which does not exceed TZS. 3,000,000/= was not within the pecuniary jurisdiction of the DLHT. The cases of **Venance Benedict Minde vs. Mussa Ally Lwalo and Others**, Land Case No. 26 of 2022 and the case of **Doctore Malesa and Others vs. Permanent Secretary Ministry of Land, Housing and Settlement and 3 Others Land Case No. 18 of 2019** (unreported), were preferred to cement the

submission. Notably, the appellant dropped the second ground of appeal, and it is hereby marked so.

The learned counsel for the appellant continued to submit on the third ground of appeal. This ground of appeal alleges the erroneous analysis of evidence by the DLHT. The assertion, is that the testimony of the Land Officer, SM3 was not given due weight. Specifically, that, in consideration of his duties as a Land Officer, his testimony which was to the effect that the appellant is the lawful owner of the suit land should have been duly regarded. Submitting further, Mr. Ndunguru stated that the chairman of the DLHT disregarded the testimony of SW3 without providing sufficient reasons. Further that section 45 of the Land Act, Cap. 113 R.E. 2019 vests the power to revoke a right of occupancy solely on the President of the United Republic of Tanzania, and neither the court nor the DLHT have jurisdiction to order revocation thereof.

The 4th and 5th grounds of appeal were argued collectively. These grounds are premised on the DLHT determining the matter in a manner that is inconsistent with the evidence on record; further, on failure to conduct a site visit to the suit land. Arguments that were further advanced were that no documents were tendered to prove ownership

by the respondent. The site visit would further have facilitated verification of related demarcations and beacons. The appellant argued that in consequence whereof, the resulting decision of the DLHT was reached prematurely. In conclusion, the appellant prayed that the decision of the trial tribunal be quashed and the appeal be allowed.

In reply, the respondent addressed all the grounds of appeal save for the abandoned second ground of appeal. The counsel for the respondent Mr. Benda, submitting on the first ground of appeal, averred that the amendment being relied upon by the appellant which makes it mandatory for a land dispute to commence at the Ward Tribunal for mediation became operative on 11th October, 2021 following the G.N. No. 41 Vol. 102 of 2021, to be read together with section 14 of the Interpretation of Laws Act, Cap. 1 R.E 2019. The learned counsel, acknowledged that the typed trial proceedings do not indicate the date of filing the land application at the DLHT. The records however, provide for the date the parties first appeared before the tribunal, to wit, 29th September 2021, the subsequent date of mention being scheduled for 21st October, 2021 as recorded at page 1 of the typed DLHT's proceedings.

Mr. Benda asserted that evidently, Land Application No. 48 of 2021 was filed before 29th September, 2021; that the said filing date was before the

Written Laws (Miscellaneous Amendments) Act No. 3 of 2021 became operative. In the circumstances, the allegation that the DLHT had no jurisdiction to entertain the matter is unfounded. Submitting further, Mr. Benda added that the case of **Issa Iddi Kauzu** *(supra)* relied upon by the appellant is distinguishable from this appeal.

Proceeding further, the learned counsel added that under the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 the Second Schedule, item 4 of Form No.1 provides that an applicant must provide an estimation of the value of the suit land. The estimated value of TZS. 3,000,000/- was therefore provided by the appellant herein, who was the applicant at the DLHT. The appellant further claimed that the purchase price was TZS. 300,000/=. Mr. Benda expressed his sheer amazement that the appellant, having provided the estimated value of the suit land at the DLHT, is now challenging the pecuniary jurisdiction of the tribunal at the appeal stage. In other words, the appellant is challenging her own pleadings at the trial.

Reiterating the principle that parties are bound by their own pleadings, the advocate for the respondent preferred the cases of **Sarrchem International Tanzania Limited vs Wande Printing and Packaging Company Limited**, Commercial Case No. 31 of 2020 at page 6; **Mbowe**

vs Eliufoo (1967) E.A. 240; and **Exim Bank (Tanzania) Ltd vs Dascar Limited and Another,** Civil Appeal No. 92 of 2009 (unreported).

Rebutting the submission advanced by the appellant that it was the duty of the DLHT to undertake valuation of the suit land, Mr. Benda argued that this position is not tenable in law. The learned counsel further asserted that the case of **Venance Benedict Minde** *(supra)* cited by the appellant, is distinguishable to the present appeal.

Submitting on the third ground of appeal, the respondent argued that the assertion by the appellant that the decision of the DLHT was founded upon erroneous analysis of evidence is baseless. In support of this, the learned advocate for the respondent categorically stated that the testimonies of the appellant and her witnesses were contradictory, specifically in the manner in which the appellant acquired the suit land. Mr. Benda averred that in addressing the contradicting testimonies, the DLHT cited the case of **Jeremiah Shemweta vs Jamhuri, (1985) TLR 228** whereby it was held that where doubts are raised in evidence, the dispute should be resolved in favour of the opposite party.

In addressing the fourth and fifth grounds of appeal, the respondent submitted that, the laws do not solely rely upon documentary evidence to prove or disprove any matter in dispute in a court of law. Mr. Benda

argued that oral evidence is permissible under section 61 of the Evidence Act, Cap.6 R. E 2019. With regard to visiting the suit land, the learned advocate submitted that neither the appellant nor her advocate filed an application at the trial tribunal requesting that a visit be paid to *the locus in quo*. It follows therefore that the appellant failed to demonstrate the manner in which non- visitation to the suit land had resulted in injustice against her. Thus, Mr. Benda finalized his reply by stating that all facts considered, the grounds of appeal lacked merit and prayed to the court to dismiss the appeal with costs.

Given that the rejoinder was expunged from the records for failure to file the same within time, I now proceed to determine whether or not the appeal before this court has merits.

On the first ground of appeal, the jurisdiction of the DLHT was challenged on the basis that the dispute should have commenced at the Ward Tribunal by way of mediation. Section 45 of the Written Laws (Miscellaneous Amendment) No. 3 Act of 2021, amended section 13 of the Land Disputes Courts Act Cap. 216 R.E 2019 by adding sub- section (4) which provides that: -

> *"Notwithstanding subsection (1), the District Land and Housing Tribunal shall not hear any proceedings affecting the title to or*

any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably.

Provided that, where the ward tribunal failed to settle a land dispute within thirty days from the date the matter was instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal"

According to the aforementioned provision, the Ward Tribunal has exclusive jurisdiction regarding mediation of land disputes. Clearly, from the cited provision, before the DLHT can entertain a land dispute before it, an attempt must have been made to mediate the dispute at the ward tribunal and a certificate issued to that effect. However, failure by the ward tribunal to mediate a dispute within 30 days of the institution of the dispute, the aggrieved party may proceed to file the dispute at the DLHT without the certificate of non-settlement from the Ward Tribunal.

In the matter at hand, having perused the records of the DLHT, I concur with the submission of the learned counsel for the respondent that Land Application No. 48 of 2021 was filed before 29th September, 2021; prior to the Written Laws (Miscellaneous Amendments) Act No. 3 of 2021 becoming operative on 11th October, 2021 through G.N No. 41 Vol. 102 dated 11th October, 2021. For that reason, I hold that the DLHT had jurisdiction to hear and determine the Land Application No. 48 of 2021. To that effect, this ground of appeal is unfounded and lacks merit.

Remarkably, the appellant cited the case of **Issa Iddi Kauzu** (supra) attempting to support his argument. However, the said case is not relevant at all because it deliberated a Land Application No. 05 of 2022 that was filed in the DLHT one year after promulgation of the Written Laws (Miscellaneous Amendments) Act No. 3 of 2021. This court held among other things that:

> *"In the final result, I agree with the chairman of the trial tribunal that the* ***Land Application No. 05 of 2022*** *was supposed to be first referred to the ward tribunal for mediation before the same being instituted in the DLHT".*

It is important to note that in the course of submitting on the first ground of appeal, the appellant submitted further that the DLHT erred in entertaining the matter before it without first ascertaining whether or not it had pecuniary jurisdiction. The appellant cited the case of **Venance Benedict Minde (supra)** which is equally distinguishable in the circumstances of this appeal. The said case deliberated on the original pecuniary jurisdiction of this court on land matters while the instant appeal arose from the DLHT. According to the Second Schedule of the Land Disputes Courts (District Land and Housing Tribunal) Regulations

2003, G.N No. 174 of 2003; item 4 of the Form of Application which is a specific law applicable to the DLHT, require the applicant to provide an estimated value of the suit land. In compliance thereof, the appellant estimated the value of the suit land to be TZS. 5,000,000/-. I have noted that the pleadings before this court cite the estimated value of the suit land to be TZS. 3,000,000/- while the pleadings at the DLHT refer to an estimated value of TZS. 5,000,000/=. Needless to say that the appellant is bound by her pleadings as correctly submitted by the counsel for the respondent. Thus, this ground fails too.

The third ground of appeal is unsound on the basis that the appellant at the trial tribunal called witness SM3, the Land Officer to give testimony on the alleged ownership of the suit land by the appellant. Unfortunately, the testimonies of the appellant SMI, and the Land Officer, (SM3), are excessively contradictory. For clarity the proceedings read as hereunder:

> *"SM2*
>
> *Baada ya kupewa offer niliendelea kulipa hadi mwaka 2021 nina risit za malipo ya kodi ya kiwanja risit zina majina yangu."*

However, SM3 testified that: -

> *"nina kumbukumbu ya malipo nimeprint leo inaonesha kiwanja hakidaiwi kodi mpaka kufikia leo. Sijaleta nyaraka hiyo hapa mahakamani. Hakuna utaratibu wa*

kuomba kiwanja wakati huo ulikua ni utaratibu wa kujiorodhesha majina ofisi za ardhi.....sijawahi kuiona hiyo orodha waliyojiorodhesha."

Regarding the evidence testified by SM1 and SM3 there was contradictions particularly on the issue of when the appellant stopped to pay land rent. SMI testified that she stopped to pay rent on 2021 while SM3 testified that the appellant paid land rent until 15th day of February, 2023, the date SM3 gave his testimony before the DLHT.

The records indicate further contradictions on how the appellant acquired the disputed land. The appellant testified that: -

"...Eneo la mgogoro nililiata (sic) kutoka kwa mjomba, nilimtumia mjomba, akaninunulia eneo la mgogoro nl kiwanja Na. 88 "B" Ikungi mji mpya nilinunua 1997. Mwaka 1998 nilipewa offer..."

While SM3 testified that:-

" kwakua maeneo haya yalikua yanatolewa na serikali wakati upimaji haujakamilika, Amina aliandaliwa hiyo offer na amekua akilipa kodi zake hadi sasa."

According to the evidence above, it contradicts itself on how the appellant acquired the land in dispute. This creates doubts in evidence adduced by the appellant at the DLHT and cannot be relied upon.

Therefore, the appellant's evidence did not meet the standard of proof in civil matters.

The fourth and fifth grounds of appeal allege that the DLHT erred in law and fact by delivering judgment that is inconsistent to the evidence on record. Further that, the trial tribunal erred in law and fact for failure to conduct a site visit to verify the information received as evidence.

On failure by the trial tribunal to visit the *locus in quo*, I wish to state that whether or not to conduct site visitation is at the discretion of the court or DLHT. In land matters, visits to the *locus in quo* assist the court or DLHT to resolve any ambiguities in the case including issues of ascertaining the size of the land, boundaries, the actual location of the disputed land; and in cases where there is a controversy about the existence and location of a particular feature thereon. It is also useful in cases where there is material variation on the evidence adduced requiring ascertainment by physical visits.

This position was stated in the case of **Avit Thadeus Massawe vs. Isidory Assenga, Civil Appeal No. 6 of 2017,** at page 14, the Court of Appeal of Tanzania (CAT) quoted the case of **Akosile vs. Adeye** (2011) 17 NWLR (Pt. 1276) p. 263, relating to the importance of visiting the *locus in quo* holding that: -

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

See also the case of **John Chuma vs. Pastoli Lubatula and Others, Land Appeal No. 9 of 2019** (unreported). Being guided by the decisions above, it should be noted that, visit to the *locus in quo* should not however be a substitute of the party's obligation to adduce sufficient evidence to prove his case. For the court to visit *locus in quo*, parties must, in their respective cases, establish sufficient evidence showing controversy or uncertainty of the issues elaborated above; whereof the visit is inevitable.

I am also aware that it is very important to visit the *locus in quo* in certain circumstance as it was observed in the case of **Avit Thadeus Massawe** *(supra).* In the said case, the testimonies of the witnesses differed as to the exact location of the suit property. Thus, a visit to the *locus in quo* was necessary in order to verify the physical location of the suit plot.

Having elaborated so, I now have to determine whether a site visit was necessary for the case at hand. In my view, there was no need to visit the *locus in quo* since there were no issues to be ascertained such as the size of the land, actual location and any particular feature found in the

suit land. With the above analysis, this court finds no merits in the entire appeal and the same is dismissed with costs.

Right of appeal explained.

I order accordingly.

DATED at **DODOMA** this 12th day of April, 2024.

I.D. MUSOKWA

JUDGE

Ruling delivered in the presence of Mr. Erick Christopher, learned counsel, holding brief for Mr. Amon Ndunguru, advocate for the appellant; and in the absence of the respondent.

I.D. MUSOKWA

JUDGE