

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF MOROGORO

AT MOROGORO

LAND APPEAL NO. 92 OF 2023

(Arising From the Decision of the Land and Housing Tribunal for Kilombero

District at Ifakara in Land Application No. 52 of 2019, Kamugusha

Esquire Chairman)

BETWEEN

LAZARO SUMKA.....APPELLANT

VERSUS

JOSEPH MATIKO.....RESPONDENT

JUDGMENT

MRUMA, J.

At the District Land and Housing Tribunal for Kilombero at Ifakara the Applicant, (the Respondent herein) Joseph Matiko sued the Appellant herein Lazaro Sumka for a piece of land allegedly measuring "8 x 14 x 16" acres located at Mlabani area in Ifakara township within Kilombero District.

It was stated during the trial that sometimes in 2006, Lazaro Sumka sold the Respondent that piece of land and he used it without any interference

till 2019 when the Respondent trespassed and started planting banana plants without authorisation.

Following that discomfort Joseph Matiko instituted the present proceedings claiming for the following reliefs;

1. That the Applicant declared as the lawful owner of the disputed land;
2. The Respondent be ordered to pay general damages to the tune of Tanzania Shillings Five Million Tanzania shillings 5,000,000/= for deliberately trespassing into the Applicant's land;
3. The respondents be ordered to pay punitive damages to the tune of Tanzania Shillings Two Million (Tsh 2,000,000) for deliberately interfering with the applicant's land ignoring warnings and notices and making intimidations;
4. Costs of the suit be provided for;
5. Any other relief(s) the Honourable Tribunal may deem just and proper.

After hearing the evidence of the parties, the trial tribunal decided the case in the Applicant's favour by declaring him the lawful owner of the land in dispute and order immediately eviction of the Respondent.

Dissatisfied with the trial tribunal decision the then Respondent has appealed to this court on the following grounds;

1. That, the trial tribunal erred in law and facts in reaching its decision in favour of the respondent without adequately evaluating the evidence on record.
2. That, as whole decision of the trial tribunal is against the evidence on record and law applicable.

The Appellant prayed this court to allow the appeal, quash the judgment of the trial tribunal and order the respondent to pay the costs. At the hearing of this appeal the Appellant was represented by Ms Elfrida Ijuikane Esquire learned advocate whereas the Respondent appeared in person and unrepresented. The appeal was disposed by way of written submissions.

Submitting in support of the appeal, counsel for the Appellant recapped a well established principle of law which is to the effect that parties are bound by their own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly so made. The learned counsel faulted the trial tribunal's decision on the ground that there was contradiction in evidence of the Respondent in that while the pleadings shows that the suit land is measuring 8x14x16 the exhibit tendered during

the trial and his oral testimony didn't establish the said measurements. It is on those grounds that the learned counsel submitted that the chairman failed to analyse and evaluate the evidence adduced during trial and reached erroneous decision. The learned counsel cited the decision of the Court of Appeal in the case of **Salim Said Mtomekela vs. Mohamed Abdallah Mohamed**, Civil Appeal No. 149/2019 TZCA and stated that the trial tribunal departed from the pleadings and evidence.

Secondly, the learned counsel contended that the trial tribunal granted reliefs which were not claimed for by the parties and the in the application which did not state clear description of the disputed land. He said that while the Respondent claimed that the Appellant had unlawfully and maliciously trespassed onto his land, there was no evidence of trespass adduced during trial. The learned counsel contended that in view of the contradictions between the claims in the application and the evidence adduced it was as if there were three different pieces of land which parties' were litigating over. He said that a declaration by the trial tribunal that the Respondent was the lawful owner of the land without stating which piece of land is an error. He said that the Respondent's description on the suit land was insufficient to identify the land allegedly owned by him. The learned counsel cited the case of **Abdulkadir Elmanzi Rashid**

and 135 Others vs. The Board of Trustees of the National Social Security Fund and Two Others, Misc. Land Application no 641 of 2020, HC at Dar es salaam and emphasized that parties must be bound by the terms and conditions provided in the agreement. To support her argument the learned counsel also cited section 101 of the Evidence Act and contended that the Respondent was barred from adducing oral evidence that contradicts the terms of their written agreement

Responding to the submission of the counsel for the Appellant the Respondent subscribed to the cardinal principle that parties are bound by their pleadings and stated that the evidence on record clearly shows that the Respondent described the size of the disputed land tallying with what was pleaded in his pleadings and application. He said that the Respondent claimed ownership of land measuring 8 x 14 x 16 metres and that he managed to give evidence to prove his ownership over the said land.

On the case of **Salim Said Mtomekela vs. Mohamed Abdallah Mohamed** (supra), the Respondent submitted that the case is distinguishable to the case at hand in that parties in the present case adhered to the principle by abiding to their pleadings. He said that the trial tribunal did not depart from the pleadings and evidence in composing its judgment.

The Respondent contended that the allegations raised by the Appellant were vexatious and submitted that the trial tribunal properly analysed the evidence and eventually declared the Respondent rightful owner of the disputed land which he bought from the Appellant. He said that the exhibit that was tendered by the Respondent clearly states that the Respondent purchased a piece of land that had coconut trunk, doll trunk and soursop trunk.

On the description of the land in dispute it was the Respondent's view that that was a new ground raised during the submissions in chief. He said that the record was clear that the disputed land was properly described both by its location and size. He therefore prayed that the appeal to be dismissed with costs.

This is the first appellate court which has the duty to re-evaluate the whole evidence adduced at the trial and came up with its own conclusion if the need arises (See the Case of **Leonard Dominic Rubuye t/a Rubuye Agrochemicals Supplies Vs Yara Tanzania Limited Civil Appeal No 219 of 2018**). In its judgment the trial tribunal reviewed evidence of the parties including the sale agreement and also visited the locus in quo and it come to a conclusion that the suit land belonged to the Respondent.

I have carefully reviewed the pleadings of the parties, the record of the evidence adduced during the trial, the grounds of the Appellant's appeal and the submissions of the parties and I agree with the Appellant that on the evidence on record the Respondent did not establish his ownership of the suit land.

In order to effectively determine ownership of a land, the disputed land must be clearly pleaded by showing its size in measurements, boundaries and where possible neighbouring lands and special features which differentiate it from other pieces of land. In the present case the facts pleaded by the Respondent in the trial tribunal shows that, the suit land was 8 x 14 x 16 acres and during trial he gave evidence to the effect that he purchase a piece of land from the Appellant measuring 8 paces wide by 16 paces long. While there can be no dispute that a piece of land measuring 8 x 14 x 16 acres cannot be the same in size as a piece of land measuring 8 paces wide to 16 paces long, the sale agreement which was tendered and admitted in evidence as exhibit P1 indicates that the Respondent purchased from the Appellant a coconut tree trunk, doll tree trunk and a soursop tree trunk. Section 100 of the Evidence Act [Cap 6 R.E, 2019] calls for exclusion of oral evidence by documentary evidence and it says:

"100-(1) when the terms of a contract, grant or any other disposition of a property have been reduced to the form of a document.....no evidence shall be given in proof of the terms of such contract grant or disposition of propertyexcept the document itself"

In the case at hand the Respondent tendered in evidence the sale agreement or HATI YA MAUZO (Exhibit P1) which reads:

"Mimi Lazaro Sumka nimemuuzia ndugu Joseph Matiko Shina la Mnazi, Shina la Mstafeli na Shina la Msekeseke kwa Jumla ya Taslim Shilingi Laki Moja....."

Sgd

In view of Exhibit P1, a sale agreement which was tendered by the Respondent himself, he purchased three trunks namely a Coconut, a doll tree, and a soursop tree. In law this documentary evidence renders oral evidence adduced of less weight and it exclude it from being relied by the court.

From the above pointed out contradictions I find that the trial tribunal erred in law and in fact to base its findings on the evidence adduced by the Respondent herein and conclude that the Respondent was able to

prove his ownership of the suit land. In my view and based on the evidence on record, the respondent didn't establish his ownership of any piece of land he had in mind in bringing these proceedings. Accordingly, I allow the Appellant's appeal with costs




A. R. MRUMA

JUDGE

30. 4. 2024

Delivered in presence of the parties this 30th April 2024


A. R. MRUMA

JUDGE

30. 4. 2024