IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

TABORA SUB-REGISTRY

AT TABORA

LAND APPEAL NO. 24 OF 2022

(Arising from Land Application No. 92 of 2020 in the District Land and Housing Tribunal for Tabora at Tabora)

GERALD LUKAS MLOWEZI ..... APPELLANT

VERSUS

LUTAMLA LUKUWIJA.....RESPONDENT

JUDGMENT

Date of Last Order: 03.04.2024
Date of Judgment: 14.05.2024

KADILU, J.

The appellant herein was the respondent in Land Application No. 92 of 2020 before the District Land and Housing Tribunal (DLHT) for Tabora. In that application, the respondent claimed from the appellant for recovery of unsurveyed land situated between Ntindeli and Mkombizi at Kapumpa suburb and Village within Sikonge District in Tabora Region. He alleged that he owned and occupied the said land customarily for over 20 years but the appellant acquired it unlawfully in 2020. The respondent stated in the application that the pecuniary value of the suit land was TZS. 22,000,000/=. He prayed for the DLHT to declare him as a lawful owner of the disputed land, order for the eviction of the appellant from the suit land, payment of general damages at the tune of TZS. 10,000,000/= and costs of the suit.

The appellant (then the respondent) filed a written statement of defence in which he averred that in 2000, he acquired the disputed land legally by way of inheritance from his late father. He added that his late father derived ownership of the said land from his grandfather who

acquired it after having cleared a virgin land way back in 1946. He contended further that he had been in occupation of the suit land from the year 2000 uninterruptedly until when the respondent's claim arose. He urged the DLHT to dismiss the application with costs and declare him the rightful owner of the land in dispute.

He urged the DLHT decided the dispute in favour of the respondent on the ground that the appellant's family was relocated from the disputed land during the villagization operation in 1974 and since then, the respondent had been using that land uninterruptedly. Aggrieved with the decision, the appellant filed the instant appeal in this court praying the appeal to be allowed with costs on the following grounds:

1. *That, the learned Chairman of the DLHT erred in law and fact for failure to consider that the land in dispute was not described properly.*
2. *That, the learned Chairman of the DLHT erred in law and fact for failure to evaluate evidence properly hence arrived at erroneous findings.*
3. *That, the learned Chairman of the DLHT erred in law and fact for declaring the respondent the lawful owner of the disputed land despite cogent evidence on record favouring the appellant.*
4. *That, the learned trial Chairman erred in law and fact for failure to adhere to procedures laid down in locus in quo visitation.*
5. *That, the learned Chairman erred in law by misinterpreting Section 15 (2) of the Village Land Act, [Cap 114 R.E 2019] without considering that the appellant's family retained the land in dispute and continued using it for agricultural activities and were in occupancy before, during and after villagization operation.*

6. *That, the learned Chairman erred in law and fact by wrongly applying the doctrine of adverse possession to declare the respondent (applicant) to be the lawful owner of the disputed land, while the evidence on record revealed that the disputed land had never been abandoned by the appellant and his family from 1946 up to date of the instant application.*
7. *That, the learned Chairman erred in law and in facts for failing to consider that the respondent (applicant) had failed to prove his case on the preponderance of probability.*
8. *That, the decree of the trial tribunal is not executable.*

The respondent filed a reply to the memorandum of appeal urging the court to dismiss the appeal with costs on the basis that the first ground of appeal is hopeless because the disputed land was described clearly and that there was nothing to fault the learned Chairman of the tribunal who decided the dispute in favour of the respondent based on the evidence presented before him. He added that all principles and procedures for visiting the *locus in quo* were fully complied with. It was further contended by the respondent that the Chairman of the tribunal was justified in applying the doctrine of adverse possession since the respondent had been in occupation of the disputed land from 1974 to 2020 when the dispute arose. He thus, argued that the decision of the DLHT was genuine and precisely executable.

The hearing of this appeal proceeded by way of written submissions. The learned Advocate Mr. Saikon Justin represented the appellant whereas the respondent enjoyed the legal services of Mr. Ramadhani Karume, also the learned Counsel. Mr. Saikon prayed to abandon the 2nd and 3rd grounds of appeal for the reason that they are intricately intertwined with the remaining grounds of appeal. Concerning the 1st ground, the learned Counsel contended that under Regulation 3

(2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 G.N. No. 174/2003 read together with Order VII rule 3 of the Civil Procedure Code [Cap. 33 R.E. 2019], the respondent was required to describe the suit land in terms of its size, location, and boundaries.

Mr. Saikon submitted that the respondent herein failed to describe the suit land properly as the pleadings of the case under paragraph 3 of the application do not show the size of the suit land, and no clear boundaries were indicated. He submitted in addition that on page 10 of the tribunal's proceedings, the respondent testified that the disputed land is six hectares, which he only discovered after the lawsuit. He argued that the respondent did not know the size of the disputed land. The learned Counsel stated that the description of the suit land was insufficient to differentiate it from other pieces of land in that area.

He elaborated that the rationale for a proper description of the suit property was discussed in the cases of ***Mwanahamisi Habibu and 7 Others v Justin Ndunge Justine Lyatuu (as administratrix of the estate of the late Justine Aitalia Lyatuu) and 173 Others***, Land Case N0. 130 of 2018, High Court of Tanzania at Dar es Salaam and ***Martin Fredrick Rajab v Ilemela Municipal Council and Synergy Tanzania Company Limited***, Civil Appeal No. 197 of 2019, Court of Appeal of Tanzania at Mwanza, where it was observed 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 pieces of land among others, were stated in the plaint."*

Mr. Saikon invited this court to nullify the trial tribunal's proceedings and judgment for being conducted on the improperly described suit property.

Concerning the description of the land in dispute, Advocate for the respondent submitted that the same was described as unsurveyed land situated between Ntindeli and Mkombizi within Kapumpa suburb and village in Sikonge District. He added that the description of the land in dispute is to help the trial court establish territorial jurisdiction and issue an executable order. He stated in addition that in the present case, the suit property was not only described but also the trial tribunal visited it. To buttress his argument, Mr. Karume cited the case of ***Onyesha Mganda v Musoma Jimola & Others***, Land Appeal No. 17 of 2021, High Court of Tanzania at Shinyanga in which this court held that description of the suit land should be able to identify and isolate it from the rest in a given locality. The learned Advocate argued that Order VII Rule 3 of the CPC and the cases cited by Mr. Saikon apply to surveyed land only.

In determining this ground of appeal, it is pertinent to highlight a renowned principle in our jurisdiction that parties are bound by their own pleadings. *See* ***James Funke Gwagilo v The Attorney General***, [2004] TLR 161 and ***Peter Karanti & 48 Others v The Attorney General & 3 Others***, Civil Appeal No. 3 of 1994. In principle, when the court is invited to determine an issue, the same must be featured in the pleadings whose proof is cemented by the evidence adduced. In the case of ***Abdallah Rashid Abdallah v Sulubu Kidongo Amour &***

Another, Civil Appeal No. 13 of 2008, the Court of Appeal of Tanzania at Dar es Salaam, held that:

> *"Now the only point of requiring pleadings and issues is to ascertain the dispute between the parties, to narrow the area of conflict, and to see justice where the two sides differ. It is not open to the tribunal to fly off a tangent and disregard the pleadings to reach any conclusion that they think is just and proper."*

In the instant matter, I have carefully examined the respondent's application filed in the DLHT. It neither disclosed the size of the suit property nor its boundaries. The respondent just stated in his testimony that a valuation of the disputed land was conducted and established that it measures 06 hectares valuing TZS. 22,000,000/=. He did not however, attach a valuation report. In resolving land disputes, the importance of making detailed descriptions of the land in dispute cannot be overstated. Order VII, Rule 3 of the CPC, [Cap. 33 R.E. 2022] is clear that where the subject matter of the suit is immovable property, the plaint should contain a description of the property sufficient to identify it and, in case such property can be identified by a title number, the plaint must specify such title number.

For unsurveyed land, as is the case at hand, the respondent was expected to indicate the boundaries, neighbours, or permanent features surrounding the land at issue to identify it from other pieces of land around Kapumpa area. In the case of ***Abutwalib A. Shoko v John Long & Albin Tarimo***, Land Case No. 20 of 2017, the court held that:

"... unless the plaintiff indicates the description of the property claimed by him either by means of boundaries or by means of title number under the Land Registration Act, it would be difficult for the court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by the defendant. Thus, the party must give a description sufficient to identify the property in dispute so that if a decree is passed about it, it shall not be unworkable...."

For the stated reasons, I am unable to agree with the contention by Mr. Karume that since the suit land was described as located between Ntindeli and Mkombizi within Kapumpa suburb and village in Sikonge District, that was a sufficient identification to make the court's order executable. Conversely, I am inclined to agree with Mr. Saikon's argument that the trial tribunal's decree is not executable since it cannot be executed all over between Ntindeli and Mkombizi. More so because the appellant alleges that his land measures 60 hectares whereas the respondent contended that the disputed land is 06 hectares. In the circumstances, it is unclear whether the tribunal's decree shall be executed over 06 or 60 hectares.

I thus, find the first ground of appeal meritorious and allow it. As this ground has the effect of nullifying the proceedings of the trial tribunal, it is sufficient to dispose of the entire appeal without considering the remaining grounds. In the upshot, I allow the appeal. I nullify the proceedings of the trial tribunal in Land Application No. 92 of 2020, I proceed to quash and set aside its resultant judgment and orders. I remit the case file to the District Land and Housing Tribunal for

Tabora for an expeditious retrial before a different Chairperson. Given the outcome of the appeal, each party shall bear its own costs. The right of appeal is fully explained.

It is so ordered.

KADILU, M.J.
JUDGE
14/05/2024

The judgment delivered in chamber on the 14th Day of May, 2024 in the presence of Mr. Saikon Justin, Advocate for the appellant also holding brief for Mr. Ramadhani Karume, Advocate for the respondent.

KADILU, M.J.
JUDGE
14/05/2024