

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
TABORA SUB-REGISTRY
AT TABORA**

LAND APPEAL NO. 20 OF 2022

*(Arising from Land Application No. 76 of 2017 in the District Land and Housing Tribunal
for Tabora)*

MWAMVITA DACHI APPELLANT

VERSUS

ASHA JUMA *(The Administratrix of the estate of the late Juma Idd Mbilizi)*

..... RESPONDENT

JUDGMENT

Date of Last Order: 30/04/2024

Date of Judgment: 22/05/2024

KADILU, J.

In the District Land and Housing Tribunal for Tabora, the respondent sued the appellant and 2 others for trespassing into the respondent's deceased father's land situated at Umoja Hamlet, Mji Mwema Ward within Kaliua District in Tabora Region. She claimed for a declaration as the rightful owner of the suit land, an eviction order against the appellant and her colleagues, the payment of TZS. 10,000,000/= as general damages, and costs of the case. The appellant did not file her defence in the trial tribunal, neither did she enter appearance during the hearing despite being duly served.

The matter proceeded *ex parte* against all the respondents therein and at the end, the tribunal ruled in favour of the respondent therein, Asha Juma. The appellant and her colleagues were ordered to demolish their structures built on the respondent's property, vacate the suit land, pay damages to the respondent at the tune of TZS. 3,000,000/= and costs of the case. Though

the respondents were dissatisfied with the tribunal's decision, they failed to appeal immediately. The time within which they could prefer an appeal expired. They sought and obtained an extension of time and filed the appeal in this court consisting of the following grounds:

1. *That, the honorable trial Chairman erred in law to decide the matter in favour of the respondent while there was non-joinder of the parties.*
2. *That, the honorable trial Chairman erred in law and fact to decide that the land in dispute belongs to the respondent while she did not indicate a proper location/boundary where the disputed land is located.*
3. *That, the honorable trial Chairman erred in law and fact to decide in favour of the respondent while there was no evidence to support the same.*

The appeal was heard by way of written submissions. The appellant was represented by Ms. Flavia Francis, Advocate and the respondent enjoyed legal services of Mr. Saikon Justin, also the learned Counsel. Initially, the appellants were Mwamvita Dachi, Elegelo Mwita and Sharifu Kamali. When the appeal was still pending in this court, Elegelo Mwita passed away. His wife, Wankyo Magesa prayed to settle the matter with the respondent out of court. Mr. Sharifu followed the same course. Their names were thus, removed from the present appeal and the parties stood as *Mwamvita Dachi versus Asha Juma*.

Submitting on the grounds of the appeal, Ms. Flavia stated that the trial tribunal's record and the plaint did not identify the proper location of the land in dispute to distinguish it from other pieces of land adjacent to it to ensure that the tribunal's order was executable. The learned Counsel elaborated that the respondent testified in the tribunal that the dispute was over the land situated at Umoja in Kaliua District. According to Ms. Flavia,

the record is silent about the boundaries of the land in dispute and the place at which it is located. To buttress her argument, she cited the case of ***Daniel Dagala Kanuda (as an administrator of the estate of the late Mbalu Lusha Mbulida) v Masaka Ibeho & 4 Others***, Land Appeal No. 26 of 2015. She concluded that failure to describe a suit land is a serious illegality hence the matter needs not to be entertained.

On the 1st and 3rd grounds of appeal, Ms. Flavia submitted that there is no evidence to show that the disputed land belongs to the respondent. She added that a copy of judgment does not analyze the adduced evidence or the reason of the said judgment which must be contained in any reasonable judgment. She prayed for the appeal to be dismissed with costs.

In opposition of the appeal, Mr. Saikon submitted that in the 1st ground of appeal concerning non-joinder of the parties, the appellant failed to specify who was not joined in the suit and its implications. Furthermore, the respondent had the prerogative right to choose who to sue. Even if there was a person who deserved to be joined in this matter but was not joined, it does not affect anything if the court's decree can be enforced without his presence. On the 2nd ground of appeal about failure to describe the suit land, the learned Advocate contended that, the ground lacks merit because the respondent clearly identified the location of the disputed land.

He referred to the respondent's pleadings and testimony and argued that they fulfilled the requirement of Regulation 3 (2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2002 G.N. 174/2003 which requires the applicant to describe the *"address of the suit premises or location of the land involved in the dispute to which the*

application relates. "He concluded that the respondent pleaded and testified that the disputed land is situated at *Umoja in Kallua District*, and the size of the land encroached by each appellant whereby the present appellant encroached an area of **35 X 40 meters** of land. Additionally, the appellant has not contested the knowledge of the disputed area.

Mr. Saikon urged the court not to allow the appellant to challenge the manner in which the disputed land was described by the respondent because she waived her right to defend the case when it was in the trial tribunal. According to Mr. Saikon, the issue of failure to describe the disputed land was supposed to be resolved during the trial stage therefore, this court should not disturb the manner in which the disputed land was described. He referred to the case of ***Lupembe Village Government & 2 Others v Bethlehemu Mwandafwa & 5 Others***, Civil Appeal No. 337 of 2020, where the Court of Appeal held that:

"While the above description can be said not to provide too many details on the suit land, it is, however, pertinent to ensure that each case is adjudged within its own circumstances."

Concerning the 3rd ground of appeal in which the appellant alleged that the respondent's case was not proved to the standard, Mr. Saikon argued that the evidence on record and testimony of PW1 & PW2 from pages 6 to 9 of the tribunal's proceedings depict that the case against the appellant was proved on the balance of probabilities as required by Section 3 (2) (b) of the Evidence Act, [CAP. 6 R.E 2022]. Additionally, the matter was heard *ex parte* and therefore, there was no opposing evidence for the tribunal to weigh and compare. The trial tribunal analyzed the evidence presented before it and

correctly determined that the respondent is the rightful owner of the disputed land. He prayed for the appeal to be dismissed with costs.

Having gone through the tribunal's records, the grounds of the appeal and parties' submissions, I now turn to determine the substance of the appeal. I wish to note at the outset that Advocate for the appellant has abandoned the first ground of the appeal without expressly saying so. I hold this view because she has submitted nothing concerning it regardless of the fact that in the grounds of the appeal, the appellant complained that there was non-joinder of the parties. Like the Advocate for the respondent, I have failed to grasp what the appellant meant in her first ground of the appeal.

With regard to the description of the suit land, I will let the pleadings speak. The respondent's application to the tribunal shows as follows in the 3rd paragraph:

"Location and address of the suit premises: Umoja Hamlet in Kaliua Ward within Kaliua District." In paragraph 6 (iv), the application displays that in 2013, the 1st respondent (Mwamvita Dachi) trespassed to the respondent's land measuring 35×40 paces and constructed a foundation preparing to build a house thereon. I fully agree with the legal position stated by Ms. Flavia that a clear description of the suit property is necessary in disputes over immovable properties. In ***Abutwalib A. Shoko v John Long & Albin Tarimo***, Land Case No. 20 of 2017, it was 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....”

Nevertheless, perusal of the trial tribunal’s records as reproduced above reveals that, the suit property was described sufficiently in both the pleadings and testimony of the respondent. I hold this opinion considering that the disputed land was unregistered hence, incapable of being described using title, plot and block numbers. From the Court of Appeal’s holding in ***Lupembe Village Government & 2 Others v Betelehamu Mwandafwa & 5 Others (supra)***, I find that in the circumstances of this case, the respondent could not be expected to describe the disputed land more than what she did. The 2nd ground of appeal is thus, lacking merit and I hereby dismiss it.

Lastly, the appellant faulted the tribunal for deciding the case in favour of the respondent allegedly without sufficient proof that the land in dispute belongs to her deceased father. In the records of the tribunal, it is shown that the respondent’s deceased father acquired the disputed land in 1978 by clearing the bush. He used it until 1988 when he passed away. The respondent’s family continued to occupy the said land uninterruptedly up to 2013 when the dispute arose. She was appointed the administratrix of the estate of her late father in 2017. The trial tribunal received an ex parte proof from the respondent as the appellant did not file written statement of defence or enter appearance during the trial.

In this circumstance, the tribunal was denied an opportunity to hear the appellant’s testimony and weigh it against that of the respondent with a view to assigning credibility to a heavier one and rule in her favour. Although

it is not a guarantee to win the case simply because it proceeded ex parte against the other side, it is also a settled position that the party whose evidence is heavier than that of the other must win the case. *See Hemed Said v Mohamed Mbilu* [1984] TLR 113. Further, it is the basic rule of law under Section 110 (1) of the Evidence Act that he who alleges must prove. In the present case, the respondent proved her case to the required standard and the honourable Chairman found her evidence trustworthy which is why he ruled that the respondent is the rightful owner of the land in dispute.

Consequently, I see no reason to disturb the findings of the District Land and Housing Tribunal for Tabora in Land Application No. 76 of 2017. I thus, dismiss the appeal with costs for being devoid of merit. The right of appeal is fully explained to whoever aggrieved with this decision.

Order accordingly.




KADILU, M.J.
JUDGE
22/05/2024.

The ruling delivered in chamber on the 22nd Day of May, 2024 in the presence of Ms. Flavia Francis, Advocate for the appellant and Mr. Saikon Justin, Advocate for the Respondent.




KADILU, M.J.
JUDGE
22/05/2024.