



THE JUDICIARY OF TANZANIA

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT SONGEA

(CORAM: HON. UPENDO MADEHA)

LAND APPEAL NO. 000000254 OF 2024

EDWIN KUMBURU COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF

VERSUS

COSMA KUMBURU RESPONDENT / DEFENDANT

JUDGMENT

Fly Notes

Nil

Facts

Aggrieved by the decision made by the District Land and Housing Tribunal for Mbinga (trial Tribunal) which declared the Appellant to be a trespasser, he has preferred this appeal.

Ratio Decidendi

Nil

29th of May 2024

Hon. MADEHA.:

It worth considering that, being aggrieved by the decision made by the District Land and Housing Tribunal for Mbinga (trial Tribunal) dated 17th November, 2023, the above-named Appellant preferred an appeal before this Court. In his petition of appeal, he has four grounds of complaints which are as follows:

1. *That, the trial Tribunal erred in law and fact in determining the matter in favour of the Respondent without joining the necessary party.*
2. *That, the trial Tribunal erred in law and fact for entertaining the matter which it has no jurisdiction.*
3. *That, the trial Tribunal erred in law and fact in determining the matter in favour of the Respondent without evaluating properly the evidence adduced by the Appellant and his witnesses before the trial Tribunal.*
4. *That, the trial Tribunal entertained the matter contrary to the law.*

Briefly, the facts behind this appeal are to the effect that, the Respondent hereinabove named, filed an application before the trial Tribunal for the declaration that, the Appellant has trespassed in two pieces of land, the property of their late mother measuring six acres and eighteen acres located at Mchumba and Mtondowela hamlets in Kigonsera Village within Mbinga District and Ruvuma Region. The evidence adduced by the parties before the



trial Tribunal were as follows.

PW1 (Cosma Sebastian Kumburu) the Respondent in this appeal, told the trial Tribunal that she is the administratrix of the estate of her late mother, one Leonia Haule, the Appellant who is her biological brother from the same mother and father has trespassed into the land of their late mother claiming to be his property. She testified that, the disputed land is located at Mchumba and Mtondowela hamlets in the Village and Ward of Kigonsera within Mbinga District, which originally was owned by their late grandfather, one Quadratus Haule who gave it to their mother, Leonia Haule. The Respondent requested for the trial Tribunal to declare the disputed land to be the property of their late mother and the Appellant be declared the trespasser in a land measuring eighteen and six acres consecutively since the land was not used by him during the lifetime of their mother.

Her testimony was corroborated by the testimony given by PW2, PW3 and PW4 who told the trial Tribunal that the disputed land was given to Leonia Haule by her father one Quadratus Haule and she owned that land in her lifetime. They further told the trial Tribunal that, the dispute over the disputed land is between the biological children of the late Leonia Haule and it started after the death of their mother and it is over the land which was used by their mother.

The Appellant in his testimony told the trial Tribunal that, in 1977 together with his mother they were given by the Village Government three acres of land each. Also, in 1983 he requested to the Village Authority to be given twenty-five (25) acres and he was given only (18) acres of land after confiscating from people and his mother refused to be given land since there were wild animals in those areas. He told the trial Tribunal that he started living in that area since 1989 and after the death of their mother he was surprised to find his brother claiming that, the land was the property of their late mother. He testified further that, it is not correct that their late mother was given the disputed land by her father since she was married and it was not possible to be given land by his father. He added that the land was given to him by the Village Authority in the presence of Oddo Nchimbi, Hilimali Milinga, Leopard Milinga and Leopard Muli and there was no any written document which was given to him.

The Appellant also called two other witnesses, DW2 & DW3. DW2 told the trial Tribunal that in 1983 he was a member of Kigonsera Village Government and in that year the Appellant was given eighteen (18) acres of land. He testified further that, he was among the people who witnesses the Appellant being given the disputed land and other members of the Village Government who witnessed were Oddo Nchimbi, Hilimali Milinga, Leopard Milinga and Leodegar Muli. When he was asked where the Village Government got the land which was given to the Appellant, he told the trial Tribunal that people were given the land when they came back in the village.

On his part, DW3 told the trial Tribunal that, he knows in 1983 the Village Government informed people who were in need of land to make application to be given. Among the people who were given land by the Village Government was the Appellant.

The trial Tribunal found the Respondent to have proved her claim and it declared the disputed pieces of land to be the properties of the late Leonia Haule. Aggrieved by that decision the Appellant lodged this appeal on the above grounds of appeal.



In this appeal the Appellant was represented by Mr. Optatus Japhet, the learned advocate whereas the Respondent was represented by Mr. Innocent Mbunda, the learned advocate. By order of this Court, this appeal was disposed by way of written submission and both parties adhered to the orders of the Court by filing their submissions on time.

Arguing in support of the first and second grounds of appeal, the Appellant's advocate submitted that the trial Tribunal erred in law when it decided the matter before it in favour of the Respondent while the Village Government which allocated the land to the Appellant was not joined as a necessary party. He submitted further that in his written statement of defence the Appellant stated clearly that he is not a trespasser but he was allocated the disputed land by Kigonsera Village Government. He contended that, Kigonsera Village Government was a necessary party since was the one who allocated the disputed land to the Appellant. He argued further that, Order 1 Rule 9 of the *Civil Procedure Code (Cap. 33, R. E. 2019)* requires a necessary party to be joined as it was elaborated in the decisions made by the Court of Appeal of Tanzania in the case of **Abdullatif Mohamed vs. Mahboob Yusuf Othuman & Another**, Civil Revision No. 6 of 2017 (unreported). To buttress his contention, he invited this Court to be guided by the decision of the Court of Appeal made in the case of **Shaibu Salim Hoza vs. Helena Mhacha (as Legal Representative of Amerina Mhacha)**, Civil Appeal No. 7 of 2012 (unreported), where the Court emphasised on the importance of joining the necessary party.

He argued that, since Kigonsera Village Government was a necessary party, also the Attorney General was to be joined after following all the legal procedures such as issuing a ninety (90) days' notice before filing the suit. He contended that, under that circumstance the trial Tribunal had no jurisdiction to entertain the matter in which the Attorney General is a party as the law provides in the amendment made under the *Written Laws (Miscellaneous Amendment) Act No. 1 of 2020*, which amended section 6 of the *Government Proceedings Act (Cap. 5, R. E. 2019)*.

On the third and fourth grounds of appeal Mr. Optatus submitted that, the Respondent in her application form before the trial Tribunal she never pleaded on how and when the late Leonia Haule got into possession of the disputed land. He argued further that, even in her testimony the Respondent stated that the late Leonia Haule inherited the disputed land from his late father, one Quadratus Haule, the fact which was not pleaded in her application. To buttress his stance, he referred this Court to the decision made in the case of **James Funke Gwagilo vs. Attorney General** [2004] T. L. R 161, in which the Court stated that, evidence given during trial must prove what was pleaded in the pleadings and any evidence which is not supportive or is at variance with what is stated in the pleadings must be ignored. He contended that the evidence given by the Respondent that the disputed land was the property of the late Leonia Haule who got it from her late father, Quadratus Haule must be ignored since that fact was not pleaded in the pleading filed by the Respondent before the trial Tribunal.

Lastly, he submitted that, the Respondent failed to prove how the late Leonia Haule and even the original owner, the late Quadratus Haule came into possession of the disputed land. Therefore, he prayed for this appeal to be allowed with costs by quashing the decision of the trial Tribunal and the Appellant herein be declared as lawful owner of the disputed land.

On the other hand, Mr. Innocent Mbunda, at the outset, he informed this Court that, the first and second grounds of appeal are on the issue of whether Kigonsera Village Government was required to be joined as a necessary party



and whether the trial Tribunal has jurisdiction to entertain this matter. He prayed to argue the first and second grounds of appeal collectively. On the third and fourth grounds of appeal the issue is on the weight of evidence given by the parties before the trial Tribunal and the correctness of the pleadings filed before the Trial Tribunal.

Arguing on the first and second grounds of appeal, Mr. Mbunda contended that, the issue whether it was important to join the Village Government as a necessary party in the present matter. He started by giving the meaning of a necessary party and he referred this Court to the definition given in the *Black's Law Dictionary, 8th Edition*, in which it is defined to mean a party who, being closely connected to a suit should be included in the case if feasible, but whose absence will not require dismissal of the proceedings. He contended that, Courts has made a distinction between a necessary and non-necessary party. For reference he referred this Court to the decision made in the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said & 29 Others**, Civil Revision No. 68 of 2011, in which the the Court of Appeal cited with approval the decision made in the case of **Juliana Francis Mkwabi vs. Laurent Chimwaga**, Civil Appeal No. 531 of 2020 (unreported) and the decision made in the case of **Abdulaatif Mohamed Hamis vs. Mehboob Yusuf Osman and Another**, Civil Revision No. 6 of 2017 (unreported). He stated that, being guided by the above authorities, it is settled view that, Kigonsera Village Council was not a necessary party who ought to have been joined in the matter at hand because in the circumstances of this case, Kigonsera Village Government was not a necessary party to be joined in this appeal. He contended further that even if Kigonsera Village Government would have ought to be joined as a necessary party, failure to join a necessary party does not vitiate the proceedings of the trial Tribunal as provided by Order 1, Rule 9 of the *Civil Procedure Code* (Cap. 33, R. E 2019). He added that, the issue of jurisdiction which has been raised by the counsel for the Appellant has no merit.

On the third and fourth grounds of appeal, Mr. Mbunda averred that, the Appellant's contention that the trial Tribunal wrongly decided the matter in favour of the Respondent for the reason that in her application she did not plead as to how and when the late Leonia Haule came into possession of the disputed land, is not correct. He averred that, he is aware that the law requires the parties to be bound by their pleadings as clearly pointed out by the Appellant's advocate however, that principle is not applicable in this appeal and the case of **James Funke Gwagilo vs. Attorney General** (supra) is distinguishable. To cement his contention, he cited the decision of the Court of Appeal in **Salim Said Mtomekela vs. Mohamed Abdallah Mohamed**, Civil Appeal No. 149 of 2019 (unreported), where the Court extensively elaborated that the trial Court is as well bound by the pleadings of the parties. The Court should not entertain any inquiry into the case before it other than adjudicating specific matters raised by the parties in their pleadings.

He stated further that in the case at hand, before the trial Tribunal the Respondent pleaded that, she is an administratrix of the estate of the late Leonia Haule, the late Leonia Haule who was the owner of the disputed land which has been trespassed by the Appellant. He contended further that, even during the hearing of the application, the Respondent testified that the disputed land was the property of the late Leonia Haule who was given by the late Quadratus Haule, who was her father. The Respondent's testimony was supported by the testimonies given by her witnesses including PW2 and PW3, that the disputed land is the property of the late Leonia Haule. He contended that, the testimonies given by the Respondent and her witnesses proved what was stated in the pleadings and she never departed from the pleadings. Finally, he prayed for this appeal to be dismissed with costs and the decision of the trial Tribunal be upheld.



On his part, the Appellant's advocate had no rejoinder submission in response to what has submitted by the Respondent's advocate.

In making determination of this appeal, I will base on the following issued which are derived from the grounds of appeal and what has been argued by the parties in their submissions. **One**, is whether the trial Tribunal erred in law in determining the matter without joining necessary party. **Two**, is whether the trial Tribunal has no jurisdiction to entertain the matter, and **three**, is whether the trial Tribunal decided the matter without evaluating properly the Appellant's evidence.

Starting with the issue of whether the trial Tribunal erred in law in determining this matter without joining necessary party, basically, after perusal of the Appellant's submissions, I find his contention is on the fact that, the Respondent failed to join Kigonsera Village Government as a necessary party in this appeal and that omission vitiated the decision of the trial Tribunal. He argued that, since in his written statement of defence he claimed to be given that land by Kigonsera Village Government and it was a necessary party in this suit. This has been denied by the Respondent's advocate stating that, there was no need of joining the Village Government which allocated land to the Appellant.

On my view, in this appeal, there was no need of joining the Village Government as a necessary party. If there would be a title deed issued by the Land Commissioner there would be a need to join a necessary party. In general, the local government authorities are joined as a necessary party under special circumstances upon fulfilment of the require criteria such as allocation of land by the Land Commissioner and the existence of a title deed or granted right of occupancy.

Therefore, since there is no evidence to prove that there was allocation of that land by the government or a title deed showing that the Appellant was allocated the land in question, it was not appropriate to join the Village Government in this case.

On the issue of whether the trial Tribunal has jurisdiction to entertain this matter, since in the above issue it is decided that, there was no need to join the Village Government, I find the trial Tribunal had jurisdiction to hear and determine the matter.

On the third and last issue of whether the trial Tribunal decided the matter without evaluating properly the Appellant's evidence, the Appellant's advocate was of the view that the Respondent departed from what was pleaded in his pleadings and she failed to prove that the disputed pieces of land were the properties of the late Leonia Haule. He has contended that, the Respondent failed to prove when and how the father of the late Leonia Haule (Quadratus Haule) came into possession of the disputed land. He was of the view that, if the trial Tribunal would have considered properly the testimony given by the Appellant, it would never reached into a decision it made. The Respondent's advocate has argued that, the testimony given by the Respondent reflected what was stated in the application form which was filed before the trial Tribunal before the hearing of the suit.

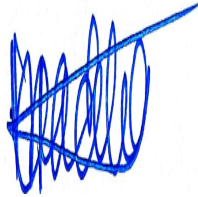
On my party, having gone through the original records, I find in reaching into the decision it made, the trial Tribunal in this matter dealt properly with the evidence given by each party. There is no any piece of testimony from either party which was not considered by the trial Tribunal. I am unable to agree with the Appellant's



advocate that the trial Tribunal failed to consider the testimony given by the Respondent in its decision and the third issue is also decided negatively.

Therefore, in the final event, I find this appeal is devoid of merit. I hereby dismiss it in its entirety. The decision and orders of the trial Tribunal are upheld. Each party to bear its own costs. It is so ordered.

Dated at **SONGEA ZONE** this 29th of May 2024.



UPENDO MADEHA

JUDGE OF THE HIGH COURT

