IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

LAND APPEAL NO. 205 OF 2022

(C/F Land Application No. 63 of 2018 in the District Land and Housing Tribunal of Karatu at Karatu)

AKHAI SIASI.....APPELLANT

VERSUS

GINYAI GISULU.....RESPONDENT

JUDGMENT

17/11/2023 & 24/01/2024

GWAE, J

Aggrieved by the decision of the District Land and Housing Tribunal of Karatu at Karatu (DLHT), the appellant had filed this appeal with the following grounds of appeal;

1. That, the trial chairman of the tribunal erred grossly in law and fact when he failed to analyze properly the evidence from both sides as a result the tribunal delivered a wrong decision.
2. That, the trial tribunal misdirected itself and wrongly applied and involved the principle of adverse possession in favour of the respondent contrary to the evidence adduced at the trial.
3. That, the trial tribunal erred grossly in law and fact by disregarding the evidence of DW2 who made an allocation of

the disputed land to the appellant in the year, prior to the coming of the operation of the village land.

4. That, the trial tribunal chairman grossly erred in law and fact by quashing its own order on a visit to a locus in quo in order to clear doubt on the balance of probabilities, arising from the conflicting evidence on existence or non-existence of 7 graves as claimed by the respondent without justifiable reasons In law.

5. That, in alternative to ground No. 4 above, the trial tribunal chairman erred in law and fact for failure to make a visit on the locus in quo with a view to ascertain the actual presence of graves and actual size and boundary of the disputed land.

6. That, the trial chairman of the tribunal erred grossly in law to deliver the judgment without recording and reading the opinion of the assessor to the parties, the violation which goes to the root of the matter which vitiates the entire proceedings and the judgment to be a nullity.

Before DLHT, the respondent filed a suit against the appellant herein claiming that he had invaded his land measuring 59 acres located at Qaru village-Endabash Ward within Mbulu District in Manyara Region. It was the respondent's version that, the suit land belonged to the respondent by virtue of inheritance from his father. It was his evidence that the suit land belonged to his later father who had been buried in the suit land together with his other 6 relatives and he inherited it in the year 1980 and that the dispute over the suit land arose in the year 2018 when the

appellant invaded it. The respondent's evidence was to the effect that that the he was not living in the suit land and the same was left to one Askwari to take care of it.

On the other hand, the appellant established that, the village council of Qaru allocated him the suit land measuring 60 acres in the year 1996. His testimony was supported by DW2 Richard Dawite who was the chairperson of the Land Committee of Qaru at the time of allocation of the land to the appellant. It was further established that, the appellant herein had a dispute with the said Askwari over the disputed land and the same was resolved in his favour. DW3 in his testimony admitted that the respondent herein had lived in the suit land and that it was true that, the respondent's father was buried in the suit land.

However, according to his testimony, the suit land was abandoned and that at the time the appellant herein was allocated the suit land it was just an open space. Although the DLHT gave an order to visit the locus in quo the order was vacated on the reason that there were transport difficulties and the fact that the chairman had been shifted to another station (Tabora) therefore he could not wait for the visit to the locus in quo.

Having evaluated the evidence of both parties, the trial tribunal gave its decision in favour of the respondent herein on the reason that, the appellant did not sufficiently prove that he was allocated the suit land by the village council.

When the appeal came for hearing, the appellant was represented by advocate Kizito Thomas whereas the respondent was under the legal representation of Mr. Peter Njau with leave of the court the appeal was disposed by way of written submission which I shall consider while disposing of this appeal save for the ground number two which was abandoned.

After carefully considering the competing arguments of the counsel for the parties. I think the first issue to be addressed by this court is whether the trial tribunal was justified to hold that the respondent is the owner of the suit land.

From the DLHT's record, this court has the following observations;- **Firstly**, that it is undisputed that the respondent and his family (late father) were previously in occupation of the disputed land. **Secondly**, through the testimony of the witnesses from both sides, it is also undisputed fact that at the time of allocation of the disputed land, it was

an open space and **thirdly,** that the respondent was not residing in the said land.

Essentially, the appellant acquired possession over the disputed land by virtue of abandonment by the respondent, and that is the reason the village council was able to re-allocate the same to the appellant. Nevertheless, procedures of declaring the disputed land as an abandoned land capable of being re-allocated to another person is provided under section 45 of the Land Act Cap 114 R.E 2019. This provision of law was interpreted by the Court of Appeal of Tanzania in the case of **Abdi M. Kipoto vs Chief Arthur Mtoi,** Civil Appeal No. 75 of 2017 reported in Tanzlii where the following was stated;

> *"Land is abandoned if it is not used for five years since allocation, or rent, tax or dues have not been paid. If a village council considers land to have been abandoned, it publishes notice stating that adjudication regarding that land will be done by the village council and inviting persons interested to show cause why the land should not be declared as abandoned. If no person shows cause, the village council will make a provisional order of abandonment, which will become final order on expiry of ninety (90) days if no person challenges it in court. The effect is to render the right of occupancy over the land revoked after which it reverts to the village and becomes*

available for allocation to another person ordinarily resident in the village."

In the case at hand, there is no evidence before the trial tribunal showing that the above procedures were followed before the appellant was re-allocated the disputed land. Much as the evidence suggests that at the time the appellant was re-allocated the disputed land after the respondent had abandoned it yet, the Qaru village council ought to have made publication of its abandonment before re-allocating the same to the appellant. Given the ailment explained herein, it is my firm view that the allocation of the disputed land to the appellant was illegal. This ground is therefore devoid of merit, it is dismissed.

Next issue for my consideration i*s whether it was proper for the trial tribunal to vacate its order of visiting the locus in quo.* The appellant herein has raised doubt on the question as to whether there are graves into the disputed and or not, therefore to him the visit to the locus was necessary. It should be remembered that there is no law, which forcefully and mandatorily requires the court or tribunal to inspect a locus in quo, as the same is done at the discretion of the court or tribunal particularly when it is necessary to verify evidence adduced by the parties during trial. See the decision of **Dar es Salaam Water and Sewage Authority vs.**

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Didas Kameka & 17 others, Civil Appeal NO. 233 of 2019 CAT sitting at Dar es Salaam (Reported at Tanzlii).

In the case at hand at page 36 and 37 of the typed proceedings it is shown that on 23/12/2020 an order to visit the locus in quo was issued by the trial tribunal but on 23/08/2021 the trial tribunal vacated its owned order with reasons and for easy of clarity I wish to quote hereunder;

> *"Kwa kuwa shauri hili lilipangwa kwa ajili ya kutembelea ardhi yenye mgogoro tangu tarehe 23/12/2020 hivyo kutembelea eneo hilo kulishindikana kutokana na ukosefu wa usafiri (gari) na kwakuwa nimehamishiwa wilaya ya Nzega (Tabora) hivyo ni maslahi ya haki kuwa mashauri yamalizike ndani ya muda mfupi, hivyo baraza hili linatengua amri ya kutembelea eneo, na jalada lipelekwe kwa wazee kwa ajili ya maoni."*

From the above, it is my considered view that since the trial tribunal is not bound by the law to make a visit to the locus but in the matter at hand, the trial tribunal in the first instance made an order to visit the locus in quo but later on vacated its order on reasons shown above. I also find no merit in this ground of appeal.

On the last ground, the appellant alleges that, the trial tribunal delivered its judgment without reading the opinion of the assessors. This

ground does not need to curtail me much as on the impugned judgment the chairperson clearly stated that at the hearing of the case, he sat together with two assessors Mzee Mushi and Mzee Akonaay. However, before completion of the trial one Mzee Mushi passed away and therefore it was only Mzee Akonaay who heard the case to its finality and he gave his opinion as reflected at page 37 of the typed proceedings on 5/10/2021 where it was recorded "Maoni ya wajumbe yamesomwa" meaning opinion of the assessor was read out. In that regard, I also find no merit in this ground of appeal.

In the upshot, this appeal fails; the decision of the trial tribunal is hereby upheld. Considering the fact that it was the village council, which did not follow proper procedures in allocating the land to the appellant, I refrain from giving orders as to costs.

It is so ordered.

M. R. GWAE
JUDGE
24/01/2024