

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB REGISTRY

AT ARUSHA

LAND APPEAL NO. 96 OF 2023

SAFARI AMSI APPELLANT

VERSUS

JULIAN SIXBERT AMIRESPONDENT

JUDGMENT:

18th & 20th June 2024

MKWIZU, J:

In 2016, before the District Land and Housing Tribunal for KARATU, the respondent filed a suit against the appellant claiming ownership of 5 ³/₄ acres of land located in Ayaarat hamlet in Endamarariek village within Karatu district in the Arusha region. He asserted that the land was allocated to him by the Endamararieck village council in the year 1996 and he has been peacefully occupying the land for over 26 years. During this time, he had built a house, engaged in farming, planted trees on the land and even drilled wells until 8/3/2022 when the appellant began to claim ownership of the suit land. The respondent requested to be declared the rightful owner of the land, among other prayers made in the

application. To support his claim, he presented evidence from PW2 and PW3, the former village chairperson and VEO, who were involved in the allocation of the village land in 1996.

The appellant opposed the respondent's claim during trial, asserting that the land belonged to him. He said, the respondent was only allocated one acre (70 * 70) by the village council, which originally belonged to his father, disputing the alleged allocation of 5 ³/₄ acres. DW2, the village committee member in 1995 and during the land allocation exercise, DW3, the chairperson of the land committee at the time of allocation and DW4, all participated in the land allocation in 1996 gave their evidence in defence.

The Karatu District Land and Housing Tribunal found in favour of the respondent (applicant by then). It declared the respondent the lawful owner of the suit's property. The appellant is aggrieved by that decision. He initially filed 6 grounds of appeal followed by an additional seven grounds of appeal filed on 22/4/2024.

During the hearing, Mr. Lecton Ngeseja advocate for the appellant prayed to abandon grounds number 1, 2,3 and 5 of the original petition and ground 7 in the additional grounds. He joined grounds 4 and 6 of the original petition, grounds No. 1 and 2 of the additional grounds and

grounds 5 and 6 of the additional grounds of appeal forming four main complaints as follows:

- i. The trial tribunal had no jurisdiction to entertain the matter
- ii. The delivered judgment was contrary to the pleadings.
- iii. The claim was not established to the required standard
- iv. The appellant was denied a right to be heard in application No. 73 of 2022.

I propose to begin with the combined 1st and 2nd grounds and 5th and 6th grounds from the additional grounds of appeal touching on the competence of the proceedings at the trial tribunal, which in my view if determined in the affirmative, they will dispose of the matter with no recourse to any other ground of appeal.

In the first set of grounds, the trial tribunal is challenged for having no jurisdiction to entertain the matter. Mr Ngeseja's arguments are two(1) that the dispute did not go for mediation contrary to section 13 (4) of the Land Dispute Court Act as amended as what was mediated between the parties referred to in the certificate of mediation by the ward tribunal attached to the pleadings by the applicant at the District land and Housing Tribunal is a distinct suit land and not the land in dispute. And two that the suit land lacked a proper and definite description. He on this second

point faulted the respondent for failure to give specific measurements of the suit land on top of the neighboring demarcation given. Reliance was made to the case of **Lupembe Village Government and Another V. Bethlehemu Mwandafwa and Others**, Civil Appeal No. 377 of 2020 (Unreported) from page 15.

There is no doubt that the District Land and Housing Tribunals are not allowed to hear and decide a land dispute unless the Ward Tribunal has attempted to settle the dispute amicably and failed, and it has issued a certificate that mediation has failed. Section 45(4) of the Written Laws (Miscellaneous Amendment) (No. 3) Act, 2021 which amends section 13 of the Land Disputes Courts Act, Cap 216 R.E 2016.) is specific to the point that:

*Notwithstanding subsection (1), the District Land and Housing Tribunal **shall not hear any proceeding affecting the title to or any interest in land unless the ward tribunal has certified that it has failed to settle the matter amicably.***

Provided that, where the ward tribunal fails to settle a land dispute within thirty days from the date the matter was

instituted, the aggrieved party may proceed to institute the land dispute without the certificate from the ward tribunal."

(Emphasis is mine)

I have examined the records. The respondent's application before the trial tribunal has attached a certificate of mediation (Form No 41 Vol. 102/2021) certifying failure by the Ward tribunal to resolve the dispute brought to it by the appellant. Meaning that it was the appellant who took the matter for mediation and the respondent's move to the District Land and Housing Tribunal only came after the Wards tribunals failed to settle their controversy. It is on this understanding that the appellant cannot come forward at this stage disowning the certificate issued because of his report made to the Ward Tribunal. It should be remembered that a certificate on no-settlement by the ward tribunal entitles a party to it to refer the matter to the District Land and Housing tribunal. This is what the respondent did. He could not have taken any other step.

Mr Ngeseja's argument that the suit land subject of the said certificate was 2 and 1/2 acres and 5 and 3/4 acres is not supported by the details of the said certificate. My reading of the certificate on non-settlement by the ward tribunal doesn't give me the description of the suit land but rather what was in their opinion allocated to the appellant. The certificate shows

that the suit land was more than 2 ½ acres. This fact has remained undisputed throughout the trial. Had it been true that the suit land at the District Land and Housing Tribunal was different from the land that was placed for mediation at the ward tribunal, the appellant would have raised it immediately during the trial but he responded to the claims by the respondent as if the matter was the same. I find the point without merit belatedly brought as an afterthought without any legal value.

The second point in the description of the suit land also is baseless. Both the pleadings and the evidence have a properly defined description of the land in dispute. In paragraph 3 of the respondent's application, the suit land was described by its boundaries North- Water Valley, Zakaria Ama to the east, Paulo Tahhani to the south and Ammi Erro to the west. The applicant was also able to describe the above boundaries in his evidence on pages 4 and 5 line 10 of the typed proceedings evidence. The 1st and 2nd grounds of appeal are therefore without merit.

The complaint on grounds 5 and 6 is about the denial of a right to be heard in respect to application no 73 of 2022 for an interim injunction. Mr Ngeseja contends that the trial tribunal went ahead to grant an interim injunction ex-parte without determining it inter parties contrary to the rules of natural justice. In his submissions, the respondent contends that

the parties were ordered to proceed with the hearing of the main application after the appellant had failed to file a counter affidavit.

I have perused the records. Indeed, there was along with the main suit, filed before the tribunal application No 73 of 2022 for a temporary injunction to restrain the respondent (current appellant) or his agent from trespassing and or doing any business on the suit land pending the final determination of the main suit. This application was loaded with ex-parte prayers and inter-parties' prayers.

According to the records available, the applicant in that application, now respondent was heard on his ex-perte prayers and an ex parte order was granted on 7/9/2022. The application was adjourned to 20/9/2022. Unfortunately, the matter could not proceed to hearing inter-parties. On 3/11/2022, parties were recorded to have anonymously consented to the prayer in the chamber summons with a prayer to proceed with the main application. The trial tribunals proceeding on page 4 of application no 73 of 2022 reads:

"Tarehe 3/11/2022

Akidi: M.RMAKOMBE- Mwenyekiti

Mdai: Yupo

Mdaiwa: Yupu

Karani: Eliza

Wadaawa: *Tunakubaliana Maombi kuendelea yale ya msingi haya yakubaliwe*

Baraza: *Maombi yanakubaliwa status quo be maintained kesi ya msingi iendeleo*

Imesainiwa

M.R.MAKOMBE

MWENYEKITI"

3/11/2022

Contrary to the respondents' submissions, the appellant's counter affidavit contesting the application was filed on 23/9/2022 and formed part of the trial tribunal records. And it is plain from the above excerpt dated 3/11/2022 that the trial tribunal did not bother to listen to each party's submissions. It only recorded a statement without letting each party's statement be recorded separately. It is therefore not certain whether parties were invited to say a word in respect of the application or not.

Worse, no single word was recorded from the appellant disowning or abandoning the contents of his counter-affidavit or expressing his view on

the already contentious application that was before the tribunal. Looked at in a legal eye, the proceedings above lack the appellant's concession to the prayers for temporary injunction by the respondent. The trial tribunals' recording was with respect flawed because though present, the appellant was not afforded the right to comment on the pending application. I agree with the appellant counsel that a decision arrived therefrom violated a right to a fair hearing guaranteed under Article 13 (6) (a) (ii) of the Constitution of the United Republic of Tanzania.

It is settled that, the right to be heard is one of the fundamental constitutional rights as it was devotedly stated in the case of **Mbeya-Rukwa Autoparts and Transport Limited v. Jestina George Mwakyoma** [2003] TLR 251, at page 265 thus:

'In this country, natural justice is not merely a principle of the common law, it has become a fundamental constitutional right Article 13(6)(a) includes the right to be heard among the attributes of equality before the law and declares in part:

(a) Wakati haki na wajibu wa mtu yeyote vinahitaji kufanyiwa uamuzi na Mahakama au chombo kinginecho kinachohusika, basi mtu huyo atakuwa na haki ya kupewa fursa ya kusikilizwa kwa ukamilifu."

See also **Samwel Gitau Saitoti @ Saimoo @ Jose and 2 Others vs. The Director of Public Prosecutions, and Abbas Sherally & Another v. Abdul Sultan Haji Mohamed FazaI boy**, Civil Application No. 33 of 2002 (unreported). In this latter case, the Court held

"The right of a party to be heard before adverse action is taken against such party has been stated and emphasized by courts in numerous decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified, even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural justice."

The trial tribunal went amiss for not according to the appellant the right to be heard on the application for temporary injunction. This is fatal rendering the entire trial a nullity.

Having established that the judgment of the District Land and Housing Tribunal is a nullity, it naturally becomes illogical to proceed with the discussion of the remaining grounds of appeal. In that respect, I invoke the revisional powers conferred upon me by section 43(l)(b) of the Land Disputes Courts Act to quash and set aside the proceedings of the trial tribunal and the resultant judgment and decree with an order for a fresh

trial before another chairperson with a new set of assessors. Since the error was committed by the trial tribunal, each party is ordered to bear its costs. Order granted accordingly.

Dated at ARUSHA, this 20th day of JUNE 2024.



E.Y. Mkwizu
E.Y. MKWIZU

JUDGE

20/6/2024

Right of Appeal fully explained.

E.Y. Mkwizu
E.Y. MKWIZU

JUDGE