

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND APPEAL NO. 115 OF 2022

(Originating from Land Application No. 12 of 2020; in the District Land and
Housing Tribunal for Kilombero/Malinyi, at Ifakara)

WILBARD MAKINDA 1st APPELLANT

THERESIA MAUDUNDA 2nd APPELLANT

VERSUS

ULANGA COTTON & RICE INDUSTRIES LTD RESPONDENT

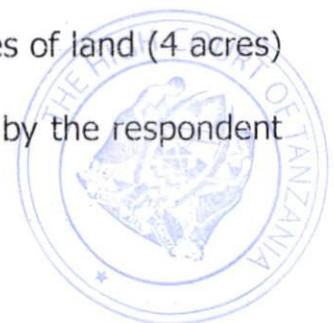
JUDGMENT

25th Jan, 2024

M.J. Chaba, J.

On 21st February, 2020, the respondent herein, a legal person (the Company) registered under the Companies Act [CAP. 212 R.E. 2002], filed Land Application No. 12 of 2020 before the District Land and Housing Tribunal for Kilombero/Malinyi, at Ifakara against the appellants herein, claiming that the appellants (respondents at trial) together with others who are not parties to this appeal, in the year 2019 they invaded her four (4) pieces of land for the purposes of cultivation, hence deprived her lawful right of using, occupying and cultivating the farm (land in dispute).

The respondent averred further that, the invaded pieces of land (4 acres) is part and parcel of the lawful owned farm/land in dispute by the respondent



measuring 532 acres situated at Ichonde Village within the District of Kilombero District, and that the said farm is owned under a Certificate of Title No. 16491 since 1966 as per annexure "U1".

At the height of trial, the DLHT decided in favour of the respondent and declared her as the lawful owner of the disputed suit land, whereas the appellants were declared as trespassers. Dissatisfied, the appellants preferred this appeal seeking to assail the decision of the District Land and Housing Tribunal for Kilombero/Malinyi, at Ifakara (the trial DLHT) on the following four (4) grounds of appeal: -

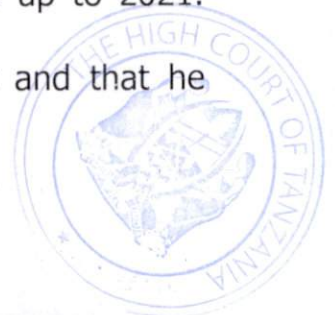
1. That, the trial Chairperson erred in law and fact for entertaining a matter which was brought by person who lacks capacity to institute a matter or matters on behalf of the corporation.
2. That, the trial Chairperson erred in law and fact by failure to find out that, the respondent did not sign the purported application filed on 21st February, 2020 as the same was signed by the advocate.
3. That, the trial Chairperson erred in law and fact for failure to consider the period which the appellants lived in the disputed suit land since it is above twelve (12) years, hence the principle of adverse possession was supposed to be applied.
4. That, the trial Chairperson erred in law and fact for failure to evaluate the evidence of the appellants properly.



With the parties' consensus, this appeal was disposed of by way of written submissions. The appellants' written submissions were drawn and filed by Mr. Hassan Said Nchimbi, Learned Advocate whereas the respondent's written submission was drafted and filed by Mr. Mumwi Sadock, also Learned Advocate.

Before addressing the Court, Mr. Hassan Said Nchimbi, learned advocate for the appellant prayed to argue grounds 1 and 2 conjointly. Submitting in support of the appeal, the Counsel averred that the principal officer who instituted the matter on behalf of the respondent is called MEDARD WILBARD NYACHI who introduced himself as the principal officer of the Company. He argues that, it is well known that a person is considered to be the principal officer if he/she is connected to the management or administration of the Company. He was of the view that, since the said principal officer failed to establish and prove at trial that he was once selected and do possess such capacity of managing the daily operations of the corporation as per dictates of Oxford Dictionary of Law, 5th Edition, it means that he was not a proper person to sue the appellants.

He went on highlighting that, at page 4 of the impugned judgment, the principal officer stated that, he has been the manager of the farm since 1992, but this issue is not true because the manager of the said farm was the late WILBARD NYACHI who worked in the said position from 1992 up to 2021. According to him, the principal officer gave untrue statement and that he



misleads the trial DLHT in order to obtain *locus standi* so as to enable him filing a suit on behalf of the respondent. He accentuated further that, the said principal officer was neither connected to the Company Administration by the time he instituted a matter before the trial DLHT, nor the majority of shareholders of the respondent. He stated that, he was just a normal employer and therefore automatically had no power to do anything in relation to the company. To put more weight in his stance, Mr. Nchimbi cited the provision of Order XXVIII, Rule 1 of the Civil Procedure Code [CAP. 33 R.E. 2019] (the CPC), which stipulates that:

"In suits by or against a corporation, any pleading may be signed and verified on behalf of corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case"

On the basis of the above provision, Mr. Nchimbi submitted that, the purported application filed before the trial DLHT was not signed by the persons mention in the above cited provision of the law, instead it was signed by the learned advocate who also did not indicate anywhere in the pleading that he was dully authorized to depone facts on behalf of the respondent.

Fortified by the holding in the case of **SOLOMON VS. SALOMON AND COMPANY [1879] AC 22**, Mr. Nchimbi stated that, once registered, a



Company acquires a legal personality, and hence its affairs are entrusted in the hands of the Boards of Directors who performs all activities of the Company on behalf of all shareholders.

As regards to the 3rd ground, Mr. Nchimbi contended that, the appellants herein and many other people around that area, started to cultivate the land in dispute since 1962 even before the existence of the respondent just around the area. He argues that, the appellants and other villagers used to live or use the disputed parcel of land from 1952 up to 2020 when the respondent filed a land against the appellants.

He elaborated that, the appellants were the first persons to settle in the disputed area because according to the respondent's pleadings, the respondent started occupying the land in dispute in 1966, that is four (4) years after the appellants started to use and cultivate the suit land. He was of the view that, the appellants are supposed to be protected by the doctrine of adverse possession because they have stayed in the suit premises for more than forty (40) years without disturbances, and further that, since the appellants were in uninterrupted occupation and use of the disputed suit land for about 40 years, which is over and above the limitation period of twelve (12) years, therefore it is certain that, they acquired their title or ownership over the disputed land by adverse possession.

As regards to the 4th ground, Mr. Nchimbi commenced his submission by placing reliance upon the decision of the CAT in the case of **REGISTERED**



TRUSTEES OF JOY IN THE HARVEST VS. HAMZA K. SUNGURA (CIVIL APPEAL 149 OF 2017) [2021] TZCA 139 (28 APRIL 2021) which quoted with the approval the case of **STANDARD CHARTERED BANK TANZANIA LTD VS. NATIONAL OIL TANZANIA LTD AND ANOTHER,** CIVIL APPEAL NO. 98 OF 2008 (unreported), and proceeded to argue that, it is the duty of the first Appellate Court to evaluate the evidence of the trial Court/Tribunal for the sake of delivering sound judgment. He said, it is clear that one among the issues which made the respondent to be a winner was the Certificate of Title No. 16491 issued on 4th July, 1966. He urged the Court to re-evaluate the evidence adduced before the trial DLHT particularly regarding the Certificate of Title/Certificate of Occupancy tendered by the respondent during the trial as the said Title does not have the followings: One; a stamp from the Commissioner for Lands, Two; some of the details such as dates and Title Numbers are handwritten, Three; not typed like the rest of the contents, and Four; the said certificate lacks the signature of the director and common seal of the Company. On that aspect, the Counsel complained that, the authentication of the documents is questionable and hence prayed for this Court to re-evaluate it to see whether the said documents qualified to be admitted as an exhibits and also if the trial DLHT was correct to admit it.

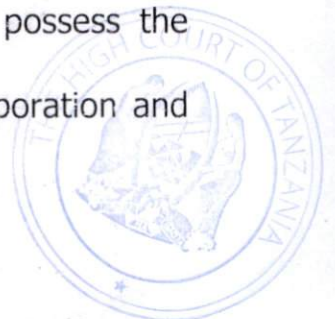


In view of the foregoing submission, Mr. Nchimbi prayed the Court to allow the appeal with costs and grant the appellants any other reliefs which this Court deems fit to grant.

In reply, Mr. Mumwi Sadock, Leaned Counsel for the respondent also submitted in pattern. Starting with the 1st and 2nd grounds of appeal, Mr. Mumwi contended that, there is nowhere in the pleadings presented before the trial DLHT for Kilombero/Malinyi through Application No. 12 of 2020 where one MEDARD WILBARD NYACHI, the manager of the said farm instituted the matter on behalf of the respondent as alleged and submitted by the Counsel for appellants. He explained that, the matter before the trial DLHT was instituted by the ULANGA COTTON & RICE INDUSTRIES LIMITED as the applicant against the appellants herein, as exhibited in form number one (1) which instituted the matter at the DLHT.

Fortified by the holding in the case of **WELLERSTENER VS. MOIR (NO.2) [1975] 1 ALL ER 849**, and **Section 15 (1) of the COMPANIES ACT [CAP. 212 R.E. 2012]** (The Company Act), Mr. Sadock averred that, **ULANGA COTTON AND RICE INDUSTRIES LIMITED**, which is the Company registered under the Companies Act (supra), gained the capacity to sue or be sued in its own names, upon its incorporation as the Company.

On the allegation that MEDARD WILBARD NYACHI failed to prove in the trial DLHT that he was selected, appointed and therefore did possess the respective capacity of managing the daily operations of the Corporation and



that neither was he connected to the Company Administration at the time of instituting the matter, Mr. Mumwi highlighted that, the duty of the manager of the farm (MR. MEDARD WILBARD NYACHI) was to produce evidence as one of the witness of the respondent before the trial DLHT and further that, his task was to give the Counsel for the respondent all relevant information relating to the land in dispute for the purposes of preparing necessary documents to initiate the suit.

He said, at paragraph 4 of the impugned Judgment of the trial DLHT, the proceedings are clear that, when MEDARD WILBARD NYACHI gave his testimony, he introduced himself as the manager of the farm owned by the respondent herein but the appellants neither cross-examined the witness to shake his testimony nor tried to challenge his position. In this regard, Mr. Mumwi had the view that, the Court at this stage cannot entertain such allegation as it was underscored by the Court of Appeal of Tanzania in the case of **BOMU MOHAMED VS. HAMIS AMIRI**, CIVIL APPEAL NO. 99 OF 2015, CAT sitting at Tabora (unreported), while referring to the case of **DAIMIAN RUHELE VS. REPUBLIC**, CRIMINAL APPEAL NO. 501 OF 2007 (unreported) at page 10 and 11. In this case, the CAT held:

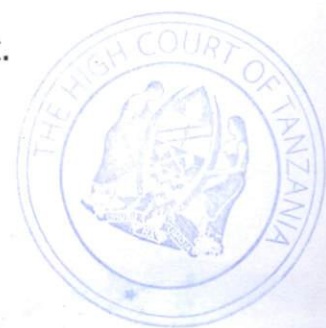
"It is trite law that failure to cross-examine a witness on an important matter ordinarily implies the acceptance of the truth of the witness evidence".



Concerning Order XXVIII, Rule 1 of the CPC cited by the Counsel for the appellants, Mr. Mumwi attacked the same for being irrelevant in the matter under consideration because the document and persons allowed to sign the application are precisely provided under form no. 1 in The Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003. He contended that, the application of the CPC under Order XXVIII, Rule 1 will come into operation where there is inadequacy from the Regulations as provided under section 51 (2) of the Land Disputes Courts Act [CAP. 216 R.E. 2019], which provides that:

"Section 51 (2) The District Land and Housing Tribunals shall apply the Regulations made under section 56 and where there is inadequacy in those Regulations it shall apply the Civil Procedure Code".

He submitted that, the application before the trial DLHT was signed as per the direction and/or dictates of form no. 1 made under Regulation 3 (2) of The Land Disputes Courts (The District Land and Housing Tribunal) Regulation, 2003, Government Notice No. 174 and that the same was verified and signed by one JOSEPHINE F. MBENA, the Learned Advocate who was representing the respondent before the trial DLHT as nothing was wrong for the advocate to sign the said application since the form itself allows the advocate to verify and sign application on behalf of his or her client.



As regards to the 3rd ground of appeal, the Counsel narrated that, the dispute between the appellants and the respondent arose in 2018 pursuant to the evidence tendered by SM1, SM3, and SU6 before the trial DLHT. Relying on the decision of the CAT sitting at Arusha in the case of **REGISTERED TRUSTEES OF HOLY SPIRIT SISTERS TANZANIA VS. JANUARY KAMILI SHAYO AND 136 OTHERS**, CIVIL APPEAL NO. 193 OF 2016, (unreported) at page 25 of the typed Judgement and Part I, Item 22 of the Schedule to the Law of Limitation Act [CAP. 89 R.E. 2019] (the LLA), the Counsel stressed that, as the dispute between the appellants and respondent arose in 2018 and the case was instituted via an Application Number 12 of 2020, that is two years after the arise of the said dispute, then in his view, the statutory period of time was not elapsed as for the appellants to claim the disputed suit land under adverse possession as contended and submitted by the Counsel for the appellants.

On the 4th ground of appeal, the Counsel highlighted that, the Chairperson correctly evaluated all evidence presented at the trial DLHT before delivering his Judgement. He submitted further that, if the appellants had any doubt in respect of the authenticity of the alleged Certificate of Title Number 16491 (Exhibit UC-1), they ought to have objected the same before the trial DLHT during the hearing of the application, and not at this stage of appeal. To support and strengthen his point, the Counsel referred this Court



to the case of **BOMU MOHAMMED VS. HAMIS AMIRI**, CIVIL APPEAL NO. 99 OF 2018 (unreported), where the Court observed that: -

"It is apparent in the record of the trial tribunal that he did not object to the admissibility of the document. He had also a chance to cross-examine the witness on the genuineness of the document. It is trite law that failure to cross-examine a witness on important matter ordinarily implies the acceptance of the truth.....In our view, where a party relies on a serious allegation with criminal implication like forgery, that forgery must be specifically pleaded. In situation where such allegation is specifically pleaded, it cannot be raised and entrained at appellate stage."

Fortified by the holding in the case of **SPLENDORS (T) LIMITED VS. DAVID RAYMOND D'SOUZA (UNDER IRREVOCABLE SPECIAL POWER OF ATTORNEY BY MARRY MUSHI & JERRY JOHN AS ADMINISTRATORS OF CHRISTINA S. MUGAMBA DECEASED) AND ANOTHER**, CIVIL APPEAL NO. 7 OF 2020 (unreported) which the CAT quoted with approval the case of **AMINA MAULID AMBALI & ANOTHER VS. RAMADHANI JUMA**, CIVIL APPEAL NO. 35 OF 2019, Mr. Mumwi submitted that, if the appellants were doubtful with the validity of the Certificate of Title No. 16491, then would have sued the Land Commissioner, Registrar of Titles



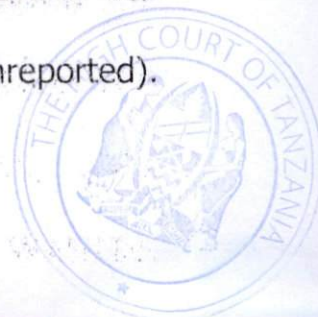
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and the Land Officer who are responsible for verifying the authenticity of the Certificate of Titles. He stressed that, the Certificate of Title by the respondent was legally obtained and it was never challenged by the appellants in the trial DLHT.

In the end, Mr. Mumwi on the basis of his submission against the appellants' appeal, urged the Court to dismiss the appeal in its entirety with costs.

I have read and impassively considered the submissions advanced by the Counsels from both sides as well as the Court records brought before this Court. The central issue for determination is whether the appeal is meritorious.

It is worth noting that this is the first appeal. Hence, as a matter of practice and procedures, the Court is enjoined to re-assess or re-evaluate the entire evidence in an objective manner and arrive at its own finding, if necessary. See the cases of **SPLENDORS (T) LIMITED VS. DAVID RAYMOND D'SOUZA (UNDER IRREVOCABLE SPECIAL POWER OF ATTORNEY BY MARRY MUSHI & JERRY JOHN AS ADMINISTRATORS OF CHRISTINA S. MUGAMBA DECEASED) AND ANOTHER**, CIVIL APPEAL NO. 7 OF 2020; **PENDO FULGENCE NKWENGE VS. DR. WAHIDA SHANGALI**, CIVIL APPEAL NO. 368 OF 2020; **FUTURE CENTURY LTD VS. TANESCO**, CIVIL APPEAL NO. 5 OF 2009, and **MAKUBI DOGANI VS. NGODONGO MAGANGA**, CIVIL APPEAL NO. 78 OF 2019 (All unreported).



For instance, in the case of **FUTURE CENTURY LTD V. TANESCO**, (supra),
The CAT observed inter-alia that: -

"It is part of our jurisprudence that a first appellate court is entitled to re-evaluate the entire evidence adduced at the trial and subject it to critical scrutiny and arrive at its independent decision".

Now, coming to the 1st ground of appeal, onset, I agree with the Counsel for the respondent that, there is nowhere in the Application lodged by the respondent (applicant at trial) before the trial DLHT for Kilombero on 21th day of February, 2020 indicating that, Mr. MEDARD WILBARD NYACHI filed the Application. Instead, the records speak for itself that, it was the respondent's advocate, one Ms. Josephine Mbeni who drew and filed the said Application registered as Application No. 12 of 2020.

From the above finding, I have also noticed a serious contravention of the law under section 147 of the Companies Act, [CAP. 212, R.E. 2002], that affects the legality of the Application No. 12 of 2020 filed before at the trial DLHT. The law stipulates thus:

"147 (1) Anything which in the case of a company may be done:

(a) by resolution of the company in general meeting,

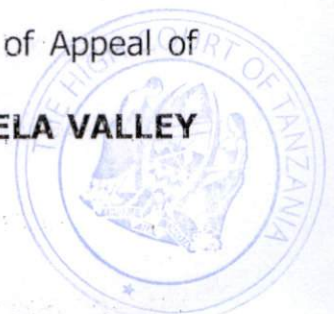
or



(b) by resolution of a meeting of any class of members of the company, may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting:

(c) Provided that, nothing in this section shall apply to a resolution under section 193 (1) removing a director before the expiry of his period of office or a resolution under section 170 (7) removing an auditor before the expiry of his term of office."

Upon a deep scrutiny of the parties pleadings, in particular the Application No. 12 of 2020 in which the present appeal sprang therefrom, I have found that, nowhere in the said Application indicates that the same was deponed to the effect that the learned advocate, Josephine Mbena was authorized by the respondent, Ulanga Cotton and Rice Industries Ltd to act on its behalf and that even in the available records of the trial DLHT there is no even a copy of the minutes of the board of directors' resolution of the Company stating or suggesting to that effect. In this regard, it is clear that the Application lodged before the DLHT was incompetent for lack of authority of the respondent's Company as it was underscored by the Court of Appeal of Tanzania in the case of **URSINO PALMS ESTATE LTD VS. KYELA VALLEY**



FOODS LTD & OTHERS (MISC. CIVIL APPLICATION 28 OF 2014)
[2018] TZCA 48 (14 JUNE 2018) which quoted with approval the case of
BUGERERE COFFEE GROWERS LTD VS. SEBADUKA & ANOTHER [1970]

1 EA 147, wherein the Court observed that:

".....institution of legal proceedings by a company must be authorized either by a Company or Board of Directors' meeting. In the case of Bugerere Coffee Growers Ltd v. Sebaduka and Another [1970] EA 147 which was cited with approval by this Court in the case of Pita Kempap Ltd v. Mohamed I.A. Abdulhussein, Civil Application No. 128 of 2004 c/f No. 69 of 2005 (unreported), the High Court of Uganda held that:

when companies authorize the commencement of legal proceedings a resolution or resolutions have to be passed either at a Company or Board of Directors' meeting and recorded in the minutes...."

The Court of Appeal of Tanzania went on stating that:

"In order to qualify to represent a company therefore, an advocate has to be appointed by a resolution. It was for this reason that in that case, after having' found that the firm of advocates, Messrs Parkhiji & Co. had

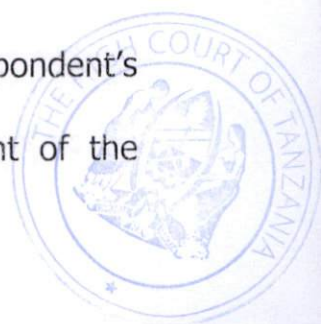


acted without having been appointed by a resolution of the company, the suit was dismissed."

Corresponding observation was made in the case of **SIMBA PAPERS CONVERTERS LIMITED VS. PACKAGING STATIONERY MANUFACTURERS LIMITED AND ANOTHER (CIVIL APPEAL CASE 280 OF 2017) 2023 TZCA 17273 (23 MAY 2023)** [extracted from www.tanzlii.org], where the Court explicated that:

"In the premises, since the claimant was a company, it was not proper to institute a suit on behalf of the company without its formal authority. This required the express authority by way of resolution of the Board of Directors to institute the case in the absence of which, the suit in the names of the company was defective and it ought to have been struck out.....in view of what we have demonstrated above, since the suit at the trial court which was at the instance of the 1st respondent was instituted without its mandate through the Board of Directors, it was incompetent and the respective judgment and proceedings are void. We thus quash and set aside the entire pleadings, proceedings and judgment."

In view of the above finding, I find and hold that, the respondent's Application was improperly lodged before the trial DLHT for want of the



Applicant's/Respondent's Company resolution authorizing its institution. In the event, this appeal has merits and it is hereby allowed.

Consequently, I proceed to nullify and quash the entire proceedings of the trial DLHT for Kilombero in Application No. 12 of 2020 and set aside the judgment, decree and any other order(s) stemmed therefrom. If the respondent's learned Counsel wishes to institute a fresh suit on behalf of the Company (the respondent herein), he (she) is at liberty to do so but subject to obtaining the prerequisite authority from the legal person. Each party shall bear its own costs.

Order accordingly.

DATED at MOROGORO this 25th day of January, 2024.



A handwritten signature in black ink, appearing to read "M. J. Chaba", is written over the seal.


M. J. Chaba

JUDGE

25/01/2024

Court:

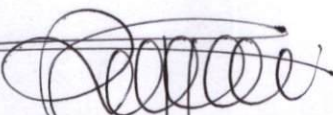

Judgement delivered in Chamber's this 25th day of January, 2024 in the presence of Ms. Kanisia Komba, Learned Advocate for the Appellants also holding brief of Mr. MumwiS adock Learned Advocate for the Respondent.




SUSAN P. KIHAWA
DEPUTY REGISTRAR
25/01/2024

Court:

Rights of the parties to appeal to the Court of Appeal of Tanzania fully explained.

SUSAN P. KIHAWA
DEPUTY REGISTRAR
25/01/2024