IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND APPEAL NO. 38 OF 2010

MAUA HUSSENI.....APPELLANT

VERSUS

MUHAJIRI OMARI SAIDI.....RESPONDENT

Date of the Last Order: 20/5/2014
Date of the Judgment: 9/9/2014

JUDGMENT

B.R. MUTUNGI, J.

The appellant Maua Hussein dully represented by Mrs. Washokera learned counsel preferred an appeal against the decision of the District Land and Housing Tribunal for Coast Region in application No. 21/2007.

The appellant has lodged three grounds of appeal which are as hereunder:-

1. That the learned chairperson erred in law and fact for failing to record the evidence properly and thereby

arriving at a wrong decision that the applicant did not prove her application.

2. That it was also an error of law and fact for delivering a judgment without visiting the locus in quo though it was intended to do so as indicated in the proceeding

3. That the learned chairman erred in law and fact when he sided with the opinion of the assessor without indicating and/or recording properly their opinions.

The learned advocate simply elaborated on the three grounds of appeal by making a repetition of what has been written in the grounds of appeal.

Having gone through the evidence on record simply the evidence is such that the appellant had gone before the trial tribunal claiming for ownership of the disputed land. She told the trial tribunal of how she had bought the suit land through her brother PW2 from the respondent. The appellant claims to have paid all the purchase price.Further it is revealed from the record that PW2 did receive 30,000/= from the appellant who incidentally is her brother and he alledges to have paid 10,000/= to the respondent and

20,000/= to the respondent's uncle. PW2 admits not having known thatthe respondent was selling the farm as his own property or by virtue of being the village chairman. PW3 did not know anything as regards the disputed farm's ownership.

On the other side the respondent denied vehemently having sold the appellant the disputed land nor receiving any money from the appellant. The respondent brought several village leaders who too denied having known or seen the appellant purchase the disputed land.

It is upon this summary that the trial tribunal ruled that the evidence of the appellant did not substantiate any ownership over the suit land.

Having digested the evidence as above I find indeed as was properly recorded and decided the appellant had no tangible evidence to prove ownership of the suit land. The appellant did not even possess any documentary evidence and even her own witnesses did not show or admit that indeed the appellant had bought the suit land from the respondent. Further more even the area leaders who came

before the trial tribunal denied having any knowledge as to the ownership of the appellant over the said land. All that is brought out clearly by her own witnesses is that she was dealing with a third party in order to purchase the said land but did not have any proof. I stand very convinced that the trial tribunal had properly evaluated the evidence on record and had come to the proper decision. This will suffice to answer the first ground of appeal.

Coming to the second ground of appeal on the issue of visiting the locus in quo.This in my settled opinion did not bar the trial tribunal from writing its decision. It is clear in the Judgment that indeed the tribunal had formed an intention to visit to locus in quo but this became difficult. There is no law forcing or directing a tribunal or a court to visit a locus in quo. This is a matter of its own discretion. I find that once the tribunal found it difficult to go to the locus in quo it was a proper decision to proceed to write its judgment. As I have already elaborated earlier in my judgment with the evidence on record the appellant had failed to prove her case. It follows therefore that it was not an error for the trial

tribunal to have delivered its judgment without first visiting the locus in quo.

Lastly on the point of the opinion of the assesors. It is very clear from the judgment (page 2) where the chairman writes

> ***"the assessors who heard this case gave their opinion similarly that the applicant did not prove her case as the applicant has no any document to prove her ownership on whether she purchased the land from the respondent in his capacity or under his own name".***

In my settled opinion I do not know what the appellant wanted the chairman to record. He has given the reason for concurring with the wise opinion of the assessors and that was more than enough.

In the upshot I find the appeal lacking merits and I proceed to dismiss the same with costs.

Right of Appeal Explained.

B.R. MUTUNGI

JUDGE

9/9/2014

Read this day of 9/9/2014 in presence of respondent in person and Mrs. Washokera learned counsel for appellant.

B.R. MUTUNGI

JUDGE

9/9/2014