IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT SONGEA

LAND CASE APPEAL NO. 37 OF 2013

(From Land Case Appeal No. 79 of 2011 of the District Land and Housing Tribunal of Ruvuma at Songea and Land Case No. 16 of 2009 at Mshindo Ward Tribunal)

TWAIBU KIHWELE ..... APPELLANT

VERSUS

SHABANI GAWAZA ..... RESPONDENT

JUDGMENT

31/10/2013 & 30/01/2014

KWARIKO, J.

Formerly, the respondent herein had sued the appellant herein over a two acres wet land used for paddy growing *(locally commonly know as "dimba")* before the Ward Tribunal of Msindo where he lost the suit. The respondent

successfully appealed before the District Land and Housing Tribunal of Songea. This present appeal is against the district tribunal's decision.

Shortly, the respondent evidenced before the trial tribunal that he had been allocated the disputed land by the village authority at Mageuzi in 2006 and certificate of allocation to that effect was presented. He had borrowed part of that land *(one acre)* to the appellant to use for one year but thereafter he refused to return the same. The appellant expanded the acreage of that land hence the respondent sued him.

On his part the appellant gave evidence to the effect that he bought the disputed land from one Mezea then village chairman of Likarangiro in 2004. He worked on that land in 2005 and in 2006 he formerly registered the same before the village office. He presented documents to that effect.

Before this court the appellant personally filed a six grounds petition of appeal which raise the following four essential points of complaints;

> *1. That, the District Land and Housing Tribunal's judgment contravened the provision of* ***Order XXXIX Rule 31 of the Civil Procedure Code Cap. 33 R.E. 2002.***

2. That, the District Land and Housing Tribunal erred in law and fact by setting aside the decision of the Ward Tribunal without visiting the locus in quo.

3. That, the District Land and Housing Tribunal erred in law and fact by disregarding the improvements made by the appellant over the disputed land.

4. That, the District Land and Housing Tribunal erred in law and fact by deciding the respondent a winner despite his unsatisfactory, contradictory and full of discrepancies evidence.

When the appeal was called for hearing the appellant contended that the disputed land belonged to him as he had been using the same since 2004. He complained that the district tribunal did not visit the *locus in quo* and did not call witnesses to testify before it.

On the other hand the respondent was represented in this court by Mr. Mhelela learned Advocate who argued the appeal. It was Mr. Mhelela's submission that the district tribunal had no duty to visit the *locus in quo* since the ward tribunal had performed that duty. Also, as regards to the complaint that witnesses should have testified before the district tribunal Mr. Mhelela learned advocate contended that witnesses were not needed there as the

tribunal heard an appeal. However, he charged that neither of the parties had applied for any witness to be called before the tribunal. Otherwise, Mr. Mhelela asked the court to dismiss the appeal with costs since the grounds of appeal were baseless.

In his rejoinder submission the appellant maintained that the district tribunal ought to have visited the *locus in quo*. Finally, he contended that the district tribunal did not inform them that they had the right to require the attendance of their witnesses during hearing of the appeal.

From the foregoing contentious submissions the issue to be decided by this court is whether the grounds of appeal have merits. I will decide the grounds of appeal in their chronological order as follows:

As regards the first ground of appeal, the appellant did not provide any input as to how the district tribunal's decision did not comply with the provision of **Order 39 Rule 31 of the Civil Procedure Code** (supra). The respondent's counsel also did not respond to this complaint. On its part this court finds that the decision of the district tribunal complied with the required legal procedure provided under the law **(See Regulation 20 (1) of the Land Disputes Courts [The District Land and Housing Tribunal] Regulations, 2003).**

For this reason therefore the **Civil Procedure Code** is applicable only by the District Land and Housing Tribunals where there is a *locuna* in the cited Regulations and the respective substantive law, **The Land Disputes Courts Act [Cap. 216 R.E. 2002].** This ground of complaint is thus baseless and it is hereby rejected.

In the second ground of appeal the appellant is complaining that the district tribunal decided the appeal without visiting the *locus in quo.* The appellant was of the view that it was necessary for the district tribunal to visit the disputed land in order to be well placed to decide the dispute. In his response Mr. Mhelela learned advocate for the respondent argued that since the ward tribunal did visit the disputed land the district tribunal could not itself again perform that duty. This court agrees with Mr. Mhelela. As the trial tribunal had visited the *locus in quo* and documented its findings it could not be legally necessary for the district tribunal to have repeated that exercise. However, it is not in every case that the *locus in quo* need to be visited lest the courts would be turned to be witnesses to the disputes.

Deliberating on the issue of the visit of the *locus in quo* the Court of Appeal of Tanzania in the case of **NIZAR H.M. LADAK V. GULAMALI FAZAL JANMOHAMED [1980] T.L.R. 29** held *inter alia* thus;

"It is only in exceptional circumstances that a court should inspect a locus in quo, as by doing so a court may unconsciously take the role of a witness rather than an adjudicator".

For the foregoing, the appellant's complaint lacks merit and it is hereby rejected.

The complaint in the third ground of appeal relates to the non-consideration by the district tribunal of the unexhausted improvements on the disputed land by the appellant. The appellant did not elaborate further on this matter and the respondent did not respond to the same. As for this court since this is a completely new matter which cropped up only in this appeal it will be difficult to deliberate on the same. Had the appellant admitted that the land belonged to the respondent and that he had improved it the district tribunal could have basis to consider the issue of unexhausted improvement. The appellant maintained that the land belongs to him. As it is now this court does not find basis within which to decide on the alleged unexhausted improvement on the disputed land by the appellant. This complaint also flops.

And the last ground of appeal relates to the evidence on record by the respondent which the appellant contended that it did not deserve any credibility by the district tribunal. The appellant contended that the respondent's evidence was unsatisfactory, contradictory and contains discrepancies. During the hearing

of the appeal the appellant did not show any of those shortcomings on the respondent's evidence as regards the ownership of the disputed land.

It is my considered opinion that the evidence on record is sufficient proof that the disputed land belongs to the respondent. There is documentary evidence to the effect that the disputed land was allocated to the respondent by Mageuzi village authority on 16/9/2006. He paid the fee of Shs. 30,000/= for registration on the same date. There is also the evidence of **PW2 JOSEPH MPUGHI** who supported that the appellant had only borrowed the land from the respondent to use. PW2 was a labourer for the appellant on the disputed land. The appellant acknowledged this witness and he did not show that he had any reason to lie in that respect.

Contrary to the respondent's evidence the appellant presented suspected documentary evidence in relation to the allocation of the disputed land to him. Despite of being a photocopy, the letter of allocation of the disputed land in respect of the appellant dated 23/9/2006 was of a later date as compared to the date the respondent got the allocation. Thus, if the two documents are compared the respondent's letter takes precedence. Also, while the appellant testified that he formerly bought the land from one Mezea a Village chairman of Likarangiro in 2004 the allocation letter is shown to have been issued by Mageuzi

village authority. He did not explain this glaring discrepancy. The said Mezea also did not come to support the appellant's testimony.

Consequent to the above analysis, the court finds that the evidence on record proves that the disputed land belongs to the respondent as was rightly decided by the district tribunal. This appeal is thus found non-meritorious and it is hereby dismissed in its entirety. The respondent shall have his costs. It is ordered accordingly.

M.A. KWARIKO

JUDGE

30/01/2014

DELIVERED AT SONGEA

30/01/2014

Appellant: Present

Respondent: Present/Mr. Mhelela, Advocate.

C/C: Miss Hobokela.

M.A. KWARIKO

JUDGE

30/01/2014

Court: Right of appeal explained.

M.A. KWARIKO

JUDGE

30/01/2014