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

LAND APPEAL NO. 135 OF 2017

(Originating from the Judgement and Decree of the District Land and Housing Tribunal for Morogoro at Morogoro in Land Application No. 148 of 2014.)

MAINA MIKAELI & 14 OTHERS.....APPELLANTS

VERSUS

RUKIA AMANI.....1ST RESPONDENT

SEKWALO AMINI.....2ND RESPONDENT

Date of last Order: 17/4/2018
Date of Judgment: 22/6/2018

J U D G M E N T

MGONYA, J.

This is an Appeal against the decision on of the District Land and Housing Tribunal for Morogoro at Morogoro **in Land Application No. 148 of 2014.** The subject of the dispute is a surveyed and registered land with **Title No. 20753 measuring 780 acres** at Dakawa in Morogoro District which the 15 Appellants sued the Respondents, Rukia Amini and Sekwabo Amini for trespass.

The District Land and Housing Tribunal entered Judgment in favour of Respondents and declared them to be lawful owner of the suit land.

Aggrieved by the said decision, the Appellants appealed to this Court on six grounds of Appeal as follows:-

1. ***That the Trial Chairman erred in iaw and fact by entertaining a matter in which he had no pecuniary jurisdiction to entertain;***
2. ***That the trial Chairman erred in iaw and fact by holding that the Appellants are trespassers in disregard of their long undisturbed occupation and use of the suit land;***
3. ***That the trial Chairman erred in iaw and fact by making a decision in matters not pleaded by the Respondent in the Application;***
4. ***That the trial Chairman erred in law and fact by making a decision in matters not pleaded by failure to analyze the evidence adduced by the Appellants and the Respondent;***
5. ***That the Trial Chairman erred in iaw and fact by disregarding pleadings filed by the Respondent and the Appellant; and***

6. That the Trial erred in law and fact by failure to go through exhibits tendered by the Appellants and holding that the Appellants were trespassers.

Pursuant to the orders of this Court, the matter was disposed by way of Written Submissions.

In arguing the grounds of Appeal the Appellants started with grounds No. 3, and submitted that, the decision appealed against was invalid because the Tribunal made decisions and orders on matters that were not pleaded /prayed nor argued by the Applicant in **Application No. 148 of 2014.** As it was seen at page 8 of the Judgment and page 2 of the Decree; these were the issues that the Tribunal raised *suo motto* without giving the opportunity to be heard especially Appellants. It was rendered the whole decision and decree of the Tribunal improper and contrary to **Regulation 20(1) (b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 GN No. 174 of 2003.**

Further the Appellant argued that lack of full and properly identifiable names renders the whole judgment and decree invalid per the of law as it was not comply with Regulation 20(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulation GN. 174 of 2003.

Regarding the 1st ground of Appeal, the Appellants submitted that the Court should have considered and found that the Tribunal did not have jurisdiction to adjudicate on a land dispute whose value was under estimate at the market price. The Land in our instant care was surveyed and registered with land Title No. 20753 measuring 780 acres be estimated at 10,000,000/=, the Appellant submitted that whatsoever valuation standards a land of 780 acres does not stand valued at 10,000,000/= only. Hence, only High Court have had jurisdiction over the dispute land and not Tribunal because it was large area of land whose value exceeds the estimated 10,000,000/=. The Appellant emphasis this position by citing provision of Section 37(1) of the Courts Land Disputes Act, 2002 (Act No. 2 of 2002).

On grounds No. 4 and 6 combined, the Appellants submitted that, the Tribunal failed to make finding that Exhibit A2 tendered by the Respondent Amina had been altered by hand by deleting of Right of Occupancy No. 20753 and replacing with No. 132757 without any signature of the Authority/person who made the alterations, since it was attracted to the conclusion that it was forged by the Respondent. (See page 5 and 6 of Judgment). Hence Exhibit R1 and R2 it where considered proves that the Respondent were not the owner of the said suit since ownership ceased in 2001.

Upon ground No. 2 of Appeal, the Appellants submitted that, the Appellants being livestock keepers and some had acquired (inherited) from their parents and forefathers were the lawful owners of the suit land since they occupied over 12 years uninterrupted hence they should be declared lawful owners of the said land.

On the 5th ground of Appeal, the Appellant submitted that the failure to consider the defences raised by the Appellant at trial stage occasioned injustice and failure of justice to the Appellants. Therefore the Appellant prayed that the decision appealed against to be quashed and set aside and the Appeal at hand be allowed.

In responding on what had been submitted by the Appellant, the Respondents regarding ground No. 3 of appeal submitted that the Appellant did not take trouble to read **Regulation 20(1) as a while of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations 2003 GN. NO. 174 of 2003** something led improper misunderstanding.

Respondent begged to reproduce the regulation: -

> ***"20(1) the Judgment of the trial shall always be short, written in simple language and shall consist:-***
>
> ***a)A brief statement of facts.***
>
> ***b)Findings on the issues***

c) A Decision; and

d) Reasons for the decision

That and its sub-sub Regulation of Regulation 20(1) of the Land Disputes Courts (Supra) was all about the contents of the Tribunal's judgment and not more than that. Hence the Regulations was not violated as it was submitted by Appellant and there was no new issues raised by the Tribunal apart from the framed issues by parties at the Tribunal.

Further, the Respondents contended that the Appellant were unlawful trespasser in suit land and the Tribunal was duty bound to give necessary orders to the Appellant as these order were prayed and countered during the hearing. Hence the Tribunal was right to order re-affixation of the beacons for the purpose of demarcating the boundaries afresh by using land surveyor. Therefore the rest of the order and prayers indicated by the Appellants at page 2 of his submission were pleaded and prayed as evidence in paragraph 7 of the amended Application filed on **5th December, 2014.**

On the issues of single names (5th to 10th) appellant, respondent submitted that, apart from not being a ground of Appeal but yet has no merits. Respondent submitted that, there was no way this could be used to move this Court to hold the judgment of Tribunal invalid as prayed by Appellants.

Regarding the 1st ground of Appeal the Respondents submitted that as per the certificate of right of occupancy, the Respondents own 780 acres of land on which the value of part of land in 780 acres unlawfully transpassed by the Appellants was estimated to Tshs. 10,000,000/= per Form No. 1 in the land Disputes Courts Act (Act No. 2 of 2002) the form used to institute land case at the District Land and Housing Tribunal which only need the estimation value of the land in issues and not an accurate value.

Further, the Respondents contended that, it is a principle of the law "who alleges must prove" and the duty to prove the value of the land in issues was for beyond the pecuniary jurisdiction of the Tribunal lies to the appellant.

Hence the more assertion cannot hold watertight if there is no specific proof to that effect.

Regarding grounds No. 4 and 6 of the Appeal, the Respondents submitted that, they proved their ownership over the land in dispute by tendering certificate of Right of Occupancy not dispute or questioned or denied by the Appellant during hearing.

On the issue of Exhibit R1 and R2, the Respondent submitted that there were search reports which shows that the Land in dispute belonged to the Respondent's father before transferred to

the Respondent's as current owners, there was no anywhere in the said exhibit that the right of Occupancy of the land in dispute was revoked hence the issues of elements of forging as submitted by Appellant had nothing to do with the tribunal as it was purely criminal matters.

Regarding ground No. 2 of the Appeal, the Respondent submitted that, there was no any piece of evidence proving long stay over the Land in dispute by the Appellants without interruption. Further, the Appellants were not in possession of any documents showing their ownership over the land in dispute. Nonetheless, the Appellants failed to bring even a single witness to substantiate their long occupation of the land in dispute.

On the provision of **Section 100 of the TEA Cap. 6 R.E. 2002,** the Respondents submitted the section was to the effect that once there was documentary evidence, oral evidence carries less legal weight, the Respondent had the Certificate of Right of Occupancy while the Appellants possess nothing.

Regarding ground No. 5 of the Appeal, the Respondent submitted that, nothing was not considered by the Tribunal in all pleadings. The Respondent cited Section 45 of the Land Dispute Courts Act 2002, hence there was no any miscarriage of justice occasioned by the Tribunal during the hearing and in the judgment preparations.

The Respondents finally prayed to court to dismiss the Appeal with costs for want of merits.

On rejoinder, the Appellants reiterate their previous submissions and emphasized what they have already stated in their main submissions that:-

> ***"The Regulations referred to above have been violated by making orders which were not prayed or argued by the parties during the hearing.***

Regarding combined grounds 4 and 6 that the Certificate of Right of Occupancy was not objected by the Appellants was strongly objected during hearing as evidence on page 6 of the Tribunal's Judgment.

In the light of the above submissions, the Appellant insisted that the Judgment and Decree of the Tribunal are invalid for not having full and proper names of the Appellants formally respondent thus such judgment and decree were not effective.

Having considered the rival submissions of both parties, I will now determine the grounds of Appeal as were argued.

On the 3rd ground of Appeal ***"that the Chairman Tribunal making a decision on matters not pleaded by the Respondents in Application".*** I go through Court records and I find that this ground has no merits as provided on paragraph 7 of

the Amended Application at page 2 that the Respondents herein prayed for eight (8) prayers which the trial Chairman granted the same as were pleaded and prayed.

Therefore I concur with the Respondents submissions that, there was no new issues raised by the Tribunal apart from the one framed by the parties and it is the duty of the Tribunal to give necessary orders which may deemed fit just to grant, hereafter the tribunal was right to order re-Affixation of the beacons for the purpose of demarcating boundaries afresh by using land surveyors.

As for the 1st ground of the Appeal, I could not see on record that the Appellants brought evidence to support their argument, rather the Appellants alleges that the valuation of the suit land was underestimated at the market price. It is the principle of the law that ***"who alleges must prove."*** In this case the Appellants failed to prove the same, as the duty to prove the value of the land in dispute lies to the Appellants. Consequently this court find that the said ground of Appeal luck merit because the mere assertion cannot hold watertight if there was no specific proof to that effect.

As for the 2nd ground of Appeal, I find nothing had been shown by the Appellants on the contention for staying longer in a dispute land. The records revealed that the Respondents started to possess the disputed land since 1968 while the Appellants started

to possess the said suit land on 2001. The records show further that the Amin Mohamed was owner of the suit land since 1968.

The record shows that the dispute over the said land was also referred to the District Commissioner who disclose that the Land in dispute belong to the deceased Amin Mohamed, the Respondent's father. Therefore, I fail to find and evidence to sustain the Appellants long occupation on the land in dispute hence this ground has no merits as well.

As for the 5th ground of Appeal, it is on record that there is no doubt that the trial Tribunal considered all the pleadings. The records show further that the trial Tribunal consider the evidence adduced and from the said evidence, the Appellants did not disputed that Respondent's father Amin Mohamed owned the land since 1968 through Certificate of Title. I additional the records reveal that the testimony of RW 18 and tendered search reports show that the Amin Mohamed owned the disputed land since 1968.

As per grounds No. 4 and No. 6 of Appeal the records shows that the Respondents prove their ownership over the suit land by tendering the relevant Certificate of Title 132757 in which they are Legal personal representative of Amin Mohamed in which was described that the Right of Occupancy was for the term of 33 years from 1st January, 2002.

In the circumstances, I find no merit in this Appeal. I hereby **dismiss with costs** and uphold the decision of the District Land and Housing Tribunal for Morogoro at Morogoro in Land Application No. 148 of 2014.

Right of Appeal Explained.

L. E. MGONYA
JUDGE
22/6/2018

COURT: Judgment delivered in the presence of Advocate Chacha Murungu for Appellants, dvocate Tumaini Mfinanga for Respondents and Ms. Emmy B/C in my chamber today 22nd June, 2018.

L. E. MGONYA
JUDGE
22/6/2018