

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT SUMBAWANGA

LAND APPEAL NO. 21 OF 2020

***(Originating from the Decision of the District Land and Housing Tribunal of
Katavi District at Mpanda in land case Application No. 14 of 2018)***

ZAKARIA ALISEN CHUNDU APPELLANT

VERSUS

MELKIO NOEL KANYUKA RESPONDENT

Date of last Order: 07/12/2020

Date of Judgment: 14/12/2020

JUDGMENT

C.P. MKEHA, J

The present appeal traces its origin from the District Land and Housing Tribunal of Katavi before which the respondent sued the appellant for invasion of unspecified piece of land. The respondent prayed for an eviction order against the appellant and his agents, permanent injunctive order against the respondent and his agents as well as an order that any documents issued in favour of the appellant and his agents be declared void. At the end of trial, 2¼ acres of land was declared to be the property of the respondent. No further orders were issued by the trial tribunal.

The appellant was not satisfied by the trial tribunal's decision. He appealed to this court with seven grounds of appeal. Out of the said grounds of appeal the

fourth ground of appeal is considered by this court to be determinative. It is as follows:

Ground No. 4: That, the trial tribunal erred in law and fact by awarding the respondent the total of 2 ¼ acres instead of 4 ½ acres which the respondent claimed in his application.

During hearing of the present appeal the appellant was represented by Ms. Tunu learned advocate. On the other hand, the respondent was represented by Mr. Mawala learned advocate.

Submitting in support of the fourth ground of appeal Ms. Tunu learned advocate submitted that, the trial chairperson failed to properly analyse evidence received before the Tribunal. In view of the learned advocate, the respondent had failed proving his claim before the tribunal. The learned advocate went on to submit that, whereas the respondent was claiming 4 ½ acres, he ended up being awarded 2 ¼ acres. The learned advocate added that, DW1 and DW2 testified in favour of the appellant's story on how the appellant acquired the disputed land.

With regard to the said ground of appeal Mr. Mawala's reply was brief that, the respondent had successfully proved that 2 ¼ acres of the disputed land belonged to him.

The only determinative issue is **whether the cause of action was made certain before the trial tribunal.**

To respond to the above posed issue I have to revisit the respondent's application before the trial tribunal. At paragraph 6 of the application a statement of facts constituting the cause of action/claim, is given in the following terms:

"THAT SOMETIMES IN 2017 THE RESPONDENT INVADED THE LAND OWNED BY THE FAMILY OF THE LATE VICENT KANYUKA WHO PASSED AWAY SOMETIMES IN 1999. THE RESPONDENT WITHOUT CONSENT OF THE APPLICANT INVADED THE LAND, SURVEYED THE LAND AND STARTED TO CONSTRUCT IN THE SAID LAND. THAT UPON INQUIRY FROM THE LAND REGISTRY AT MPANDA THE APPLICANT WAS INFORMED THAT THE APPLICANT (SIC) HAD USED PRIVATE SURVEYOR AND THE MUNICIPAL WAS NOT INVOLVED IN THE PROCESS OF SURVEY AND MAPPING THE AREA WHICH IS ABOUT 4.5 ACRES."

In the introductory part of this judgment, I indicated that the appellant was sued for invading the respondent's unspecified piece of land. It is true. Reading from paragraph 6 of the application, the actual size of the disputed land is uncertain. It is merely indicated that, the Land Registry at Mpanda, was not involved in the process of surveying and mapping the area which is about 4.5 acres. In the said statement, it is even uncertain as to who actually engaged a private surveyor to survey the said 4.5 acres of land between the applicant and the respondent.

In my considered opinion, it was wrong for the trial tribunal to proceed entertaining an application filed before it, whose statement of facts constituting the claim was not in certain terms. This is because, under Regulation 3 (2) (c) of the Land Disputes Court (The District Land and Housing Tribunal) Regulations, 2003, an application to the Tribunal should be made in the form prescribed in the Second Schedule to the Regulations and the same should contain explanation as to the nature of dispute and cause of action. Regulation 5 provides that, where an application is made to the Tribunal the Tribunal may after consideration of the application or chamber application:

- (a) not applicable
- (b) Require the applicant to produce more information as may be necessary or
- (c) Reject an application and record the reasons for the decision.

One of the situations in which an application filed before the Tribunal may be rejected, no doubt, is where the application does not disclose the cause of action as demonstrated hereinabove.

It was the appellant's complaint that the trial chairperson failed to properly analyse the evidence received before the tribunal. I agree. What the trial chairperson awarded to the respondent does not find trace in the statement of facts constituting the claim. This was partly caused by failure of the respondent to make certain, the facts constituting his cause of action. It is for

that reason I hold that, the application was of the kind that ought to have been rejected for failure to disclose cause of action.

For the foregoing reasons, the trial tribunal's proceedings are hereby quashed. The tribunal's decision and orders are set aside. I step into the shoes of the trial Chairperson thereby rejecting the application before the Tribunal. This court's orders shall not preclude the respondent from presenting a fresh application in respect of the same cause of action subject to the law of limitation. I make no order as to costs.

Dated at **SUMBAWANGA** this 14th day of DECEMBER, 2020.




C.P. MKEHA
JUDGE
14/12/2020

Court: Judgment is delivered in the presence of the parties.


C.P. MKEHA
JUDGE
14/12/2020

Right of further appeal explained.




C.P. MKEHA
JUDGE
14/12/2020