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

LAND APPEAL NO. 170 OF 2019
(Originating from Morogoro District Land and Housing Tribunal in Land Application No.202 of 2016

DANIEL GILBERT.....APPELLANT

VERSUS

HASHIMU SHABANI.....RESPONDENT

Date of Last Order: 10.06.2021
Date of Ruling: 12.07.2021

JUDGMENT

V.L. MAKANI, J

This is an appeal by DANIEL GILBERT. He is appealing against the decision of the Morogoro District Land and Housing Tribunal at Morogoro (the **Tribunal**) in Land Application No. 202 of 2016 (Hon.O.Y. Mbuga, Chairman).

The dispute of ownership of land between the parties has its history way back in 1999 when the respondent herein instituted Shauri la Madai No.216/1999 at Morogoro Urban Primary Court and the appellant herein was declared the lawful owner of the disputed land. Honestly, the attached copy of judgment in Shauri la Madai No. 216/1999 is so faint such that nothing can be grasped therefrom,

other than the statement that the appellant herein is the lawful owner of the land in dispute.

After this case, there followed a series of criminal cases between the parties and later in 2016 vide Shauri la Jinai No.164/2015 it was observed among other things that, the Plot in dispute in Shauri la Jinai No.164/2015 was different from the plot in dispute in Shauri la Madai No.216/1999. Further the Primary Court decreed that the matter should be channelled to the proper land Tribunals/Courts for adjudication. Criminal Appeal No.08/2016 was preferred to Morogoro District Court against the decision in Shauri la Jinai No.164/2015, however, the District Court upheld the decision of the Primary Court. In that way, the conflict over the land which was learnt to have been situated at Mtawala in Mwembesongwa Ward in Morogoro (**the suit land**) found its way to Baraza la Kata Mwembesongo in Shauri No.01/2016, Appeal No.54/2016 at the District Tribunal and then Misc. Application No.202/2016 at the District Tribunal in which the Chairman decided that he was in dilemma and therefore referred the matter to the High Court for further directions. The Chairman, however, did not stay the judgment but instead neither party was declared the lawful owner of the suit land. The appellant was dissatisfied with the decision

of the Tribunal hence this appeal with four grounds of appeal reproduced herein below:

1. *That, the Chairman of the Tribunal erred in law and fact by completely distorting the appellants testimony and evidence thereby making erroneous conclusions.*

2. *That the learned chairperson erred in law and fact by entertain the matter which has no jurisdiction with.*

3. *That the learned chairperson erred in law and fact by completely distorting the fact (former respondents) was declared as lawful owner vide Criminal Case No.164 of 2015 before Hon. Magistrate Somi at Urban Primary Court for Morogoro at Morogoro.*

4. *That the learned chairperson erred in law and fact by failing to understand that the application was brought with the aim of circumventing the Court decision in Criminal case No.164 of 2015 before Hon. Magistrate Somi at Urban Primary Court for Morogoro at Morogoro between the parties.*

With leave of the court the appeal was argued by way of written submissions. The appellant personally drew and filed his own submissions, likewise Respondent drew and filed written submission on his own.

Submitting on the appeal, the appellant prayed to abandon the third and fourth grounds of appeal and argued only the first and second grounds of appeal. He prayed to adopt the petition of appeal.

Supporting the first ground of appeal, the appellant said that the Chairperson of the Tribunal in HIS judgment said that the respondent herein won the criminal case No.164 of 2015 against the appellant herein. He said that the Chairman's statement was not true at all because the respondent in the said criminal case was found guilty and he paid fine. He said during the hearing the appellant managed to tender the building permit from the Municipal (**D.E-1**) and was never countered. He said that the building permit is given to a person who is the lawful owner of a piece of land. That the permit was enough evidence for the Tribunal to declare the appellant herein the lawful owner of the suit land. He said the respondent herein tendered nothing during the hearing at the Tribunal to signify his ownership over the suit land. He only tendered decisions of other courts which proves nothing on ownership of the suit land.

On the second ground of appeal, the appellant said that the present appeal came from Land Application No.202 of 2016 heard by the

Tribunal. But back in 1999 there was Land Case No.216 of 1999 tried at Morogoro Urban Primary Court, involving the same parties and the same subject matter and was decided in favour of the appellant herein and the respondent did not appeal against that decision. The appellant said the respondent was supposed to appeal from the decision of Morogoro Urban Primary Court if he was aggrieved instead of filing a fresh suit. He relied on section 9 of the Civil Procedure Code, Cap 33, RE 2019 (the **CPC**) and insisted that the Chairman at page three of his judgment admitted that the matter had already been adjudicated on merit but decided to continue with it. He further sought support from the case of **Quality Group Limited vs. Tanzania Building Agency, Civil Application No.186 of 2016 (CAT-DSM)** (unreported) that once a case is conclusively determined by a court or Tribunal the same court is barred from entertaining the same matter. He was of the opinion that the learned Chairman failed to interpret the provisions of section 9 of the CPC. He prayed for the appeal to be allowed and the appellant be declared the lawful owner of the suit land.

In reply the respondent said that, it is true that since 1999 the parties had series of cases at Morogoro Urban Primary Court concerning

ownership of the suit land. However, those cases failed to fully determine the ownership of the suit land which is situated at Mtawala in Mwembesongwa Ward in Morogoro. That it was then referred to Mwembesongwa Ward Tribunal and then to the District Tribunal where it was decided to be heard de novo. The respondent said the case was assigned to Hon. Mbega where the rightful owner was revealed. He said **Annexure A-I** is Appeal No.54/2016 where the Tribunal decided the matter to be heard de novo and **Annexure B-1** is Land Application No.202/2016 where the matter was heard de novo and the applicant won the case. He said that, at the Tribunal the appellant (Hashimu Mbaga) brought two witnesses while the respondent (Daniel Gilbert) who is the appellant herein had no witness other than himself and he relied on the building permit to justify that the suit land belongs to him. He said the only document which verify ownership of the land is the Right of Occupancy or Deed of Sale in unplanned land which the appellant failed to bring.

The respondent further stated that, the appellant is claiming to have won Criminal Case No.164 of 2015 at Morogoro Urban Primary Court. However, section 167 of the Land Act, 1999 (the **Land Act**) excludes Primary Court from determining Land matters. That even section 4(2)

of Land Disputes Courts Act, Cap 216 RE 2019 and section 18 of the Magistrates Courts Act, Cap 11 RE 2019 (the **MCA**) excludes Primary Courts from trying land matters. He said that it is for the stated reasons that this matter was referred to the Ward Tribunal and finally to the District Tribunal.

On the second ground of appeal, the respondent said that the decision of Morogoro Primary Court had a lot of discrepancies. That it was heard twice by the same court. At first it was heard by Hon. Somi and her decision was nullified on revision. Later the same was refiled in the same Court before Hon. Bestina and the appellant herein preferred an appeal to the District Tribunal where it was decided that the suit should be referred to the Ward Tribunal. He said the appeal from the Ward Tribunal resulted to the matter to be heard de novo as Land Application No.202 of 2016 therefore the appellant ought to prove how the District Tribunal had no jurisdiction. He insisted that the case had already moved from the courts which have no jurisdiction to the courts with jurisdiction on land matters as per section 167 of the Land Act. That the best direction for attaining justice was to assess the correctness of the District Tribunal's decision. He prayed for this appeal to be dismissed with costs.

In rejoinder the appellant reiterated the main submission and added that there is no judgment from the High Court nullifying the decision in Land Case No. 216 of 1999 from Morogoro Primary Court. Further he said that respondent did no win Land application No.202 of 2016 as the District Tribunal failed to pronounce the winner. He insisted that Land Application No.202 of 2016 has already been adjudicated through Land Case No.216 of 1999.

The issue for determination is whether this appeal has merit. As per the records there is no dispute that the parties herein have been in constant litigation over the suit land from the year 1999. Most of the cases between the parties were criminal trespass initiated by either side which could not establish the ownership of the suit land. However, the turning point was Criminal Appeal No.08 of 2016 in the District Court of Morogoro between the appellant and the respondent herein. In the said appeal, the District Court upheld the decision of Morogoro Urban Primary Court in Shauri la Jinai No.164/2015 in which it was decided that the parties herein should go to the proper land courts for determination of the lawful ownership over the suit land. Worth to remember is that the issue of lawful ownership was once

dealt with in Shauri la Madai No.216/1999 in Morogoro Urban Primary Court. However as aforesaid, the District Court being higher in the hierarchy ordered the dispute to be adjudicated in a proper forum related to land matters and hence the impugned judgment in Land Application No.202 of 2016.

As stated above, the appellant abandoned the 3rd and 4th grounds of appeal, therefore there are only two grounds to determine in this appeal; **One** whether the Tribunal's Chairman erroneously concluded the matter by distorting the appellant's evidence and **two,** whether the District Tribunal had jurisdiction to entertain the matter.

As for the issue of jurisdiction, it is the appellant's contention that the District Tribunal had no jurisdiction to entertain the matter as per section 9 of the CPC since the matter had already been conclusively determined by Morogoro Urban Primary Court via Shauri la Madai No.216/1999. However, in Shauri la Jinai No.164/2015 when the same court was referring the matter to the competent land Tribunals/Courts, the Court observed among other things that the land in dispute is different from the disputed land in Shauri la Madai No.216/1999 (refer last paragraph of the 7th page of the judgment in

Shauri la Jinai No.164/2015). The said decision was confirmed by Morogoro District Court in Criminal Appeal.08/2016. As per the records, the decision of Morogoro District Court was not appealed against, therefore its decision remains valid, therefore there is no valid decision involving the same parties and same subject matter by the courts of competent jurisdiction as alleged by the appellant. The court thus had jurisdiction to entertain the matter.

On the issue of the Tribunal's erroneous conclusion in the impugned judgment, it is obvious that the Chairman failed to decide. The Chairman's verdict referred the matter to the High Court for directions. Neither the applicant nor the respondent was declared the lawful owner of the suit land. It is my considered view that the Tribunal's judgment does not meet the qualities of a judgment because there is no decision and reasons for the decision as provided by **Regulation 20(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003.** Looking at the Tribunal's judgment there is no reasoned decision, only the Chairman's expression of dilemma. This cannot be termed as proper contents of a judgment as discussed in the case of **Caritas Tanzania vs Stuart Mkwawa (1996) TLR 239** where the court referred to Order XX

Rule 4 and 5 of the CPC which is similar to Regulation 20 of the Regulations. In this case the court was of the view that a judgment must contain a concise statement of the case, points for determination, the decision arrived at and the reasons for such decision. Looking at the last page of Tribunal's judgment the Chairman states:

> *"The honourable assessors sat with me gave opinion to the effect that the Respondent invaded the applicants land his area be demolished, I hereby found necessary to refer the matter to the High Court for further directions as by myself in this situation I am in dilemma"*

The Chairman then went further and gave the decree, meaning that the matter has been concluded. But on the other hand, the Chairman referred the matter to the High Court for directions stating that he was in a dilemma. If at all he was in a dilemma as he alleges, he ought to have stayed the judgment pending directions by the High Court. The fact that there is a decree means that the matter is concluded because a decree requires to be executed and a decree in a dilemma is not executable. In that respect and considering the above cited authorities, one cannot state that there is judgment by the District Tribunal but rather the judgment is irregular in the eyes of law.

Basing on the findings above, this appeal is allowed on the ground that there is no proper judgment on record according to the cited law above. The case file is to be returned to the Tribunal for the Chairman to properly evaluate the evidence on records and compose a judgment reflecting a clear, concise, correct reasoning and verdict. Each party to bear his own costs.

It is so ordered.

V.L. MAKANI
JUDGE
12/07/2021