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

LAND APPEAL NO.142 OF 2019

(From the Decision of the District Land and Housing Tribunal of Kibaha District.at Kibaha in Land Case No. 14 of 2014)

MUHENGA MBEGA KINYOLILA..... APPELLANT

VERSUS

BAKARI M SENGOLI.....1ST RESPONDENT
HUSSEIN HASSAN SENGOLI.....2ND RESPONDENT

JUDGMENT

OPIYO, J:

The mater originates from the District Land and Housing Tribunal of Kibaha District here in after called the trial tribunal. The respondents jointly sued the respondent for trespass over their piece of land, measuring 3 acres, located at Bwilingu Village, Chalinze, Bagamoyo District in Coast Region. The respondents have claimed further that the suit land was allocated to them by the Village Government after they presented their application before it for the same. They have been in occupation on that land since the year 2000 and the appellant appeared in 2012 to claim the ownership of the suit land, hence this dispute. The decision of the trial tribunal favoured the respondents while the appellant was declared a trespasser and ordered to vacate the land and remove all of his properties present on the suit land. The appellant was aggrieved by the decision of the trial tribunal and has preferred this appeal with the following grounds; -

1. That, the learned Chairman erred in law and facts for ignoring the facts that the respondent's testimonies at the Ward tribunal and at the District Tribunal were greatly different on how they acquired the suit land.

2. That, the learned Chairman erred in law and facts for failure of the respondents to prove that they acquired the suit land through a lawful process.

3. That, the learned Chairman erred in law and facts for not revealing the variations and differences in testimonies of the respondent and their witnesses.

4. That, the learned Chairman erred in law and facts for not revealing the lies of the respondent who said he was allocated the land in 2000 while PW2 stated that the dispute arose in 2009 and the appellant has been farming on the suit land since 2000-2011.

5. That, the learned Chairman erred in law and facts for assuming that the land which was officially located to several people by a special group of people could be conducted without documentation while any land is granted virtue of writing.

6. That, the learned Chairman erred in law and facts for misdirecting himself for believing that the said Mzee Omary Mbega had an ability to surrender the land of his late young Bother who gave his farm to the respondents.
7. That, the learned Chairman erred in law and facts for not asking himself why the old person surrendered only appellants farm to the respondent.

8. That, the learned Chairman erred in law and facts for testifying that the appellant had his land which was under the care of his uncle but no evidence was tendered to that effect.

9. That, the learned Chairman erred in law and facts for unreasonably ignoring the testimonies of the appellant's side.

The appeal was heard by written submissions. Mr. Saiwello Kumwenda appeared for the appellant and the respondents were represented by Advocate Job kerario.

Submitting on the 1st ground, Mr. Kumwenda for the appellant maintained that, the parties were duty bound to tell the Ward and District tribunals how they acquired the land in dispute. However, the testimonies given by the respondents before the two tribunals are different and are tainted with lies for the purpose of snatching the appellant's farm. He went on to insist on the 2nd and 5th grounds that, the respondents failed to provide any written document to prove that the village government allocated the suit land to them. On the 3rd ground, it was argued that, the trial learned chairman decided in favour of the respondents while the testimonies of their witnesses differed greatly. On the 4th ground, Mr. Kumwenda was of the view that, it is not true that respondents were safely farming the suit land since the year 2000-2011. If that is the case, why the dispute the dispute arose in 2009. That means the respondent's witnesses lied before the trial tribunal. It was argued further on ground number 6 that, the respondents failed to show how Mzee Omary Mbega gave the suit land to the village leaders on behalf of the appellant and further that no actual size of the said land was stated. Therefore, it was not right for the trial tribunal to decide in favour of the respondents in such circumstances. On

the 7th and 8th grounds, the appellant's counsel submitted that, the trial chairman had a duty to question himself if Mzee Omary Mbega just surrendered the appellant's farm to the village leaders or the same was snatched by the said leaders through Mzee Omary Mbega and gave it to others while the appellant was still alive. Lastly on ground number 9, the appellant's counsel insisted the trial tribunal unlawfully ruled in favour of the respondents regardless the discrepancies associated with the respondents' evidence.

Mr. Job Kerario replied the submissions by the appellants' counsel generally that, the proceedings at Bwilingu Ward tribunal in respect of the said matter was nullified by the District Land and Housing tribunal of Kibaha, hence cannot be a reference in what transpired in the trial tribunal with regard to the dispute at hand. He insisted that, the discrepancies pointed out by the appellant's counsel are minor and do not affect the decision of the trial tribunal. The fact remain undisputed is the truth that the respondents have been in occupation on the suit land since the year 2000 with the approval of the village authority, hence the trial tribunal was right to declare them as lawful owners of the suit land. Lack of minutes from the village authority doesn't mean that the respondents were not allocated such land as there was uncontroverted evidence. The regularization of the respondents can be done after the judgement of the trial tribunal as observed in the case of **Flaviana Mathew Nyendikuu versus Mauseni Kamela, (PC) Civil Appeal No. 45 of 1987, High court of Tanzania at Dar Es Salaam, (unreported), quoting in approval the decision Methuselah Paul Nyangwaswa versus Christopher Mbote Nyirabu, Civil App. No. 14 of 1985, Court of Appeal of Tanzania**, where the court had this to say:-

"By regularizing his occupation of the land he purchased from Patrick I take it that the court of Appeal meant that Nyangwasa should go and obtain the necessary consent from the village council. In this instant case too, I advise the appellant to regularize his occupation of the land he bought from the respondent by now applying for and obtaining the consent of the village council and the transaction"

The respondents counsel insisted that, the decision of the trial District Land and Housing Tribunal for Kibaha was well considered decision and should not be disturbed by any means in the instant appeal.

In his rejoinder submissions, the appellant's counsel reiterated his submissions in chief and maintained that, the appeal be allowed.

Having gone through the records and submissions of parties, my observations as far as the appeal at hand is concerned are generally that, the same is baseless and worth of dismissal. From its onset, looking at the memorandum of appeal I struggled with difficulties to understand what the appellant meant in each ground. Fortunately, that did not make me fail to analyse what I could grasp from the memorandum. The grounds of appeal the way they appear in the memorandum of appeal have failed to show the errors so complained of on part of the trial chairperson, rather they are mostly complaints in comparison to what had transpired in the ward tribunal in an application that was nullified and the trial tribunal had no record of the same. The appellant seems to complain of issues which have no legal effect as seen in the first ground of appeal. He faulted the trial tribunal for matters that transpired in the Ward tribunal forgetting that, they did not form part of the matter at the hand of the

trial tribunal. The tribunal correctly made decision, from what was before it. The first ground is therefor baseless. It is dismissed.

As for the remaining grounds of appeal, 2nd-9th grounds, I have noted nothing suggesting any fault on part of the trial tribunal in deciding the case before it in favour of the respondents. The trial tribunal fairly considered the evidence of both parties and came out reasoned decision. Its decision cannot be put in the basket of bad decisions for lack of reasoning as insinuated by the respondent. The evidence on records have proved that the suit land was given to the village authority voluntarily by Mzee Omary Mbega, and the same was later allocated to the respondents for 11 years before the appellants attempt to take the same in 2011. The appellant technically agreed in his testimony that, there were pieces of land that were allocated to individuals at some point, but that excluded his land. This is different from what he insinuates in his submissions in which he completely denied knowing any allocation, for lack of documentation. The subsequent denial alone does not show that no land was allocated to the respondents. Therefore, in my considered view, the respondents being the bonafide occupiers have nothing to do with how the land in question came into possession of the village authority, their concerns were to be allocated land and nothing else. If the processes were not documented, it is for the village government to complete the processes and accommodate the respondent in the land allocation registers (**Flaviana Mathew Nyendikuu versus Mauseni Kamela (supra).** From that, it is in my considered opinion that the 2nd – 9th grounds are also without merit and they are hereby equally dismissed.

In the final analysis, the entire appeal is hereby dismissed with costs.

M.P. OPIYO,

JUDGE

1/3/2021