IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 182 OF 2022

KHALFAN NASSORO RUHOMBO..... APPELLANT

VERSUS

MTONGANI VILLAGE COUNCIL ..... 1ST RESPONDENT

SELEMAN PAZI ..... 2ND RESPONDENT

YASIN MWANGA ..... 3RD RESPONDENT

KASULE AMBOGO .....4TH RESPONDENT

ELIBARIKI LYAMUYA ..... 5TH RESPONDENT

MOHAMED MUHID JUMAA ..... 6TH RESPONDENT

IDDI LIMBOKA ..... 7TH RESPONDENT

RASHID LIMBOKA ..... 8TH RESPONDENT

JUDGMENT

Date of last Order: 30/3/2023

Date of Judgment: 25/4/2023

A. MSAFIRI, J.

This appeal originates from the decision of Kibaha Land District and Housing Tribunal (trial Tribunal) in Land Application No. 21 of 2015 which was delivered on 02/02/2018.

In the said dispute, the current appellant was an applicant and has instituted a suit against the respondents. The dispute was a piece of land

measuring five (5) acres (herein as suit land or suit property) located at Kilangalanga Village, Mlandizi, Kibaha District.

Briefly, the applicant claimed the ownership of the suit land. The applicant/appellant claimed that, the 1st respondent, the Village Chairman of Mtongani Village sold three (3) acres, which are part of suit land to the 6th respondent. The applicant also claimed that, the 2nd respondent on his own, sold part of the applicant's land to six unknown people. The applicant claimed further that the 7th & 8th respondents invaded the applicant's land (suit land) and erected houses on it. They also sold part of the suit land to the 3rd, 4th and 5th respondents.

After hearing of the application, the trial Tribunal dismissed the same without costs and declared the respondents the lawful owners of their respective pieces of land in the suit land.

The appellant was aggrieved and lodged the current appeal backed by a memorandum of appeal carrying three grounds of appeal as follows;

1. That, the trial Tribunal erred in law and facts for disregard to visit locus in quo.
2. That, the trial Tribunal erred in law and facts for not considering that to whom the Respondents (sic) the title was properly passed from the Appellant.
3. That, the trial Tribunal erred in law and facts for failure to evaluate and analyze properly the documentary evidence tendered by the Appellant.

The appellant prays for the appeal to be allowed and the judgment of trial Tribunal be quashed with costs.

The hearing of the appeal was conducted by way of written submissions whereby the appellant was represented by Frank Mposo, learned advocate, the 1st respondent was represented by Emmanuel Mkwe, Senior State Attorney, whereas the 2nd- 8th respondents were represented by Idd Mussa Msawanga, the learned advocate.

On the 1st ground of appeal, Mr. Mposo submitted that in the trial judgment, the Chairman have discovered that the appellant's evidence does not show either the location of the land or the boundaries of the bought disputed land by the appellant. That, this was enough reason for the trial Tribunal to visit the locus in quo. He stated further that, it was also the appellant's prayer before the trial Tribunal for the same to visit the locus in quo in order to have a clear picture of the disputed land. But the trial Tribunal disregarded this.

Mr. Mposo admitted that, the Tribunal shall have to consider some factors for a visit of locus in quo to be conducted as stated in numerous cases of this Court and the Court of Appeal, but Mr. Mposo argued that, the trial Chairperson should have agreed after discovering that the evidence tendered by parties was conflicting and contradictory so it was imperative for the trial Tribunal to visit locus in quo.

To cement his print, he cited the Court of Appeal case of **Avit Thadeus Massawe vs. Isdory Assenga**, Civil Appeal No. 7 of 2017 (unreported)

and the High Court case of **Samwel Maleo vs. Peter Kimaro,** Land Appeal No. 8 of 2019, High Court Moshi Registry (unreported).

On the second ground of appeal, counsel for the appellant Mr. Mposo submitted that the act of the appellant being the first person to buy the disputed land gives or entitles him to have a good or better title over the respondents who trespassed in the appellant's land without his consent as the owner of the dispute land for more than 30 years.

He cited the case of **Jumanne Chimpaye vs. Daud Mohamed Mkwaje,** Misc. Land Appeal No. 06 of 2020, High Court at Kigoma Registry (unreported), where it was held thus;

> *"it is the appellant who has the better title over the dispute land and no any other who could properly pass that title other than him."*

On the third ground of appeal, it was alleged by the appellant that the trial Tribunal erred for failure to evaluate and analyse properly the documentary evidence tendered by the appellant. The counsel averred that, the appellant properly substantiated his right of ownership over the suit land. That the appellant had properly proved his case on the balance of probability as per the requirement of the law.

The counsel for the appellant prayed for the Court to hear and entertain the appeal on its merits and quash and set aside the decision of the trial Tribunal.

In reply, the 1st respondent submitted on the first ground of appeal that there is no law in Civil jurisprudence that makes visiting of the locus in

quo a compulsory procedure in land matters but such practice is conducted at the discretion of the Court, depending on nature of the case itself.

He added that, in the case before trial Tribunal, the substance of dispute was all about ownership of suit land, and the determination of the matter was centered on whether the suit land located at Kilangalanga, Mtongani, Mlandizi Ward is the property of the applicant (now appellant).

The counsel for the 1st respondent stated further that, in establishing his ownership of suit land, the applicant tendered sale agreement as Exhibit P1. However, the said agreement as inspected by the trial Tribunal, failed to prove or establish ownership as claimed by the applicant. That, the sale agreement was ambiguous and uncertain as it did not indicate the location or boundaries of the land sold.

The counsel added that the uncertainty or vagueness of sale agreement alleged to confer title of suit land to the applicant cannot be a factor for compelling the trial Tribunal to visit locus in quo. Doing so would amount into making the trial Tribunal part of the applicant's (appellant) witness rather than independent adjudicator of justice.

He averred that the cases cited by the appellant in support of his evidence are distinguishable from this case.

To buttress his arguments, he cited the case of **Dar es Salaam Water and Sewerage Authority vs. Didas Kameka and 17 others,** Civil Appeal No. 233 of 2019, CAT (unreported).

On the second ground of appeal, Mr. Mkwe submitted that, the appellant's contentions about the issues of passing good title and priority are

misconceived and inapplicable as there was no such matters for determination by the trial Tribunal.

He added that, in the trial, the appellant has failed to prove or establish any title over the disputed land. On the principle of priority, the counsel argued that the same exists only where there are two contesting parties, each deemed to have a valid title, and hence the former or first person to acquire it prevails over the latter or second person to get it. However, he insisted such principle does not apply in the ongoing matter as there are no two valid titles co existing over the suit land.

The counsel concluded that the averments and cases cited in support of this second ground of appeal are immaterial, unrelated and have no connection to the facts of the case appealed from.

On the third ground of appeal, the counsel for the 1st respondent submitted that, the trial Tribunal ascertained properly all evidence before it both oral and documentary in arriving at its well-reasoned decision.

He added that, the appellant failed to understand and appreciate that the sale agreement which he tendered to support his claim of ownership was defective in itself and constituted an absurdity in the eyes of the law due to its vagueness.

He submitted further that the appellant failed to prove ownership over the disputed land, and the cases cited by the appellant in support of the third ground of appeal have no relevance to this case.

In conclusion, the counsel for 1st respondent contended that the grounds of appeal raised by the appellant are devoid of merit and prayed for this Court to dismiss the appeal in its entirety with costs.

The 2nd, 3rd, 4th, 5th, 6th, 7th and 8th respondents also filed their reply in opposition of this appeal. The submission was advanced by their counsel, Mr. Msawanga.

First, the counsel pointed to the Court that through records presented by 1st respondent, the appellant has never owned a suit premise, and he is not recognized by the Village Council of Mtongani, so he lacks legs to stand on his allegations.

On the first ground of appeal, Mr. Msawanga submitted that, the visiting of the suit premises (locus in quo) was done by the trial Tribunal as per the proceedings where the appellant failed to show the features of this land as per his testimonial. That, the appellant failed to show the boundaries of his land, and also failed to show five acres which he claims. In the result, the appellant failed to prove the size of his land, and hence failed to prove that the suit land belongs to him.

On the second ground of appeal, Mr. Msawanga submitted that the better title rise from lawful acquisition of the land in which the appellant failed to prove his ownership over the suit premise.

He contended that, it is clear that the appellant obtained land from TANU office which has no authority to allocate land, and the purported sale agreement does not show the boundaries (neighbors).

The counsel said that, in Mtongani Village, there is no place called Wakuti or Kilangalanga area while the application claims that the suit premise is located at Kilangalanga which is not within Mtongani Village.

He added that, the exhibits tendered by the appellant before Kibaha District Tribunal did not prove ownership of the suit premises. He prayed for the Court to dismiss this appeal in its entirety with costs.

The was no rejoinder.

Having gone through the submissions by the parties to this appeal, the important question is whether this appeal has merit.

I will determine the merit of the appeal by analysing the grounds of appeal in seriatim as they were raised and argued by the appellant.

The first ground is that the trial Tribunal erred in law and facts for disregard to visit locus in quo. The appellant argued that it was his prayer before the Tribunal to move the same to visit locus in quo to have a clear picture of the disputed land, but the Chairman decided to disregard the appellants' request.

However, I find the appellant's claims to be untrue and misconceived for the reason that the trial Tribunal did visit the locus in quo as it is shown in the record of the trial Tribunal.

The proceedings of the trial Tribunal as per the records shows that, the Tribunal visited locus in quo on 15/9/2017 following an order of 21/8/2017. This was done before the delivery of judgment after the closure of defence case.

On 15/9/2017, the applicant was present in person along with his advocate, Mr. Fungo, together with the 1st – 7th respondents. According to the un-typed proceedings of the trial Tribunal, the trial Tribunal visited the locus in quo so that the same could see the status of the suit land. It is recorded that, while at the locus in quo, the Tribunal was shown the suit land by the then applicant who was PW1.

The Tribunal made observations that, the land shown was measured 97 x 560 footsteps which is equivalent to 8 acres, contrary to 5 acres which were claimed by the applicant. Further, PW1 could not specifically identify which piece of land is occupied by who. That, the applicant just showed generally that, that area was his property.

" Hili ndilo shamba langu lilivamiwa na wadaiwa."

The trial Tribunal also observed that the suit land is occupied and comprised of about 50 houses and residents, but the applicant has sued only seven (7) people.

The fact that the trial Tribunal visited locus in quo is also supported by the Gentleman and Lady assessors who stated in their opinion that, the trial Tribunal visited the suit land, and that the appellant could not specifically identify his claimed land as per his sale agreement.

Therefore, beside the fact that visiting the locus in quo is entirely in the Court's discretion as it was observed in the case of Court of Appeal of **Sikuzani Saidi Magambo & another vs. Mohamed Roble,** Civil Appeal No. 197 of 2018 CAT at Dodoma (Unreported), the trial Tribunal in the

dispute at hand visited the locus in quo and made observations which helped in determination of the matter.

Basing on the above analysis, I find the first ground of appeal to have no base and I dismiss it.

The second ground is that the trial Tribunal erred for not considering that to whom the respondents the title was properly passed from the appellant.

This ground of appeal is determined while considering the issue on whether the appellant proved before the trial Tribunal that he is the lawful owner of the suit land. It is only if the appellant has proved the ownership of the suit land when the issue of his passing the title to the respondents could have been considered by the Tribunal.

I say so because if the appellant failed to prove his ownership of the suit land, then he has/had no good title to pass to the respondents. In addition, the issue of first priority cannot be considered or determined before the issue of ownership has been ascertained.

Having read the proceedings, and judgment of trial Tribunal, the issues agreed for determination were two; first, whether the suit land located at Kilangalanga, Mtongani, Mlandinzi Ward is the property of the applicant hereof, and; second, to what relief (s) are parties entitled to.

In proving the ownership of suit land, the applicant had three witnesses including himself. He also tendered the Sale Agreement which was admitted as Exhibit P1. I have seen and read Exhibit P1. It is titled "Hati ya Mauzo". It shows that one Jonas Melele sold a farm to Khalfan Nassoro

Ruhombo (appellant), sized 5 acres on 05/06/1969. The document does not describe the farm, the neighbourhood or where it is located. As far as Exhibit P1 is concerned, the farm can be anywhere in Mlandizi.

Furthermore, none of the people who are listed as witnesses came to testify in the Tribunal.

PW2 who gave evidence for the applicant, stated that he was a labourer in the farm of the applicant, that he did not stay long at the farm and knows nothing about the alleged trespass.

PW3 evidence was basically on the information he was given by the applicant. He said that he knows nothing on the history of ownership of the suit land apart from being told by the applicant himself that he bought it in 1968.

Having examined the evidence advanced by the appellant during the trial, I agree with the findings of the trial Chairman that the applicant has totally failed to prove his claim over the suit land.

Since the appellant failed to prove the ownership of land and the trial Tribunal declared so, then it was right not to consider on the issue of whether the title was properly passed from the appellant to the respondents and to which respondent. The appellant had no any title to pass to the respondents since he failed to prove on balance of probability that the suit land belonged to him.

I find the second ground of appeal to have no merit and I also dismiss it.

The third ground is that the trial Tribunal erred for failure to evaluate and analyze properly the documentary evidence tendered by the appellant.

The appellants claim over the suit land is centered on sale agreement, Exhibit P1.

In his submission before the Court, the appellant through this counsel, stated that he had properly substantiate his right of ownership over the suit land. That the sale agreement was properly entered and witnessed by TANU office (as it was then called) which is now Mtongani Village Council.

However, as I have observed earlier, the sale agreement which is the base of the appellant's claim of ownership, does not describe the land which the appellant claims he bought from one Jonas Melele. The sale agreement does not even show where the land is located in Mlandizi.

The words "*Imethibishwa na Serikali ya Kijiji*" (approved by the Village Government), which appears on the bottom of the said sale agreement gives more confusion as it is not clear which Village Government is approving the sale.

The official stamp on the sale agreement, which shows "Ofisi ya TANU, MLANDIZI", does not help to reveal the location of the piece of land bought by the appellant from Jonas Melele in 1968.

In the circumstances, I have to agree with the findings of the trial Chairman that, the sale agreement, Exhibit P1 has no connection with the suit land. With exhibit P1, the applicant could have claimed any land in Mlandizi! I find that the trial Tribunal did evaluate and analyse properly the

documentary evidence tendered and came with fair and right decision. I also dismiss the third ground of appeal for lack of merit.

For the foregoing reasons, I find the appeal to have no merit and I dismiss it in its entirety. I give no order as to the costs basing on the observation of the trial Tribunal on the condition of the appellant.

Right of appeal explained.

It is so ordered.

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A. MSAFIRI

JUDGE

25/4/2023