

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

MISC LAND APPEAL NO. 26 OF 2023

(Originating from Land Appeal No. 09 of 2021 Temeke District Land and Housing
Tribunal)

ALEXANDER SEBASTIAN MSIMBE.....APPELLANT

VERSUS

SALUM MOHAMED MNETE.....1ST RESPONDENT

HAJI MOHAMED MNETE.....2ND RESPONDENT

JUDGMENT

31/08/2023 to 05/09/2023

E.B. LUVANDA, J

The Appellant named above sued the Respondent mentioned above for trespassing suit land comprised in residential licence TMK/MBGK/MKK 13/243 exhibit P1. After full trial and visiting *locus in quo*, the trial Tribunal ruled that the Appellant failed to prove his claim, as such dismissed it with costs. The Appellants is unhappy with this verdict, hence this appeal. In the petition of appeal, the Appellant raised the following grounds:-

1. The trial Chairman erred in law and fact by failing to consider the boundaries and dimension stated in the Appellant's tendered settlement (sic, residential) license which was admitted as exhibit P1 to prove the Appellant's ownership of the suit premises.
2. The trial Chairman erred in law and fact by failing to evaluate the evidence tendered by the Appellant both during the trial and during the visitation of the *locus in quo*.
3. The trial Chairman erred in law for failure to giving reason for deferring with the assessor's opinion.
4. The trial Chairman erred both in law and fact for drawing inference on the facts which never transpired during the visitation of the *locus in quo*.
5. The trial Chairman erred in law and facts when he grossly misdirected himself to hold that the Appellant failed to show boundaries of his suit premises while the same are clearly in the survey plan, issued with the settlement(sic, residential) license which he ought to have taken a judicial notice of.

Ground number one, on failure to consider the boundaries of the suit premise. The Appellant submitted that during trial it was evident that visible demarcation of their piece of land was the madrass tress (michongoma)

which were cut down by the Respondents. He submitted that he also tendered *leseni ya makazi* exhibit P1, which contain the dimensions and survey plan of a respective piece of land. He submitted that the person with a certificate of title will always be taken to be a lawful owner unless proved that a certificate was unlawful obtained. He cited **Amina Maulid Ambali & Two Others vs. Ramadhani Juma** Civil Appeal No. 35/2019. He submitted that it was wrong for the Tribunal to hold that the Appellant failed to show the boundaries of the disputed plot while the same are clearly shown in the survey plan of residential licence exhibit P1.

Ground number two for failure to evaluate evidence. He submitted that the Appellant tendered exhibit P1 to prove his ownership and dimensions of the suit premises, but the Tribunal never considered it nor examined its contents let alone to accord it any consideration. He submitted that the Tribunal ought to evaluate exhibit P1, instead of relying on physical demarcation which were intentionally destroyed by the Respondent long ago.

Ground number three, failure to give reasons. The Appellant submitted that the trial Chairman in his judgment nowhere offered specific reasons for differing with assessor's opinion, citing section 24 of the Land Disputes Courts Act, Cap 216 R. E. 2019. He submitted that the omission is fatal and entail this Court to quash the judgment.

Ground number four, facts not raised. The Appellant submitted that in his application (plaint) nowhere he stated that he has been planting crops in the disputed land as stated by the Tribunal at paragraphs five and six of the judgment. He submitted that this facts was neither raised in the pleadings nor during trial or during visiting the *locus in quo*. He faulted the Tribunal for assuming the role of collecting evidence and disapprove the facts given during the inspection of the *locus in quo*, instead of adjudicating on them.

In opposition, the Respondents on the first ground, submitted that it was not the duty of the Tribunal to identify boundaries, arguing that the Appellant was obliged to make sure he led and assist the Tribunal with clear Boundaries and real demarcations of the suit premises, arguing there is no proof in record that shows the said demarcations. He submitted that exhibit P1 does not state specifically the boundaries of the suit plot, and it was prepared without clear measurements rather was based on estimation. He cited the case of **Hemedi Said vs. Mohmaed Mbilu** (1984) TLR 113.

Grounded number two and three the Respondents combined and argued that there is no evidence that the Tribunal failed to evaluate evidence, argued that the evidence procured by the Appellant lacks weight and failed even to establish the demarcation of the suit land. Regarding opinion of assessors, he submitted that the Chairperson stated clearly that since the

parties failed to identify boundaries there is no way the Tribunal can rule otherwise.

Ground number four, the Respondents submitted that there is no any new fact raised by the Tribunal, arguing that the Tribunal used the same facts adduced on evidence tendered by the Appellant.

On rejoinder, the Appellant submitted that failure by the Tribunal to examine and disregard exhibit P1 which is approved by qualified surveyors and planner of the Municipal Council, amounted to failure to properly analyze the evidence. He submitted that the law require the Chairman to give reasons for differing with the opinion of assessors. He submitted that raising of new fact which was not pleaded by the Appellant and making decision basing on it, occasioned miscarriage of justice on the part of the Appellant.

On my part for ground number one. To my opinion the problem was orchestrated by the Appellant himself regard being made to the manner and mode he crafted and pleaded his facts or claim in the application (plaint). At paragraph 6(iii), he pleaded that the Respondents without any colour of right invaded and trespassed upon the suit premises, which on the face of it portray that the Respondents were accused for trespassing the whole suit land. Nowhere the Appellant pleaded that he was suing over encroachment on boundaries. No wonder even issues were framed to capture the question

of trespass and invasion. The question of encroachment and extension of boundaries cropped up in the course of the trial. The Appellant alleged that boundaries are clearly shown in exhibit P1. But the said document exhibits P1 merely capture location of the suit premises to be at Mbagala Kuu Ward, Makuka Street, with estimated size of the land to be 525 square metres. Therefore, it is a wrong notion for the Appellant to allege that exhibit P1 could assist to build up and prove his case on the alleged trespass and or encroachment. As alluded by the Respondent, even a size of the Appellants plot, exhibits P1 could not tell the exact size, rather suggest it is a mere estimate. Exhibit P1 does not capture any permanent mark on the ground, neither stated if any beacon was erected for geometry and land survey to depict the dimensional position of points, distances and the angles, which could enable tell the exact boundaries of the Appellant's plots. The rest, in absence of these professional measurements, remain to be tell tale.

In evidence, the Appellant who testified as PW1 stated on his testimony in chief that the Respondents cut down his palm tree in furtherance of eliminating evidence of boundaries. On cross examination by the learned Counsel for Respondents, PW1 maintained that there was a single palm tree. On the other hand, Zena Athuman Sagara (PW2) who is the wife of the Appellant, on cross examination by the learned Counsel for Respondents

stated that they placed a boundary of thorn trees (michongoma). PW2 made no mention of palm trees, likewise PW1 made no mention of thorn trees. Importantly, in its findings the Tribunal ruled that there is no element showing that any tree was cutdown at the *locus on quo*. Therefore, the first ground is dismissed.

For ground number two that the Tribunal failed to evaluate evidence. This grounds is without substance, at pages 5, 6, and 7 first paragraph of the judgment, the Tribunal deliberated on the evidence tendered by the Appellant. Regarding a second limb of the complaint that the Tribunal did not accord any consideration to exhibit P1, of course there was non. However, my adumbration on ground number above one suffices to answer this complaint, and I have ruled that exhibit P1 was of little value or at all useless in so far as demarcations and boundaries are concerned.

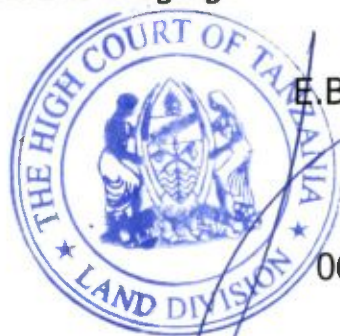
On ground number three, failure to give reasons for departure to the opinion of assessors. This ground is also unmerited. Reasons for the learned Chairman departure to the wise assessor's opinion, are reflected at page seven second paragraph from the bottom of the judgment. The learned Chairman made it clear that reasons for disagreeing with wise assessor's opinion are the same given when answering the first issue therein. May be if the Appellants wishes the learned Chairman to reproduce the same

reasoning. But suffices to say the reasons are there and therefore the alleged provision of section 24 Cap 216(supra) was not offended.

Ground number four, the Appellant complained that crops (biennial) was a new fact raised by the Tribunal at page four and five of the impugned judgment, arguing was neither pleaded, nor raised during trial or at the *locus in quo*. The Appellant is misleading or he don't know his own case and facts. In his pleading (application/complaint), paragraph 6(iii), the Appellant pleaded that some biennial crops were planted without the Applicant's (Appellant herein) consent or authorization. Therefore, his ground is without substance.

For that reasons, the appeal is without merit. The trial tribunal judgment is upheld.

The Appeal is dismissed. However, I make no order for costs for reasons that the Appellant is aging.



E.B. LUVANDA

JUDGE

06/09/2023

Judgment delivered in the present of the Appellant and the first Respondent who is also appearing on behalf of the Second Respondent.



E. B. LUVANDA

JUDGE

06/09/2023