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

LAND APPEAL NO. 282 OF 2023
(Arising from Land Application No. 88 of 2020, by the District Land and Housing Tribunal for Temeke)

MOHAMED ABDALLAH RAJABU.....APPELLANT

VERSUS

MUSSA IBRAHIMU MUSSA.....RESPONDENT

J U D G M E N T

Date of Last Order: 31.10.2023

Date of Judgement:16.11.2023

T. N. MWENEGOHA, J.

This appeal is based on the following grounds; -

1. **That, the Trial Tribunal erred in law and facts when it failed to admit and put in records Exhibits annexed to the Application;**
2. **That, the Trial Tribunal erred in law and facts when it failed to evaluate the evidence presented by SU1 and SM1.**
3. **That, the Trial Tribunal erred and fact when it failed to understand that the appellant his house since 2009 and the chambers were built in his area outside the wall before the respondent bought the land from SM5 in 2018.**
4. **That, the Trial Tribunal erred in law when it failed to understand that before the respondent bought the piece of**

SM5, the had no complain concerning the disputed land with SM5 until when the respondent bought the same from SM5 and built a wall which damaged appellant's chamber.

The appeal was heard through Written Submissions. Advocate Idd S. Mwinyi, appeared for the appellant, while the respondent was represented by Advocate Godfrey F Alfred.

Submitting on the 1st ground, Mr. Mwinyi insisted that, during the trial, the appellant tendered Exhibits to prove the damages caused by the respondent on the appellant's land. The same were not admitted by the trial Chairperson and no reasons were given for not admitting them. This act led to miscarriage of justice as stated in **Muhubiri Rogega Mangáteko versus Mak Medics Ltd, Civil Appeal No. 106 of 2019, Court of Appeal of Tanzania, at Mwanza.**

He went on to argue on the 2nd ground that, the evidence of SM5 was enough to prove to the satisfaction of the Tribunal that the respondent was a trespasser. She was the one who sold the suit land to the respondent and also showed the boundaries of the said land. This is against the rules given in the case of **Leonard Mwanashoka versus Republic, Criminal Appeal No. 226 of 2014, Court of Appeal of Tanzania at Bukoba**.

On the 3rd ground, Mr. Mwinyi insisted that, the appellant was the 1st person to own the land nearby the suit land, since 2009 and the appellant lived with the neighbors peacefully until the respondent came into his land in 2018. Therefore, the act of buying the piece of land by the respondent adjacent to the appellant's land created a problem which has never been there before due to the respondent's ignorance.

Lastly on the 4th ground, it was argued that, since the day the respondent bought the land on the area, there was no misunderstanding between him and his neighbors. The appellant built his wall and sewerage chambers were built outside the wall and everyone was respecting his boundary until the respondent emerged on the said area.

In reply, Mr. Alfred was of the view on the 1st ground that, the trial Tribunal admitted the appellant's documents as Exhibit P1 and P2. Therefore, it is not true that his Exhibits were not admitted. That, above all, the trial Tribunal visited the area in dispute and saw no damages on the same. Therefore, there was no proof at all of the damages claimed by the appellant. He argued further that, the case cited by the appellant of **Muhubiri Rogega Mangáteko versus Mak Medics Ltd,** (supra) is distinguishable to the case at hand. That, the respondent's evidence was heavier and he deserved to win as stated in **Hemed Said versus Mohamed Mbilu, (PC) Civil Appeal No. 31(B) of 1984**.

On the 2nd ground, Mr. Alfred insisted that, the appellant is trying to mislead the Court. That, the Trial Tribunal evaluated properly the evidence of both parties and their witnesses including that of SM5 who showed the bounderies and reached to a conclusion in favour of the respondent. The said SM5 is on record stating that she did not know the size of the land, hence her evidence is not sufficient to prove the case in favour of the appellant.

He went on to argue the 3rd ground that, the appellant has admitted in his submissions that he built the chamber outside his wall. The fact that he lived peacefully with other neighbors is not an issue, but what he owns

is that is within his fencing wall. Whatever is outside the fence is not his property.

Lastly on the 4th ground, the respondent's counsel maintained that, the claims by the appellant are unfounded and baseless. The appellant failed to prove how the respondent trespassed into his land. There is no doubt that the appellant's chambers were built on the land bought by the respondent. That, there was no misunderstanding between the respondent and SM5 and generally the appellant's evidence was very weak to prove his claim at the trial Tribunal.

In his rejoinder, the appellant's counsel reitarted his submissions in chief and prayed for the Appeal to be allowed.

Having heard the submissions of both counsels on behalf of the parties and also having gone through the records from the trial Tribunal, the issue for determination is whether the Appeal has merits or not. I prefer to consolidate all four grounds of Appeal and discuss them together as all of them focus on evaluation and analysis of evidence by the trial Tribunal.

The centre of the dispute between the parties is the claim that the respondent trespassed into the appellant's land. According to the facts contained in his Application, the appellant at paragraph **6 (v) and (vi),** stated that he fenced his property, leaving some inches outside his wall which he used the same for sewage system of his house. Further, he stated that, one of his neighbors was Hadija Omary Leteleni and they have been living together peacefully until when the said Khadija, sold her land to the respondent.

What I have picked from the above set of facts is that, the appellant has his land fenced. And further, his septic tanks were constructed outside his fenced land. To him, he claims he left ***"some inch outside his wall for the sewage system."*** That is to say, he was not aware of the exact size he left outside his wall, on few inches. The rules are settled that, parties are bound by their pleadings, see **YARA Tanzania Limited vs. Charles Aloyce Msemwa and 2 others; Commercial case No5 of 2015 High Court Commercial Division DSM (unreported)**. Looking at the pleadings presented by the applicant/appellant, they are confusing as to the exact size of the land in dispute which the respondent has trespassed upon. If he cannot describe the exact size of his land that was trespassed upon by the respondent, then it is hard for any Court or Tribunal to rule in his favour. This communicates that, there may be no land that has been trespassed upon, or the appellant does not know the exact land upon which his claim lies. In other words, the case before the Tribunal was not even supposed to be heard in the first place as the Application did not describe the suit land, sufficiently to identify the same. The law under **Order VII Rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019,** the law provides as follows; -

> *3. "Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number."*

Failure of the appellant, who was the applicant at the Trial Tribunal, to comply with the above mandatory provisions of the law made his suit to be incompetent before the trial Tribunal as decided in **Daniel Ndagala**

Kanuda (As an Adminstrator of the Estate of the late Mbalu Kushaha Baluda) versus Masaka Ibeho and 4 others, Land Appeal No. 26 of 2015, High court of Tanzania, at Tabora, (unreported).

In this case the Court observed that;-

> *"However, regarding unsurvayed land, specifications of boundaries and or permanent features surrounding the land at issue are very important particulars for the purposes of identifying the land from other pieces of land neighboring it."*

Therefore, on the account of the aforegiven reasons, I find the entire Appeal to be devoid of merits.

In the end, I quash the whole proceedings and the Judgment trial Tribunal and Orders that followed it are set aside. If any person is still interested with the dispute, should start afresh with a subject matter properly described in their pleadings.

No order as to costs.

T. N. MWENEGOHA

JUDGE

16/11/2023