

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

LAND APPEAL NO. 5068 OF 2024

(Originating from Application No. 25 of 2022, Mkuranga
District Land and Housing Tribunal)

MAMRO NASSOR SUPA (Administrator of the
Estate of the Late Issa Halfan Kumang'ando).....**APPELLANT**
VERSUS

SAIMON NDEGE CHACHA.....**RESPONDENT**

JUDGMENT

14th to 24th May, 2024

E.B. LUVANDA, J

The Appellant named above lodged five grounds of appeal to challenge the decision of the Tribunal dated 23/01/2024 where it dismissed his claim for ownership of fifteen acres of land situated at Kingongo Hamlet, Tengelea Village in Mkuranga District within Coast Region.

In the memorandum of appeal, the Appellant raised the following grounds:

One, the trial Chairperson grossly erred in law and fact for not considering documentary evidence tendered by the Appellant; Two, the trial Chairperson grossly erred in law and fact to reach into judgment without making site visit

to the disputed property; Three, the trial Chairperson grossly erred in law and fact to rule out without expressing what are the opinion of assessors.

Mr. Abdul Azizi learned Counsel for the Appellant submitted that during the hearing, the Appellant produced documentary evidence that is handing over documents from Tengelea Village Council when the disputed property was invaded by one Juma Gombole. He submitted that the document dated 24/09/2009 showed that the Appellant was the rightful owner of the disputed property measuring fifteen acres. He submitted that in 2015 the suit farm was trespassed again, and handed over back to the Appellant. He submitted that the trial Chairperson did not consider the document prepared by the village officials tendered by the Appellant to show ownership.

Ground number two, the learned Counsel submitted that the essence of visiting the *locus in quo*, is because the Appellant complained that the fifteen acres were trespassed, and mentioned neighbors, argued the Respondent also alleged to have ten acres and mentioned his neighbors which are different from those mentioned by the Appellant. He cited the case of **Ndenengosia Mlay vs Ngase Ndauka**, Land Appeal No. 28 of 2019, HC Land Division, for the proposition that the trial Chairperson was under obligation to visit so as to be certain on the disputed property.

Ground number three, the learned Counsel submitted that going through the whole judgment, the Chairperson did not show to what extent was the opinion of assessors, argued merely said she agree with opinion of assessors, citing sections 23(1),(2) and (3) and 24 of the Land Disputes Courts Act, Cap 216 R.E. 2019, regulation 19(1) and (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, GN 174 of 2003; **Hosea Andrea Mushongi (Administrator of the Estate of the Late Hosea Mushongi) vs Charles Garagambi**, Land Appeal No. 66 of 2021 HC Bukoba; **Elilumba Eliezel vs John Jaja**, Civil Appeal No. 30 of 2020, CAT.

In reply, Mr. Ferdinand Makore learned Counsel for Respondent submitted that the Appellant did not present any material document that show how the deceased owned the land in dispute. He submitted that looking on exhibit P3 and P4 which are handing over document by the Tengelea Village to the Appellant, do not indicate the name of the deceased but the bear the name of the Appellant, arguing the said document do not relate with the decease's ownership but rather indicate the name of the Appellant, arguing a claim by the Appellant was rendered unsubstantiated. He submitted that there was no explanation as to why the most key witnesses who surrendered the suit property were not called to give out their evidence.

For ground number two, the learned Counsel submitted that visiting the *locus in quo* is not mandatory requirement, citing **Kimonidimitri Mantheakis vs Ally Azim Dewji and Seven Others**, Civil Appeal No. 4 of 2018, CAT, page 5 and 6. He submitted that description of the suit land was clearly indicated by DW1. He submitted that the Appellant did not prepare any neighbor as a witness during trial, arguing there was no question of boundaries in dispute. He submitted that if the Appellant found appropriate visiting a *locus in quo*, he could had introduced it during the proceedings for the Tribunal to determine it.

Ground number three, the learned Counsel submitted that at page twenty-nine of the proceedings, the opinion of assessors were read out on 11/10/2023 in the presence of both parties. He submitted that at page nine of the judgment, the assessors' opinion were reflected and made clear that the Tribunal enjoins assessors' opinion

Regarding ground number one, the same is unmerited. The alleged letters for handing over the farm to the Appellant that is a letter dated 24/09/2009 exhibit P3 where alleged one Mohamed Ally Chembe handed over to the Appellant fifteen acres of farm located at Tengelea Village, Kingongo Hamlet along a letter dated 25/11/2015 part of exhibit P4 where it is alleged one

Juma Abdala Gombeko handed over a farm to the Appellant, were both considered by the Tribunal at page nine second paragraph of the impugned judgment. The Tribunal considered it by way of making a finding that the Appellant did not tender any other document to prove that the late Issa Halfan Kumang'ando was the owner of the suit farm. To my view, the argument of the learned Chairperson was premised on the fact that in exhibit P3 and P4 there is no mention that the suit farm was owned by the late Issa Halfan Kumang'ando for which the Appellant is acting as an administrator of his estate. Two, exhibit P4 is vague to the extent that there is no description of the alleged land nor depict its location, size or the owner. The alleged Juma Abdala Gombeko merely surrendered to the Appellant. Exhibit P3 depict a farm of fifteen acres of farm located at Tengelea Village, Kingongo Hamlet. As afore stated, the Appellant was suing as a legal representative of the late Issa halfan Kumang'ando under the letters of administration in Mirathi Na. 145 of 2009, Form No. IV part of exhibit P2, which was derived from the minutes of the family of the deceased which indicate was convened on 20/07/2009 part of exhibit P2, where at the agenda for commencement of a meeting, the clan members listed properties of the deceased as follows: a farm located at Zunguni Mingongolo Mkuranga District Coast Region and

a farm located at Nyavinondo Mwalusembe. The suit farm along the farm mentioned in exhibit P3 was not among the assets of the deceased. That is where a call for more evidence to prove that the suit property was part of the estate of the late Issa Halfan Kumang'ando, comes in. Therefore, exhibit P3 and P4 could not suffice to prove a claim of ownership by the late Issa Halfan Kumang'ando.

Ground number two, to my view a mere fact that each litigant is mentioning his own neighbors to his alleged farm, is not a sole reason for visiting the *locus in quo*. Above all, as alluded by the learned Counsel for Respondent, the Appellant raised this complaint as an afterthought, because at the trial nowhere intimated to make a prayer for visiting *locus in quo*. The records of the Tribunal reveal that after PW2 had testified, the Appellant asked to close his case without any reservation for visiting the *locus in quo* in future. Equally after DW4 had testified, the Respondent closed his case, and there was no prayer from either party for a need of visiting the *locus in quo*. Therefore, raised it by way of complaint at this stage, is awkward and unjustifiable.

Ground number three, the learned Chairperson is faulted for nothing. As alluded by the learned Counsel for Respondent, at page twenty-nine of proceedings depict assessors' opinion were read aloud before both parties.

At page nine second paragraph of the impugned judgment, the learned Chairperson captured a summary/verdict given by the assessors in their opinion. Therefore, to my view, the provisions of sections 23(2) and 24 of Cap 216 (supra) and rule 19(2) of GN 174 (supra), were complied with.

Having premised as above, the appeal is unmeritorious. The decision of the Tribunal is upheld.

The appeal is dismissed with costs.



E. B. LUVANDA
JUDGE
24/05/2024