IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 226 OF 2023

(Originating from Application No. 53 of 2016, Kibaha District Land and Housing Tribunal)

SIA AKWILINA MLAY.....APPELLANT

VERSUS

MARIAMU HABIBU.....RESPONDENT

JUDGMENT

7/05/2024 to 21/06/2024

E.B. LUVANDA, J

The Appellant named above is aggrieved by the decision of the Tribunal decreeing in favour of the First Respondent as the lawful owner of a land of three acres located at Mapinga Kwa Kibosha.

In the petition of appeal, the Appellant grounded that: One, the trial Chairman erred both in law and fact for holding the Respondent herein to be the owner of the disputed land; Two, the trial Chairman erred both in law and fact for holding that exhibit P1, P2 and P3 to be proof of ownership without assessing them; Three, the trial Chairman erred both in law and fact for failure to evaluate the evidence on record; Four, the trial Chairman erred both in law and fact for holding that the Applicant (sic, Appellant) herein is trespasser; Five, the trial

Chairman erred both in law and fact for delivering decision without providing reason to substantiate the delivered decision; Six, the trial Chairman erred both in law and fact for failure to evaluate and assess exhibit tendered and evidence adduced by the Appellant.

The Respondent defaulted to appear even after summons was published on 4/04/2024, hence the appeal proceeded in her absence.

Ms. Shamimu Kikoti learned Counsel for Appellant combined ground number one and two, she submitted that the trial Tribunal erred in determining the matter by only considering the testimony, exhibit and evidence that was given by the Respondent. She submitted that the Tribunal erred in law and fact while deciding the ownership of the farm by failing to consider the general principle in civil suit that who allege must prove, citing sections 110 and 111 of the Evidence Act, Cap 6 R.E. 2019. She submitted that during trial, the Tribunal admitted a letter for an application for allocation of the farm, a consent of being allocated the farm (*hati ya kupewa shamba*) and receipt of payment, exhibit P1, P2 and P3 respectively, where the Tribunal relied on it as the proof of the ownership of the farm. The learned Counsel submitted that the exhibits tendered are not sole proof of the ownership of an un-surveyed land. She submitted that at the trial, the Respondent said that the land was allocated to her by the Village Council in 1984 which according to her own testimony, she

was at age of 30 years, arguing is doubtful in its own. She submitted that the trial Tribunal erred in law and fact for holding the Respondent being the lawful owner of the disputed land and ignoring the fact that the village leaders are not the owners of the village land, therefore allocating the land without conducting village meeting was illegal. She cited the provision of sections 110 and 111 of Cap 6 (supra), for a proposition that the Respondent failed to prove her case, for explanation that the exhibits tendered, and testimony given during the trial left many doubts. She submitted that the Appellant successfully tendered her exhibits of ownership which were the two sale agreements, where one was a handwritten agreement between the parties and the second one was on the prescribed form from the village council and both agreements has specification of the disputed land. She submitted that the Appellant tendered the minutes of the village meeting which recognized the Appellant as the sole owner of the land in dispute. She submitted that the Appellant testimony was corroborated by the evidence of DW2 and DW1 as she bought the land in disputes since 1990 and being enjoying the said land since then.

The learned Counsel combined grounds number three and six, she submitted that the Tribunal erred in determining this matter without evaluating the evidence given. She submitted that the trial Chairman failed to evaluate and assess the exhibits tendered and evidence adduced by the Appellant. She

submitted that the Appellant has been a lawful owner and occupant of the farm since 8/09/1990 after having bought the said land from one Urembo Jaha and Mtoro Ramadhani as depicted on the sale agreement (exhibit KU1), arguing was later officiated at the Chama Cha Mapinduzi office at Mapinga Village on 19/09/1990. She submitted that the Appellant developed the farm by building a small house, planting various crops and subsequently engaged her next neighbor, one Kibwana Hamisi to cultivate and watch over the Farm. She cited the case of **Stanslaus Rugabe Kasusura and Another vs. Phares Kabuye** (1982) TRL 338, for a proposition that it is the duty of the trial court to evaluate the evidence of each witness as well as his credibility and make a finding on the contested facts in issue. She cited section 2 of the Land Registration Act Cap 334 (R.E 2019); **Francis Yustin Kambona (As the legal representative of the late Maria Yustin Kambona) vs. Elizabeth Seme and Another**, Land Case No. 2015 of 2020 (Tanzlii). She submitted that the Appellant herein on 20/10/2008 wrote a letter to Mapinga Village Council requesting to survey the land in dispute to attain a certificate of title, where the Village Council approved the appellant's request to survey the disputed land through two meetings held on 28/10/2008 and 13/11/2008 as per the minutes of the meeting exhibit KU2. She submitted that this Court is the first Appellate court where it has mandate to re-evaluate the evidence on records and subject it to analysis and if

warranted, arrive at its own decision, citing **Makubi Dogani vs Mgodongo Maganga**, Civil Appeal No. 78 of 2019 (reported to Tanzlii).

Ground number four the learned Counsel submitted that the Appellant was the lawful owner, occupant, and developer of the farm since 1990. She submitted that there was no evidence tendered by the Respondent in the trial Tribunal to show if the Respondent has ever occupied or developed the farm from the purported allocation in 1984 to the year 2016 when she filed a suit against the Appellant herein after the elapse of good 32 years. She submitted that, for the trial Chairman to hold that the Appellant is the trespasser while there was no objection with regard to ownership of the land in dispute whilst the Respondent made the request to the Village Council to survey the land in dispute in 2008, nor at any time before or thereafter for the period of more than 5 years.

For ground number five, the learned Counsel submitted that according to regulation 20(1) of the Land Disputes (The District Land and Housing Tribunal) (sic, Regulation GN 173 of 2003) it provides that a judgment shall consist of brief statement of facts, findings on the issue, a decision, and reasons for the decision. She submitted that this provision mandates the trial Chairman to give reasons leading for the decision made. She submitted that despite directives from this regulation, the judgment is hanging and leaves a lot of doubt as to the reasoning for the decision reached by the Tribunal Chairman. She submitted

that it is on the courts record that Appellant was receiving legal representation services from D.K.M Legal Consultant and when the Appellant was adducing evidence was led by Advocate Shamimu Kikoti, surprisingly in the typed judgment the trial Chairman said that the Appellant during the trial had no any representation.

On my part, I will tackle the grounds of appeal along the mode argued by the learned Counsel for Appellant. For ground number one and two, in the impugned judgment the learned Chairperson before landing to the verdict that the Respondent had proved her claim for ownership of the suit farm, considered and examined the evidence tendered by the Respondent, specifically the oral testimony of the Respondent which according to the Tribunal was supported by PW2 (sic, PW3 Bakari Selemani Malaya) who happened to be a member of a village council at Mapinga between 1984 to 1993, along a certificate for allocating land dated 7/02/1985 exhibit P2 and cash receipt dated 7/02/1985 exhibit P3. The Tribunal evaluated this evidence vis-à-vis the testimony of the Appellant who alleged to have purchased the suit farm measuring three and half quarter acres from one Urembo Jaha for a consideration of Tsh 30,000 and crops valued Tsh 50,000 making a grand total of Tsh 80,000 vide sale agreement dated 19/09/1990 exhibit KU1. The Tribunal faulted this evidence for the following reasons: One, in 1990 when the Appellant purport to have

purchased the suit land of 3.5 acres, it was already allocated to the Respondent;

Two, the purported consideration of Tsh 80,000 differs completely with exhibit KU1. In exhibit KU1 there are two sales agreement, the first is dated 8/08/1990 (handwritten version) depict sale of 3.5 acres for a consideration of Tsh 80,000, vendors were Urembo Jaha and Mtoro Ramadhani. The testimony of the Appellant is silent regarding purchasing a suit farm from the so called Mtoro Radhani. It is Kibwana Hams Kibwana who was defence witness number two on the part of the Appellant who asserted that the Appellant purchased the farm from Mtoro Ramadhani and a small portion from Jaha Urembo. This pose a serious discrepancy. One, it suggest the farm was predominantly purchased from Mtoro Ramadhani and only a certain small portion was purchased from Jaha Urembo. Two, a sale agreement dated 8/09/1990 does not state if the Mtoro Ramadhani and Jaha Urembo are co-onwers or own separate land.

The second sale agreement is dated 19/09/1990 being executed after expiry of ten days from the first sale agreement executed on 8/09/1990. In the second agreement, depict Urembo Jaha is vending to the Appellant a farm of unspecified size for a consideration of Tsh 30,000. In the second sale agreement, which the Appellant argued submitted to officiate the sale agreement dated 8/09/1990, but the name of Mtoro Ramdhani (co-vendor) is missing, instead there is a name of one Mtoro Ally who merely signed as a

witness. In both sales agreement there is no mention of value for crops as suggested by the Appellant.

In view of the above anomalies and contradictions, the learned Chairman correctly ruled that the evidence of ownership tendered by the Respondent was heavier compared to the Appellant's contradictory testimony.

For ground number three and six, as per my adumbration above, the learned Chairman critically analyzed, evaluated and assessed both the testimony of the Appellant and the Respondent as reflected at page four and five of the impugned judgment.

Regarding an argument that the Appellant developed the farm by building a small house, planting various crops and subsequently engaged her next neighbor, one Kibwana Hamisi to cultivate and watch over the farm, was not supported by evidence, according to the Appellant who testified as DW1, at the verge of commencement of preliminary stages of cleaning the suit farm contemplating green farm, she was transferred to Rombo Kilimanjaro, Tanga and Mbeya, she was on and off movement and failed even to inspect the farm. Even DW2 did not say if DW1 carried any development on the suit farm.

Ground number four, the Respondent explained to had engaged Mzee Muhuluka et all who cleared the heavy forest, planted permanent crops like coconut trees, mango trees, orange trees and cultivated seasonal crops and constructed a mud

two roomed house roofed by iron sheets, which according to the Respondent the mud hut was demolished by the Appellant in 2015. Indeed, the Appellant testified under oath that after purchasing she mowed crops found in the suit farm.

The argument that the Respondent sued in 2016 after elapse of thirty-two years, is legally untenable. As stated above, the Appellant asserted to had failed even to visit for inspection of the suit farm, for reason that immediately after purchasing she was transferred to another duty station at Rombo Kilimanjaro. Thereafter kept being transferred here and there.

The argument that the impugned judgment offends the provisions of regulation 20(1) GN 173 of 2003 (supra) for want of reason for the decision, was not grounded as a substantive ground of appeal. But for the sake of argument, the reasons for the decision are embedded in judgment where the learned Chairperson canvassed at page five paragraph two from the bottom downward up to page six paragraph one.

In totality the appeal is devoid of merit. The decision of the Tribunal is upheld. The appeal is dismissed. No order for costs.

E.B. LUVANDA
JUDGE
21/06/2024

Judgment delivered in the presence of Ms. Berdina Mitti Advocate for the Appellant and in the absence of the Respondent.

E.B. LUVANDA
JUDGE
21/06/2024