**IN THE HIGH COURT OF TANZANIA**

**AT DODOMA**

**LAND CASE APPEAL NO 49 OF 2015**

*(From the decision of the District Land and Housing Tribunal of Dodoma District at Dodoma in land case No. 69 of 2010)*

**SHABANI ALUTE & 12 OTHERS ..... APPELLANTS**

**VERSUS**

**SINGIDA URBAN WATER SUPPLY AND SANITATION AUTHORITY (SUWASA) .....RESPONDENT**

**JUDGEMENT**

*15/09/2016 & 14/12/2016*

**A. MOHAMED, J.**

The appellants sued the respondent in the Singida Land and Housing Tribunal in Land Application No. 69 of 2011 seeking for compensation of clan land appropriated by the respondent. They lost that case. And hence the instant appeal.

The brief facts leading to this appeal are that the appellants (then plaintiffs) claimed they had been occupying and using about 31 acres of land as communal clan grazing land in Singida for 5 successive generations. That in 2006, the respondent trespassed and developed the area by planting trees and erecting beacons thereon. They sued the respondent and sought compensation of 37

million shillings. On the other hand, the respondent maintained that area was declared a water reserve area in 1972 by his predecessor, the erstwhile Singida Region Water Department. And that it was given a title in 2006 by the Singida Municipal Council. Further that the said parcel of land had never been occupied prior to 1972. At the tribunal, judgment was given for the respondent.

Against the decision, the appellants appeal on two grounds;

1. That the trial tribunal erred in declaring the land belonged to the respondent while the evidence on record was in favour of the appellants
2. That the trial tribunal erred in holding the appellants did not deserve to be compensated on the ground the disputed land was never occupied nor was it clan land.

The appeal was disposed of by way of written submissions. In support of the 1st ground of their appeal, the appellants contended the respondent installed a water pump at the vicinity of the 31 acres of land but it was never stated at the trial tribunal whether such installation justified the respondent to acquire ownership of the area near the pump.

They went on to state the respondent did not provide documentary evidence of their claim that the area was surveyed as was said by DW2. Further that the size of the disputed area was not

stated in order to ascertain the exact size of the area purported to have been granted to the respondent.

It was the appellant's view that in his testimony, DW2 had admitted the area was used for communal grazing and he never denied the appellants were part of that community who owned a specific portion of the 31 acres. They therefore argued, on a balance of probability, the evidence on record is in their favour.

In regard to the 2nd ground to wit compensation, the appellants maintained that as admitted by DW2 the area was a communal grazing area, then they ought to be compensated by the respondent. And that section 11 (1) of the Land Acquisition Act [Cap 118 RE 2002] requires them to be compensated. The provision reads:

> ***"Subject to the provisions of this Act, where any land is acquired by the President under section 3, the Minister shall on behalf of the Government pay in respect thereof, out of the moneys provided for the purpose by parliament, such compensation as may be agreed upon or determined in accordance with the provision of this Act."***

It was their contention they were entitled to compensation after the respondent acquired the area as a water reserve.

In resisting the 1st ground of appeal, the respondent maintained DW1, DW2 and DW3's evidence was credible. He went on to say

That DW3 knew the land since 1972 when he was employed to manage and supervise environment and water resources in the the Singida Water Department. He had said the said area was unoccupied *mbuga* without any houses or cultivation within its vicinity. He said DW1 knew the area since 1989 when he was employed by the Singida Water Department. DW2, a councilor of the area testified he knew the area since 1985 when he settled at the Mitunduruni area where the disputed parcel of land is situate. He went on to say the well was established in 1972 with the assistance of an Australian Water Project company. And further that the respondent's occupation from 1972 to 2007 is a long standing one and proves his occupation of the area.

On ground two of the appeal, the respondent submitted that PW1, PW2 and PW3 failed to establish the land was clan land. He said PW1 failed to prove that the disputed land was clan land. Nor could he detail how it was succeeded by his forefathers. During the locus in quo PW1, PW2 and PW3 failed to show the demarcation of their land. Instead they used the respondent's fence and trees to show the boundaries. He said PW1 failed to prove any farming activities thereon or tell who dug the local wells found in the area.

He argued it had been established that the respondent was the owner of that land and therefore he was not obliged to pay any compensation.

As to the claim of the respondent's failure to produce documents that the land was surveyed, the respondent responded that the said survey was a water availability survey showing the location of the aquifer and not a land survey. And he clarified that local people continued to graze their livestock in that area as it had not been previously fenced.

After hearing the parties and upon reviewing the lower tribunal's record, I will now earnestly consider the appeal.

I will start with the appellants 1st complaint that the trial tribunal erred in giving judgment for the respondent whilst the evidence on record was in their favour . Upon perusal of the record, I find myself in agreement with the trial tribunal's decision. The respondent's evidence through DW1, DW2 and DW3 was credible. DW1, Mangu Charles Mangu, knew the land since 1989 when he was first employed by the Singida Water Department and knows the area quite well. DW2, Pantaleo Sorongai (DW2), a councilor of the area said he settled in that area in 1985 and knows it quite well. In fact, I am of the view, if the appellant's claims were well founded, DW2, in view of his position, ought to have supported the appellants' claim of ownership. I also found Renatus Mnyovele (DW3) being well conversant with the suit land since 1972 in the course of his employment in managing and supervising environment and water resources at the erstwhile Singida Water Department. He said a

water pump was installed in 1972 and no one claimed compensation of that land since then until the appellants' action in the lower tribunal. I am satisfied with his testimony in the lower tribunal that the disputed land was an uninhabited *mbuga* without any farming activities. The respondent was the successor of the said water department.

On the other hand, PW1 who claimed the area had been clan land, failed to detail how the said land was succeeded by his forefathers nor could he point out any farming activities there. He failed to name any clan members who dug up the local well. Again at the locus in quo, PW2 and PW3 could not even show the demarcation of their land. Instead they used the respondent's fence and trees as reference points. In view of the evidence on record, I accordingly find the 1st ground devoid of merit and I dismiss it.

The 2nd ground of the appeal being contingent on the success of the 1st ground has thus no legs to stand on. It suffices to say the appellants are not entitled to compensation as the disputed parcel of land has been proved to be legally owned by the respondent.

In the final, I find no reason to fault the trial tribunal's sound decision and I accordingly dismiss the appeal in its entirety with costs.

It is so ordered.

**A. MOHAMED**

**JUDGE**

**14/12/2016**

The right of appeal explained.

**A. MOHAMED**

**JUDGE**

**14/12/2016**