IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA

LAND APPEAL CASE NO. 02 OF 2020
(Originating from Land Appeal No. 17/2018 of Muleba District Land and Housing Tribunal)

ZEPHURINE MPAMBO.....APPELLANT

VERSUS

BUHANGAZA VILLAGE COUNCIL.....RESPONDENT

JUDGMENT

06th November, & 11th December, 2020

Kilekamajenga, J.

Before the District Land and Housing Tribunal for Kagera at Muleba, the appellant sued Buhangaza Village Council for encroaching into his land and cutting pine trees. On the other hand, there is evidence suggesting that the disputed land belongs to the Village Council but the appellant has just encroached into it. The trial tribunal was convinced that the land belongs to the village council hence the case was decided in favour of the respondent. The appellant being aggrieved with the decision of the trial tribunal, he appealed to this Court armed with twelve grounds of appeal. The grounds are haphazardly drafted and I take the discretion not to reproduce them in this judgment. The appeal finally matured for hearing

and the appellant appeared in person to argue the case; the respondent was represented by the learned solicitor, Mr. Kyabona.

In the oral submission, the appellant argued that village leaders of Buhangza village cut 164 of pine trees from his land. He reported the matter to the police who later advised him to file a land case in order to determine the ownership of the land. Initially, the appellant sued such village leaders vide application No. 170 of 2012 but he was later advised to sue the village council. In response, the village council also filed a counter claim alleging that the appellant trespassed into the village land. The appellant also filed a counter claim of Tshs. 5,000,000/= against the respondent. The respondent was supposed to reply to the counter claim within 21 days but failed to do so and the counter claim was heard exparte. The respondent finally failed to prosecute the application and it was dismissed. The trial tribunal further proceeded to determine the appellant's counter claim.

On the ownership of the land, the appellant argued that he applied for the land at Buhangaza District Council in 1990. On 22nd February 1990, Buhangaza Village Council approved the appellant's application for land

through the village meeting which deliberated the application on 13th February 1990. Thereafter, the appellant paid Tshs. 1,000/= for the land. He used the land for agricultural activities and that he planted pine trees. The appellant further argued that it was wrong for the trial court to determine the counter claim exparte; the tribunal was supposed to issue a default judgment. He also impugned the decision for the trial tribunal which decided that the appellant failed to prove ownership of 50 acres of land. He further alleged to own the land even before he applied for it in 1990. He urged the Court to declare the appellant the lawful owner of the disputed land.

On the other hand, the counsel for the respondent objected the appeal. He insisted that the disputed land belongs to the village council. The village land is about 400 acres in total. The disputed land is used by villagers to cultivate perennial crops and the appellant is one of the villagers who use the land under that category. Mr. Kyabona submitted that in 1980s the appellant lived outside the region of Kagera; he later came back in the village and started cultivating tobacco in the disputed land. But there is another land which is about 200 acres reserved as a natural vegetation and

source of water streams. The appellant also trespassed into this vast land and caused serious destruction to the natural vegetation.

Mr. Kyabona argued that to prove the counter claim, the appellant was supposed to prove ownership of the land. Therefore, it was right for the trial tribunal to determine ownership of the land before deciding on the counter claim. On the ownership of land, the trial tribunal doubted the documents tendered by the appellant on ownership of the land. For instance, the receipt tendered by the appellant showed that it was issued three years after the offer of the disputed land to the appellant. Furthermore, there were no minutes of the village council approving the appellant's application for land.

The counsel for the respondent further argued that in proving the claim, the appellant summoned only one witness; this was the person wrote the documents alleged to give title to the appellant on the land. The appellant was possibly trying to hide something in this case. Also, the documents used to prove the case had several errors. For instance, the receipt shows the boundaries of the disputed land something which raises doubts on

whether the appellant real owns the land. He finally urged the Court to dismiss the appeal with costs.

When rejoining, the appellant did not raise anything substantial rather than insisting that he owns the disputed land.

After considering the submissions from the parties, the grounds of appeal and other information available in the court file, the major issue that calls for determination is whether the appellant is the lawful owner of the disputed land. This appeal originates from the counter claim raised by the appellant. The appellant claimed compensation against the respondent for the pine trees allegedly cut by village leaders. The trial tribunal had to determine the ownership of the disputed land before determining the appellant's claim. In proving the counter claim, the appellant summoned only one witness to prove that he owned the land. The witness for the appellant was the person who signed the letter which alleged to offer the land to the appellant.

I am mindful that there is no number of witnesses required to prove a fact. See, **section 143 of the Evidence Act, Cap. 6 RE 2019**. However, the

fact that the appellant alleged to own the land since 1990, he was expected to have many villagers who could testify on the ownership of the disputed land. The only witness for the appellant, and that he is the person having interest in the land because he signed the letter alleged to offer the land to the appellant. In my view, I find the only witness for the appellant as a witness who had his own interest to serve. In the case of **Abraham Sagurani v. Republic [1981] TLR 265,** the Court stated that:

> *"Evidence of a person with an interest of his own to serve must be approached with care and should not be acted up unless collaborated by some other independent evidence."*

Furthermore, examining further into the documents submitted by the appellant to prove the allegation that he owned the land, the appellant alleged that he applied for the disputed land in 1990. The offer was accepted through the letter dated 22nd February 1990. He later paid, Tshs. 1,000/= to the village council as payment for the allocation of the land. However, as rightly observed by the trial chairman, the receipt was issued three years after the offer of the land to the appellant. Again, at the back of the receipt, there are further information about the size and boundaries of the disputed land. It is inordinate for the receipt to contain information

about the boundaries of the land. The size and boundaries could be stated in the letter of offer. It seems as if, the appellant added such information in the receipt after realising that the size of the land is unknown. In the same vein, throughout the whole file, I failed to grasp the size of the disputed land.

Under **Regulation 3(2)(b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003** the law requires the applicant to state the location of the disputed land. The regulation specifically provides:

> *3(2) An application to the tribunal shall be made in the form prescribed in the second schedule to these regulations and shall contain:*
>
> *(a)...*
>
> *(b) the address of the suit premises or location of the land involved in the dispute to which the application.*
>
> *(c)...*

The above provision of law is vital in ensuring that the tribunal deals with the land which is the subject matter in the dispute. In the instant case, the application filed by the respondent only shows the location of the disputed land. But there is no any information concerning the actual size of the land

in dispute. I am mindful of the case of **Daniel Dagala Kanuda (As Administrator of Estates of the late Mbalu Kushaha Buluda v. Masaka Ibeho and 4 Others Land Appeal No. 26 of 2015** (unreported) in which my learned brother Honourable Utamwa, J. extensively analysed the essence of the above provision of the law. In fact, it may be a serious misdirection to deal with the land when its location and size has not been stated in the application or in the evidence.

Furthermore, I have considered the documents supporting the appellant's case. The appellant argued that he was allocated the land by the village council in 1990. However, there is no document in the whole file to support that the village council approved the allocation of land to the appellant in 1990. Under **section 147(1) of the Local Government (District Authorities) Act, Cap. 287 RE 2002** the village council is empowers to manage the affairs and business of a village. The section provides:

> *'A village council is the organ in which is vested all executive power in respect of all the affairs and business of a village.'*

Therefore, in line with the above provisions of the law, the allocation of village land without the approval of the village council is null and void. The

Court of Appeal of Tanzania was also confronted with a similar dispute in the case of **Bakari Mhando Swanga v. Mzee Mohamedi Bakari Shelukindo and 3 others, Civil appeal No. 389 of 2019**, CAT at Tanga (unreported). The Court had the following observation:

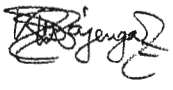
> *'Even if we assume that the purported sale agreement was valid, which is not the case, then the same was supposed to be approved by the village council...'*

The Court of Appeal went on stating:

> *'Under normal circumstances, it was expected for the appellant after he had executed the purported sale deed with Khatibu Shembilu, to present the document to the village council of Kasiga to get its blessings...The observation we make here is that there is no due diligence on the part of the appellant in the whole process of executing the purported deed of sale. In our view, he ought to have consulted the village council before embarking on the transaction.'*

In absence of the village council to prove allocation of land, the appellant's allegation that he was allocated the land has no legal backup. I hereby dismiss the appeal with costs. The appellant should immediately vacate from the disputed land.

Order accordingly.



DATED at **BUKOBA** this 11th Day of December, 2020.

Ntemi N. Kilekamajenga.
JUDGE
11/12/2020

Court:

Judgment delivered this 11th December 2020 in the presence of the appellant and respondent present in person. Right of appeal explained.

Ntemi N. Kilekamajenga.
JUDGE
11/12/2020