IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 216 OF 2023

(Originating from the Judgment and Decree in Land Application No. 11 of 2019 at District Land Housing Tribunal for Temeke delivered on 18 May 2023, Hon. J. Silas, Chairman)

MEDADI ABDALLAH MNONGO.....APPELLANT

VERSUS

ENOCK JACKSON ENOCK.....RESPONDENT

J U D G M E N T

Date of last Order:24/07/2023
Date of Judgment:25/08/2023

K. D. MHINA, J.

This is the first appeal. It stems from the decision of the District Land and Housing Tribunal ("the DLHT") for Temeke, whereby Enock Jackson Enock, the respondent, Medadi Abdallah Mnongo, vide Land Application No. 11 of 2019, sued the respondent for trespassing into his land located at Mbagala Rangi Tatu with residential license no TMK 034097.

Briefly, in this matter, at the Tribunal commenced on 8 March 2021 and on the same date after the respondent closed his case after his testimony. Therefore, the application was scheduled for defence to begin on 4 May 2021. On 10 October 2021, the appellant testified and then the matter was

enable the appellant to submit the original document. The case continued on 30 January 2023, and the appellant prayed for an adjournment to bring the original residential permit. The prayer was granted with an order that the 2nd of March, 2023, would be the last adjournment.

On 2 March 2023, the counsel for the appellant was absent, and the appellant was not ready for a hearing. Therefore, the trial tribunal decided to close the defence case and, on 10 May 2023, proceeded to deliver the judgment based on the evidence on record.

Aggrieved by that decision, the appellant approached this Court by way of appeal and raised four grounds as follows: -

1)The Trial Chairperson erred in law and fact for failure to accord the right to be heard to the appellant by closing the defence case without hearing the appellant and its witness to the completeness of their case.

2) The Trial Chairperson erred in law and fact to determine the matter in favour of the applicant without stating the reason for his decision.

3) The Trial Chairperson erred in law and fact by failing to critically answer each issue framed with the evidence on record

4) The Trial Chairperson erred in law and fact by failing to subject the evidence on the record as a whole to a fresh and exhaustive scrutiny which the respondents were entitled to expect.

The appeal proceeded by way of oral submissions, and the appellant had the services of Mr. Benson Kuboja, learned counsel, while the respondent appeared in person, unrepresented.

Faulting the Trial Tribunal's decision in the first ground of appeal, Mr. Kuboja submitted that the Tribunal erred when it closed the defence case as it was the duty of the defence case to close their defence. To bolster his argument, he cited the decision of the Court of Appeal in **DPP vs. Elia Masaka**, Criminal Appeal No. 137 of 2021 (Tanzlii), where it was held that;

"Courts have no mandate to close the case."

He submitted that the defence side expected to bring witnesses from the Municipal Council; therefore, an act of closing the defence case denied those witnesses to testify.

On the way forward, Mr. Kuboja suggested that this court remit the case to the trial tribunal and order the trial to proceed at the stage it had reached before the closure of the defence.

On the second ground, he submitted that the Trial Chairman did not give reasons for his declaration that the respondent was the lawful owner of the suit property. That was contrary to Order 20 Rule 4 of the CPC, which requires judgment to contain the reason(s) for a decision. To support his argument, he cited **Bahati Moshi Masabile vs. Camel Oil**, Civil, Appeal No. 216 of 2018 (HC-DSM), where this Court elaborated on the importance of giving reasons in a judgment.

Supporting the third ground, Mr. Kuboja submitted that the tribunal did not specifically attend to the framed issues. He narrated that there was no specific finding that the appellant was a trespasser. On this, he cited the decision of the Court of Appeal in **Agatha Mshote vs. Edson Emmanuel and ten others**, Civil Appeal No. 121 of 2019.

On the last ground, he submitted that the trial tribunal failed to evaluate the evidence and give reasons why it gave weight to the respondent evidence than to the appellant evidence. He cited Ramadhani Mtulia Mwega vs. Shaweji Salum Mndote, Land Appeal No. 50 of 2019, where it was held that;

"There must be evaluation of evidence."

In response, the respondent in person who chose the appeal to proceed by way of oral submissions briefly stated that;

First, the Tribunal decided to close the defence case after a long period of failure of the appellant to proceed with the defence. He was given a chance to present his witnesses, but he failed.

Second, the Chairman evaluated the evidence on record and reached that decision. It was after the appellant failed to tender a residential licence.

In a brief rejoinder, Mr. Kuboja submitted that the respondent acknowledged that the Tribunal closed the defence case.

Having objectively gone through the grounds of appeal, the submissions by both parties and the entire records of appeal, I will start with the first ground of appeal regarding the closure of the defence case by the trial tribunal. This should not detain me long.

The Court of Appeal in **David Mushi vs. Abdallah Msham Kitwanga**, Civil, Appeal No. 286 of 2016 (Tanzlii) cited its earlier decision of **Abdallah Kondo vs. Republic**, Criminal Appeal No. 322 of 2015 (unreported) where it was held that;

"A trial magistrate or judge has no power to close neither the prosecution nor defence case. It was further observed therein that the parties are at liberty to close their respective cases after being satisfied that what their witnesses have adduced as evidence is sufficient.

Much as the cited decision involved a criminal case in nature, we are of the view that the underlying principle is also applicable in the case at hand."

This equally applied to the DLHT; the Trial Chairman had no mandate to close the plaintiff or defence case. That is a trite despite whatever reason(s) arise before the closure. That is the law.

Therefore, the order of closure of the defence case dated 2 March 2023 is null and void because, as I alluded to earlier, the Trial Chairman did not possess such powers. Consequently, all subsequent proceedings and judgment are also a nullity.

Since that ground alone disposes of the appeal, there is no need to determine the remaining grounds of appeal as it will be an academic exercise.

Before embarking on the way forward quite briefly, I am obliged to comment on the appellant's conduct at the trial.

The records indicated that, for the first time, the defence case was scheduled to commence on 4 May 2021. That day, there was an excuse that the appellant witness was bereaved, and the matter was adjourned to 2 August 2021. That day, the counsel for the appellant gave an excuse that her child was sick, and then the case was adjourned to 12 October 2021. On that day, the appellant started to give his defence. During the hearing, the counsel for the appellant prayed for an adjournment because they had no original residential licence that day. The matter was adjourned to 13 December 2021.

On 13 December 2021, there was an excuse from the appellant that his advocate attended the advocates meeting. That day, the matter was adjourned to 21 March 2022. The Chairman was absent that day, and the case was adjourned to 4 July 2022. On 4 July 2022, the record is silent on what happened.

On 15 November 2022, the respondent was absent, and the matter was adjourned to 7 December 2022, but the appellant was absent that day.

On 30 January 2023, the appellant appeared to continue with the hearing. Still, on the course of the hearing, for the same reason that he had advanced

earlier, he prayed for an adjournment of one month to submit the original residential licence. He was granted that prayer, and the matter was adjourned to 2 March 2023 as the last adjournment.

On 2 March 2023, there was an excuse that the counsel for the appellant was attending a matter at the High Court.

From the above narration, the application was adjourned for almost two years for the defence side (appellant) to continue with their evidence. It was adjourned almost ten (10) times, and the one who caused the matter to adjourned in most cases except one time because of the respondent and one time the Chairman was absent was the appellant. This is one of the sad stories of how a party may delay a dispensation of justice.

I find the appellant's acts at the Tribunal as disturbing and abhorrent. In such a situation, I think each adjournment can be with cost until a party closes his/ her case.

On the way forward, I proceed to quash and set aside the order closing the defendant's case, the proceedings of the trial tribunal from 2 March 2023 to the end, and set aside the judgment and decree emanating therefrom.

I further order the case file to be remitted to the DLHT for Temeke for an expedited hearing to proceed from the stage reached prior to 2 March 2023. The appellant shall make sure he attends the Tribunal together with his witnesses to complete his defence as the Tribunal will schedule it.

In conclusion, the appeal is allowed on the ground discussed above. Considering the nature of the infraction in the proceedings, I make no order as to costs.

I order accordingly.

K. D. MHINA

JUDGE

25/08/2023