**THE UNITED REPUBLIC OF TANZANIA**
**JUDICIARY**
**IN THE HIGH COURT OF TANZANIA**
**MBEYA DISTRICT REGISTRY**
**AT MBEYA**
**LAND APPEAL NO. 78 OF 2022**
***(Originating from Land Application No. 141 of 2012 at the District Land and Housing Tribunal of Mbeya at Mbeya)***

**ASHIRI MSITE.....1ST APPELLANT**

**ENELESI KYANDO.....2ND APPELLANT**

**DAUDI MWAISWELO.....3RD APPELLANT**

**DOTTO NYANI.....4TH APPELLANT**

**VERSUS**

**MICHAEL MWANG'ONDA.....RESPONDENT**

## JUDGMENT

Dated: 2nd & 24th March, 2023

**KARAYEMAHA, J.**

This appeal traces its origin from the decision of the District Land and Housing Tribunal for Mbeya at Mbeya (henceforth the Tribunal), which granted the respondent's application with costs.

The facts of this case can briefly be told as follows. The respondent sued the respondent in the Tribunal vide Land Application No. 141 of 2012 for a declaration that he is the lawful owner of the farm

measuring 6 acres located in Ngorongoro Village, Ihali Ward in Mbarali District (hereinafter the suit land) which he owned since 1998. The suit land was allocated to him by the Village Council. It is contended that in November, 2010 the appellants invaded the suit land without any legal justification. Noting their bad intention, the respondent reported them to the village council whereby they were summoned and ordered to vacate. However, the appellants never heeded to the warning and the order. Efforts to have the dispute settled amicably failed. It was this background that pushed the appellant to enlist the intervention of the Tribunal.

The application met a serious opposition from the appellant and was put to strict proof. The appellants averred further that the suit land belongs to the 4th respondent having inherited it from his late father one Japhet Nyani in 2004. The 1st, 2nd and 3rd respondents averred that they hired the suit land from the 4th respondent.

As stated earlier on, the Tribunal found the respondent's evidence plausible and resonating, hence its decision to declare him the lawful owner of the suit land. This decision did not amuse the appellants. They decided to challenge it through the present appeal whose memorandum

of appeal consists of five (5) grounds which for reasons to be apparent in the course, I shall not reproduce them.

In disposing of this matter, I feel constrained not to consider grounds of appeal fronted by the appellant filed on 29th August, 2022. The apparent reason is that on reading the respondent's application filed in the tribunal, I spotted one serious irregularity in the proceedings touching the jurisdiction of the tribunal. It is whether the location of the suit land was properly described. Given the legal effect of this anomaly, I invited both parties to address the court and give the way forward. Unfortunately, the respondent did not appear because even where he was served, he didn't enter appearance. In the event I heard the appellants' counsel alone.

On 2nd March, 2023 when the matter came for hearing and parties called on to address the Court, Ms. Heppifania Msuya, learned advocate appeared for the appellants.

Mr. Msuya's brief contention was that the respondent failed to properly described the location of the suit land as required by Regulation 3 (2) (b) of the Land District Disputes (the District Land and Housing Tribunal) GN. No. 174 of 2003 (hereinafter the Regulation). She held the

view that it was inadequate for the respondent to mention the village, ward and district without mentioning neighbours.

On reading the application filed in the tribunal, I have discovered that the respondent filed the same on 10th September, 2012. Now, the notable irregularity is through paragraph 3 of the amended application which is couched to disclose the location and address of the suit land. It describes the location of the suit land to be in Ngorongoro Village in Ihahi Ward.

A common ground tells that an application is an instrument which normally institutes proceedings before the District Land and Housing Tribunal as per Regulation 3 (1) of the Regulations. This instrument replaces the pleadings (a plaint) in suits under the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC). Paragraph 3 of the application in the present matter purported to comply with the mandatory provisions of the law which require an application to disclose the address or location of the suit land. The paragraph under subject, however, only indicates that:

*"Eneo lenye mgogoro lilipo: Kijiji cha Ngorongoro kata ya Ihahi."*

My take is that the description of the land provided for under paragraph 3 of the application was insufficient for determination of a

dispute. It only introduces the suit land to be located in Ngorongoro Villlage in Ihahi Ward. Apart from mentioning the village and ward, it is difficult to know in which hamlet it is located, his neighbours and peculiar features. In addition, it is gathered from the respondent's evidence at page 7 of the typed proceedings that his farm is located at Mngolongolo hamlet in Ihai village within Ihai Ward. This contradicted his pleadings. I am unable now to ascertain where the trial Chairman got the description he incorporated in his judgment. Page 1 of the typed judgement tells it all that, I quote:

> *"... anawashitaki wadaiwa kuvamia shamba lililopo katika Kijiji cha Ngorongoro, kata ya Ihahi, Wilaya ya Mbarali, Mkoa wa Mbeya..."*

It is a common cause that the tribunal was bound by parties' pleadings and had no mandate to drift from them. The respondent's application described the location of the suit property to be *Kijiji cha Ngorongoro kata ya Ihahi*. It was, therefore, in my considered view, wrong to come out with a description that did not feature in the pleadings. The principle of parties are bound by their pleadings was not propagated as a mere decoration but to ensure that no new matters or extraneous matters are brought in during the hearing stage hence taking the adverse party on surprise. Reciprocally, the court or tribunal cannot raise extraneous matters out of what was pleaded. To settle the

dust on this state of affairs, the Court of Appeal guided in the case of **Anthony Ngoo & Another v. Kitinda Kimaro**, CAT-Civil Appeal No. 25 of 2014 (unreported) borrowing a leaf from an English case of **Lever Brothers Ltd v. Bell** (1931) 1 KB 557 at 583 in which the necessity of adhering to the pleadings was stated that:

> *"The practice of the courts is to consider and deal with legal result of pleaded facts, although the particular legal result alleged is not stated in the pleading."*

Abhorring the conduct which was taken by the trial court in the **Anthony Ngoo case**, the Court of Appeal made reference to Lord Diplock's remarks in **Hadmor Productions v. Hamilton** (1982) 1 All ER 1042 at p. 1055 wherein it was held

> *"Under our adversary system of procedure for a Judge to disregard the rule by which counsel are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the right of each to be informed of any point adverse to him that is going to be relied upon by the Judge, and to be given the opportunity of stating what is his answer to it."*

Operating in consonance with the settled position that parties are bound by their pleadings, as accentuated in **Scan TAN TOUR Ltd v. The Catholic Diocese of Mbulu**, CAT-Civil Appeal No. 78 of 2012; and **Peter Ng'homango v. The Attorney General**, CAT-Civil Appeal No.

114 of 2011 (both unreported), the upper Bench quoted an excerpt in **Mogha's Law of Pleading in India**, 10th Edition (p.25) in which it is stated as follows:

> *"The Court cannot make out a new case altogether and grant relief neither prayed for in the plaint nor flows naturally from the grounds of claim stated in the plaint."*

Guided by the foregoing authorities, it was wrong for the tribunal to invent its location of the suit property which was not pleaded and not even given in evidence.

The legal requirement for disclosure of the location or address in the pleadings was not put in place for decoration purposes. It was intended to inform the tribunal of a sufficient description so as to specify the suit land from other farms where the suit land stands. In respect of un-surveyed land, like in the present case, specification of boundaries, neighbours and/or permanent features surrounding the suit land is important for the purpose of identification. This is what is envisaged by regulation 3 (2) (b) of the Regulation when it talks of the term *location*. The Black's Law Dictionary, 9th Edition, West Publishing Company, St. Paul, 2009 at page 1024 similarly defines the term *location;*

> *"As a specific place or position of a thing; and in land matters (real Estate) it means the designation*

*of the boundaries of a particular piece of land, either on the record or land itself."*

In view of the foregoing definition, it was thus inadequate for the respondent to simply mention that the suit land was Ngorongoro village in Ihahi Ward. My view is based on the fact that the totality of the pleadings (the application) does not make an impression that the suit land stands in the land which covers the whole of was Ngorongoro village in Ihahi Ward. It was thus imperative on the respondent to disclose the hamlet, the boundaries and permanent peculiar features surrounding the area holding the suit land. The respondent's blanket description of the suit land in the pleadings denied the tribunal jurisdiction to determine the matter.

The importance of making detailed description of suit house in resolving disputes cannot be over emphasized. The law, through all amendments, has been constantly underscoring the significance of describing the location of the suit land because it establishes the territorial jurisdiction. The provisions of Order VII Rule 3 of the CPC, for instance give lucid wording of the requirement. It guides as follows:

*"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the*

*property sufficient to identify it and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number".*

In my settled opinion Rule 3 (2) (b) of the Regulation should be construed to mean what is envisaged by Order VII Rule 3 of the CPC. The essence of this provision needs not be over emphasized, it helps the court in establishing the territorial jurisdiction and most importantly, assists in issuing executable orders as well. The legal requirement highlighted above is indeed intended for the purposes of an authentic identification of the house in dispute. The intention of the law is to ensure that, the Court determines the controversy between the two sides of a suit related to landed property effectively by dealing with a specific and definite land. The law intends further that, when the court passes a decree, the same becomes certain and executable.

Facing the same scenario, my brother Hon. Utamwa, J remarked in the case of **Ramadhan Omary Humbi and 58 others v. Aneth Paulina Nkinda and another,** HC Land Case No. 99 of 2013 at DSM (unreported) that:

*"It is the law that Court orders must be certain and executable. It follows thus where the description of the*

*land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it".*

Owing to the above reasons, it cannot be argued that the appellant complied with the law in the instant matter when he made a blanket description of the location of the suit land by calling it a disputable property located at was Ngorongoro village in Ihahi Ward. The insufficiency in describing the suit land could not enable the tribunal to effectively resolve the controversy between the parties.

This anomaly was not detected by the trial Chairman. He tried the matter and determined it at the stage ruling lacking the requisite jurisdiction. To the contrary, given the discussion above, the matter was incompetent before the Tribunal for the uncertainty of the matter. It is a common knowledge that Courts and Tribunals of law do not have jurisdiction to entertain incompetent matters, that is, disputes on uncertain matters.

This irregularity, therefore, vitiates the proceedings and verdict of the tribunal and any order to proceed with the hearing could not resolve the dispute between the parties for want of certainty of the suit land.

In the upshot of the foregoing, I find that the suit and the appeal thereto are incompetent for want of proper description and sufficient

identification of the suit land. Therefore, the appeal is struck out. The proceedings of the trial tribunal are quashed and judgment and orders thereto are set aside. Any interested party is at liberty to institute the case a fresh. Since this point of law was raised *suo mottu* by this court, no orders to costs. Each party to bear its own costs.

It is so ordered.


Dated at **MBEYA** this 24th March, 2023

**J. M. Karayemaha**
**JUDGE**