

THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF BUKOBA)
AT BUKOBA
LAND APPEAL NO. 79 OF 2022

(Arising from the District Land and Housing Tribunal for Karagwe at Kayanga in Application No. 41 of 2021)

DOMICIAN RWEZAHURA APPELLANT
VERSUS
YUSTACE MIHINGO RESPONDENT

JUDGMENT

Date of last Order: 30.06.2023
Date of Judgment: 21.07.2023
A.Y. Mwenda J.

The District Land and Housing Tribunal for Karagwe at Kayanga delivered its judgment in Application No. 41 of 2021 on 28th October 2022 which declared the applicant one Mr. Yustace Mihingo (now the respondent) as the rightful owner of the disputed land. The respondent (now the appellant) was ordered to vacate from the Suit land and to pay the respondent costs. Aggrieved by the said decision the appellant filed the present appeal with nine (9) grounds.

During the hearing of the present appeal both parties appeared in person without legal representation and the appellant prayed this appeal to be disposed by the way of written submissions. The said prayer was granted and both parties complied with the scheduling order.

In his written submission the appellant started by arguing the 1st and the 2nd ground combined together. He challenged the Hon. Chairman's findings which declared the respondent as the rightful owner of the disputed land while the said land is un survey and it was not described as per the requirement of the law. According to him, the respondent failed to identify and specify the land in disputed in the pleadings. He said that the respondent gave a general description of the land by stating that the said land is located at Ndama Village, Kayanga Ward in the District of Karagwe.

Regarding the 3rd and 4th ground of appeal the appellant submitted that, the Hon. Chairman failed to properly analyze his evidence as a result he wrongly entered the judgment in the respondent's favor who failed to prove his case. He complained that during trial, he tendered his written contract to prove his ownership but the respondent had nothing to tender other than his oral testimonies. He was of the view that oral evidence cannot supersede written evidence and to him the respondent failed to prove his case.

Arguing on the fifth ground of appeal, the appellant submitted that the tribunal's proceedings is tainted with illegality for failure by the Hon. Chairman to records the questions asked by the parties and assessors to the disputants. He stressed that the said illegality is fatal which caused miscarriage of justice.

With regard to the sixth ground of appeal the appellant submitted that the Hon. Chairman erred in law and fact to rely on the evidence of the respondent and

his witnesses which were not pleaded in the pleadings. He stressed that this was contrary to the principle that parties are bound by their pleadings. He submitted that respondent's application does not explain anything about the plot in dispute and his evidence is not within his application. He was of the view that this prejudiced the appellant's right to a fair hearing. To support this point, he cited the case of ISON BPO TANAZANIA LIMITED VS MOHAMED ASLAM, CIVIL APPLICATION NO. 367/18 of 2021 and the case of ATHUMAN AMIRI VS HAMZA AMIRI & ADIA AMIRI, CIVIL APPEAL NO. 8 OF 2020.

On the 7th ground of appeal regarding the change of Hon. Chairman and change of assessors, the appellant submitted that there was a change of Hon. Chairmen and assessors without assigning reasons. He submitted that the Hon. Chairman has a duty to give reasons for the taking over. He said that Hon. D.S.David who delivered the judgment is not the one who started with the hearing of this matter. To support this, he cited the case of M/S GEORGE CENTRE LTD VS THE ATTORNEY GENERAL & ANOTHER, CIVIL APPEAL NO. 29 OF 2016 (CAT).

With regard to the 8th ground of appeal the appellant submitted that the Hon. Chairman erred in law and fact for not considering that, even if the respondent proved ownership, still the appellant is protected by the principle and the doctrine of adverse possession. He submitted that he was in use of the land in dispute since 1984 as evidenced in sale agreement exhibit D1, almost 39 years back. To support this point, he cited the case of BHOKE KITANGITA VS MAKURU MAHEMBA, CIVIL APPEAL NO. 222 OF 2017 (CAT)

On the last ground of appeal, the appellant submitted that the Hon. Chairman erred for his failure to consider that the land in dispute had already had a dispute and the decision regarding ownership of the same was pronounced and there is no appeal in that regard. The appellant submitted that since there was no appeal then the tribunal was barred to re-open a fresh suit. To support this, he cited the case of SAMWEL EZEKEL MWAISUMBE VS FAIZ INDUSTRIES LTD, LAND CASE NO. 57 OF 2012. To conclude his submissions, the appellant prayed this appeal to be allowed by quashing and setting aside the proceedings, decision and orders of the trial tribunal.

Responding to the submissions by the appellant in respect of the 1st, 2nd, 3rd and 4th grounds of appeal the respondent submitted that the District Land and Housing Tribunal was correct to decide the case basing on the circumstantial evidence adduced by him and the evidence from his witnesses. He was of the view that the case was proved on the balance of probability.

Regarding the appellant's argument that there was a dispute which was already decided and no appeal was preferred and the execution is complete, the respondent submitted that he owned the said land for more than sixty years without any disturbance from any person. In his conclusion he submitted that the appellant failed to tender any document to prove his case. He then prayed this appeal to be dismissed with costs.

In rejoinder the appellant reiterated to his submission in chief that the disputed land is unsurveyed thus the respondent was bound to identify the boundaries before the court so that the court can be in a good position to know the land in dispute and to grant an executable decree. Apart from that he insisted that there was a change of Hon Chairmen and assessors without assigning reasons as a result the whole proceedings are nullity.

He further rejoindered that there was a dispute on the same land and he was the one who was declared as the rightful owner of the same. He further stressed that the respondent failed to adduce evidence hence the trial tribunal failed to evaluate it. He thus reiterated to his prayer that this appeal be allowed.

That marks the end of the summary on the submissions by both parties and the issue for determination is whether or not this appeal is meritorious.

In the present appeal the appellant filed 9 grounds of appeal but this court decided to deal with the 1st and 2nd grounds only as the said grounds are capable of finalizing this matter. The said grounds read as follows;

- 1) That the hon. Chairman erred in law and fact for determining (sic) that the disputed land belongs to the respondent while the disputed land is un-surveyed land which the law requires to be described and those description of un-surveyed land to be pleaded in the pleadings.*

2) That the hon. Chairman erred in law and fact for delivering non-executable decree for lack of description of the disputed land after the respondent failure to describe the disputed land in his pleadings.

At the outset it is important to note that it is every decree holder's dream/expectation that a decree granted to him/her is executable. In land matter, one of the factors/features that make the decree executable is the description of land which include location and boundaries. This factor is crucial, no wonder the law has it covered. This is by virtue of regulation 3(2) (b) of the Land Disputes Courts (District Land and Housing Tribunal) Regulations, 2003 G.N No. 174 of 2003. This regulation provides as follows, and I quote:

Reg. 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) N/A

(b) the address of the suit premise or location of the land involved in the dispute to which the application related...

[Emphasis added]

In the present matter, while instituting a suit before the District Land and Housing Tribunal the respondent (the then applicant) stated that the land in dispute is located at Ndama Village, Kayanga Ward within Karagwe District. This

description is too general. He did not describe its size and the boundaries, bad indeed, even during the trial he never described its size and boundaries. The rationale of describing the land sufficiently is to sufficiently identify it. This may lead to a smooth and viable execution of the court's decree and orders at the end of the litigation. The emphasis of describing the location and size has been stated in various decisions of the court. One of them is the case of RWANGANILLO VILLAGE COUNCIL AND 21 OTHERS vs. JOSEPH RWAKASHENYI, LAND CASE APPEL NO. 74 OF 2018 (unreported) where the court, while citing with approval the case of DANIEL DAGALA KINOI (As administrator of the Estate of the late Mbalu Kushaha Bulude) vs. MASAHA IBEHO AND 4 OTHERS, LAND APPEAL No. 26 of 2015 stated inter alia that:

"... I highly subscribe to the view and findings because it may be grave injustice and dangerous to decide a case which its size and location is unknown ... "[emphasis added]"



Also, the Court of Appeal of Tanzania in the case of MARTINE FREDRICK RAJABU VS ILEMELA MUNICIPAL COUNCIL & ANOTHER, CIVIL APPEAL NO. 197 OF 2019 (unreported) held as follows and I quote,

"From what was pleaded by the appellant, it is glaring that the description of the suit property was not given because neither the size nor neighboring owners of pieces of land among others

were state in the plaint. This was not proper and we agree with the learned trial judge and Mr. Mrisho that, it was incumbent on the appellant to state in the plaint the description of the suit property... [Emphasize added]

Based on the above findings and by considering the non- description of the size and boundaries of the Land in dispute, this Court is also persuaded to allow the appeal, quash the proceedings and set aside judgment and any orders emanating from Land Application No. 41 of 2021. Each party shall bear its own costs.

It is so ordered.



A.Y. Mwenda
Judge
21.07.2023

Judgment delivered in chamber under the seal of this court in the presence of Mr Domician Rwezahura the appellant and in the present of Mr. Yustace Mihingo the respondent.



A.Y. Mwenda
Judge
21.07.2023