

TANZANIA / JUDGMENT

JUDGMENT Benward P

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24 October 2024

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THE UNITED REPUBLIC OF TANZANIA JUDICIARY IN THE HIGH COURT OF TANZANIA SONGEA SUB-REGISTRY AT SONGEA LAND APPEAL NO. 19492 OF 2024 (Originating from the District Land and Housing Tribunal for Songea at Songea in Application No. 84 of 2023) BENWARD P. KOMBA APPELLANT VERSUS MARIA NGONYANI RESPONDENT

JUDGMENT

Date of Last Order: 24th October, 2024. Date of Judgment: 13th November, 2024. KAWISHE, J.: The appellant filed this appeal challenging the decision made by the District Land and Housing Tribunal for Songea at Songea (hereinafter referred as the tribunal) in Application No. 84 of 2023. The respondent filed an application before the tribunal claiming to be the lawful owner of the disputed land measuring one acre located at Mchweka Hamlet, Ngadinda Village, Gumbiro Ward, Songea District within Ruvuma Region. At the conclusion of the application, the tribunal 1 found the respondent to have proved her case and declared her to be the lawful owner of the suit land. The appellant was aggrieved by the decision of the tribunal and he preferred this appeal on the following grounds: -

1. That, the trial tribunal erred in law and facts to determine the matter while the appellant had no legal capacity of being sued (no locus standi) over the disputed property which belongs to his late father.
2. That, the trial tribunal erred in law and in facts to hold in favour of the respondent to order and award payment of Tshs. 6,000,000/= (six million) as general damages without proof which is contrary to the law.
3. That, the trial tribunal erred in law and facts by relying on the inconsistency and contradictory evidence of the respondent and her witnesses regarding the boundaries of the disputed property which is a crucial criterion for un-surveyed land. The brief facts of the matter are as follows: That the respondent in her testimony claimed to be the lawful owner of the disputed land which was allocated to her by the village government in 1985. She testified that, she has been using the disputed land up to 2019 when the appellant invaded and rented it to other people to use for agricultural activities. Her testimony was corroborated by PW2 (Erasto John Mbawala), PW3 (Sesilia Ansgar Ponera) and PW4 (Akresi

Joachim Ngonyani). They told the tribunal that, the disputed land is the property of the respondent. PW3 told the tribunal that, her land is bordered by 2 the disputed land and she saw the appellant when he invaded the disputed land. Countering the submission, the respondent/appellant told the tribunal that, the disputed land was used by his stepmother who is the respondent's sister. He testified that, the disputed land was allocated to him by the village government in 1982. That his father used the disputed land up to 1998 when he died. That in 2000, the disputed land was rented to other people. His witnesses, DW2 (Philipo Meshack Komba) and DW4 (Oscar Golden Mapunda) told the tribunal that, the appellant told them that the respondent trespassed into the disputed land. DW2 told the tribunal that the disputed land was given to Paulinus Komba in 1982. It was from the above testimonies that the trial Tribunal found the respondent to have proved her claim and declared her to be the lawful owner of the disputed land. In this appeal, the appellant was represented by Mr. Alex Dominicus Nyoni, learned advocate whereas the respondent appeared in person and fended for herself. Upon the parties' consent, the disposal of this appeal was by way of written submissions filed by both parties pursuant to the order of this court. 3 Arguing on the first ground of appeal, the appellant's learned advocate submitted that, before the tribunal the appellant in his written statement of defence told the tribunal that the disputed land was the property of his late father. He averred that, out of the 1 acre, $\frac{3}{4}$ acre was the property of his late father while $\frac{1}{4}$ acre is the property of Philipo Meshack Komba (DW2). He submitted further that since the appellant in his written statement of defence pleaded that the disputed land is not his property, the tribunal was duty bound to direct the appellant to be appointed as the administrator of his late father's estate before proceeding with the determination of the application. He added that, it is a general rule that, parties are bound by their pleadings. To back up his submission, he cited the case of Makori Wassaga vs. Joshua Mwaikambo & Another (1987) TLR 88 and Omary Mbwana (Administrator of the Estate of the Late Said Mazito Mazito) vs. Amad Fundi, Civil Appeal No. 201 of 2024, in which the Court nullified the proceedings and decisions of the lower courts for the reason that, the case was wrongly filed against the defendants. On the second ground of appeal, the appellant's learned advocate faulted the tribunal in granting TZS. 6,000,000.00 as specific damages. He argued that, it is a legal principle that, specific damages must be 4 clearly pleaded and strictly proved. He lamented that apart from that principle, in this appeal, there is no evidence to justify the award of TZS. 6,000,000.00 as specific damages. He contended that, despite the fact that the respondent pleaded for the award of the granted amount, there was no evidence to justify the award. To buttress his proposition, he referred the case of Oscar Karsan Kanji vs. Abdallah Hassan (Suing as A Legal Personal Representative of Hassan Abdallah - Deceased), Civil Appeal No. 09/2020 (unreported). With regard to the third ground of appeal, on the inconsistency and contradictions, Mr. Nyoni submitted that, while in her pleading the respondent averred that she is bordered by the appellant's father in the South but in her testimony, she told the tribunal that, she is bordered with the appellant's father in the Northern part of the disputed land. He added that, even her witness (PW3) gave different boundaries from what was stated in the pleading by the respondent. He was of the view that, since the boundaries of the disputed land are not

clear, it will be difficult in the execution of the court's order. The appellant's advocate went on submitting that, in the un-surveyed land, the issue of boundaries is very crucial and the party claiming ownership over the land must identify them clearly. That, failure to abide to that, will be 5 contravening regulation 3 (2) (b) of the Land Disputes Courts (The District Land and Housing Tribunal), Regulations, 2002 (GN. No. 174 of 2003). The other contradictions pinpointed by the appellant's learned advocate are on the year in which the respondent acquired the disputed land. He contended that, the respondent is not clear on which year she acquired the disputed land, either in 1985 or 1987. He contended further that, her witnesses stated that she acquired the disputed land in 1997 and 1983. In his view, that is contrary to what was pleaded and testified by the respondent. He prayed for this appeal to be allowed with costs. The proceedings and decision of the tribunal be nullified. Replying to the appellant's learned advocate submission, the respondent faulted the appellant's claim that, he has no legal stand to be sued. She submitted that, the tribunal correctly decided the matter placed before it. That, if the appellant thought the disputed land was the property of his late father, he was duty bound to produce evidence to that effect. She added that, if the land was inherited from his father, he was to produce documents to prove such fact rather than stating that he is the lawful owner of the disputed land. Countering on the second ground of appeal, the respondent contended that, what was awarded by tribunal was not a specific but 6 general damages. The respondent averred that, the tribunal correctly awarded the damages since the disputed land has been used by the appellant for some years by planting rice and leasing and in doing so, he benefited a lot. She added that, the law allows courts to grant for the payment of general damages. Thus, the tribunal correctly assessed and granted the awarded damages. She added that, the awarded amount is neither so inordinate high nor low to invite the intervention of this court to make re-assessment. To cement her stance, she cited the case of *Finca Microfinace Bank Ltd vs. Mohamed Omary Mkuyu*, Civil Appeal No. 20 of 2020 (unreported). With respect to the third ground of appeal, the respondent submitted that, the tribunal was correct decided rightly. That there were no contradictions in the respondent's testimony to weaken her testimony. Besides, she contended that, the appellant failed to prove his case, as his testimony was based on hearsay evidence which is contrary to section 62(2)(a) Evidence Act (Cap. 6, R.E 2022). In the event, the respondent prayed for this appeal to be dismissed with costs. In this appeal, the appellant's learned advocate opted not to file rejoinder submission. 7 I have carefully gone through the submissions made by both parties. Upon perusal of the grounds of appeal and scrutinized the original records, it is an ample time to deliberate on the merits of this appeal. In determining the appeal, this court will address the grounds of appeal one after another. The main issue leading the determination is whether this appeal has merit. On the first ground of appeal the appellant's learned advocate faulted the tribunal for its decision. It was his argument that, the appellant had no legal capacity of being sued (no locus standi) over the disputed land which is the property of his late father. That the appellant's written statement of defence depicted that the disputed land belonged to the appellant's late father. That the tribunal was to be guided by the pleadings and order for the appellant to file probate cause to be appointed as administrator before proceeding with the

determination of the matter before it. On her party, the respondent faulted the appellant's learned advocate assertion stating that, locus standi is determined on the plaintiff or applicant's side and not on the defendant or the respondent side who has trespassed in the disputed land and not his late father that is why he was sued in his capacity. That 8 the appellant failed to prove that the disputed land belonged to his late father. From the competing submissions made by the parties, I have engaged my mind on the issue of locus standi. Locus standi, simply means the right to sue where personal rights are infringed. To have locus standi one must have interest in the suit. Contemplating on the first ground of appeal that the appellant/respondent had no locus standi, I find it imperative to amplify on the issue of locus standi basing on case law as I do accordingly. In the case of Lujuna Shubi Ballonzi vs. Registered Trustees of Chama Cha Mapinduzi (1996) TLR 203, Samatta, J (as he then was) the Court had the following to say on locus standi: "Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions." Also, in the case of Peter Mpalanzi vs. Christina Mbaruku (Civil Appeal 153 of 2019) [2021] TZCA 510 (23 September 2021) which also cited the case of Godbless Lema vs. Mussa Hamis Mkanga and 2 Others, Civil Appeal No. 47 of 2012 (unreported) the Court of Appeal stated that: 9 "Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it. ... Further, locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised." From the excerpt above, the principle set by the Apex Court in the country is very clear, since locus standi is a point of law, whenever it is raised at any stage of the case it must be attended to. The issue of locus standi has to be considered by the court regardless of having been improperly raised or raised at a late stage. At this appeal the appellant is claiming that he had no locus standi to be sued. The appellant's learned counsel submitted that the respondent and her witnesses at page 6 of the trial tribunal proceedings testified that the disputed land belonged to the appellant's late father. This submission motivated me to revisit the proceedings. Subsequently, I found that the respondent and her witnesses stated that, the respondent had 1 acre and the appellant's father who had two wives had two acres. This does not amount to the respondent and her witnesses testifying that the disputed land belonged to the appellant's late father. With due respect the appellant's learned counsel has misdirected himself on the testimony. By so doing the cases 10 cited by the appellant's learned counsel, Makori Wassaga vs. Joshua Mwaikambo & Another (supra) and Omary Mbwana (Administrator of the Estate of the Late Said Mazito Mazito) vs. Amad Fundi (supra) are irrelevant. Just a polite reminder to the appellant's learned counsel, the appellant stated that the disputed land was allocated to him by the village government in 1982. That his father used the disputed land up to 1998 when he died. This means that he is claiming to be the owner of the disputed land. Thus, his claim that he was to be directed to apply for the letters of administration of his late father's estate is

unfounded and contradicting his evidence. Having considered the issue of locus standi raised by the appellant's counsel, I am inclined to the respondent's submission that, the one who has trespassed in the disputed land is the appellant and not his late father. Therefore, the assertions made by the appellant are baseless. What he was required to do, was to adduce evidence to prove his assertion before the trial Tribunal. The respondent countered this complaint by stating that locus standi is on the plaintiff or applicant and not on the respondent. I am convinced with the respondent's response as per the principle accentuated in the case of Lujuna Shubi Balonzi (supra).¹¹ The principle laid down in the case cited is clear that, the person who approaches the court has to satisfy himself on locus standi. The respondent or defendant are not bound with the principle of locus standi. In the appeal at hand, since the appellant was the one who trespassed the respondent's land, he was the proper person to be sued. From the trial Tribunal's records, he was sued personally for invasion. The suit had nothing to do with appellant's late father. As a result, the first ground of appeal lacks merit. consequently, it is hereby dismissed. Reverting to the second ground of appeal that, the tribunal erred in awarding TZS. 6,000,000.00 (six million) as specific damages without proof, the appellant's learned advocate argued that, those were specific damages and they were to be clearly pleaded and strictly proved. Responding to the appellant's learned advocate submission, the respondent submitted that, what was awarded by the tribunal was not specific damages rather was general damages. The respondent averred that, the tribunal correctly awarded the damages. Her reason was that the appellant used the disputed land for a longtime. That he cultivated rice and leasing the same hence he benefited a lot. She added that the tribunal granted general damages after assessing the evidence given before it and there was no need of proving. Upon scrutinizing the 12 original records, I find the respondent's assertion is correct that the tribunal awarded general damages and not specific damages as alleged by the appellant's learned counsel. The appellant's learned counsel only asserted that it was specific damages did not justify that the award of TZS. 6,000,000.00 was specific damages. I decided to peruse the trial Tribunal's Judgment at page 6, the learned chairman stated, I wish to quote item 4 of the reliefs granted: "4. Mjibu maombi anaamuriwa kulipa fidia ya jumla shilingi milioni sita (6,000,000/=) kwa mwombaji kwa kumzuia kulima shamba tangu mwaka 2019." Literally translated, the respondent is ordered to pay the applicant six million Shillings (6,000,000/=) as general damages for obstructing the applicant from cultivating the land from 2019. The quoted paragraph is about general damages and not specific damages as claimed by the appellant's learned advocate. Perhaps it will be helpful at this juncture to state what is general damages. According to Black's Law Dictionary (Abridged 7th Edition), the term "general damages" is defined as: "Damages that the law presumes follow from the type of wrong complained of. General damages do not need to be specifically claimed or proved to have been sustained."¹³ Therefore, general damages are granted by the trial court as compensation for loss or injury caused to the party. In this appeal, the appellant was declared to be a trespasser and ordered to pay general damages to the respondent. It is a settled law that, general damages are awarded at the discretion of the court. It is a compensation to the plaintiff for the sufferings occasioned unto him by the respondent. This was well elaborate in the case of

Kibwana and Another vs. Jumbe [1990-1994] 1 EA 223, where it was stated that: "The Court, in granting damages will determine an amount which will give the injured party reparation for the wrongful act and for all the direct and unnatural consequences of the wrongful". As per the position of the Court in the passage quoted, it is trite law that, general damages are awarded when the court finds that the respondent caused injury to the plaintiff. There is no hard and fast rule on the awarding of general damages. They are not specifically pleaded and proved. See the case of Tanzania - China Friendship Textile Co. Ltd. vs. Our Lady of the Usambara Sisters [2006] TLR 70. Whence, in my view, the claim that the tribunal wrongly awarded the general damages is unfounded. The general damages were correctly awarded. They were awarded basing on the wrongful acts done by the appellant. 14 The third ground of appeal is on the inconsistency and contradictory evidence of the respondent and her witnesses regarding the boundaries of the disputed property. In his submission, the appellant's learned advocate argued that, the testimony contradicted the pleadings filed to the trial tribunal. He added that, in order to prove ownership of un-surveyed land, the issue of boundaries is very crucial. He averred that, the party claiming ownership over the land must identify them clearly. He pinpointed that, the evidence given by the respondent contradicted her witnesses' evidence in respect to the boundaries of the disputed land. He further pinpointed that; the respondent's evidence was not clear on which year she started using the disputed land. The respondent has vehemently refuted the appellant's learned advocate contention by arguing that there were no contradictions in the testimony given by the respondent to weaken her testimony. It is a settled law that, where there are contradictions, the Court has to resolve the contradiction. This was so held in the case of Toyidoto s/o Kosima vs. Republic (criminal Appeal No.525 of 2021)

[2023] TZCA 17305 (5 June 2023). Also see the case of Marmo Slaa 15 Hofu & 3 Others vs. Republic, Criminal Appeal No. 246 of 2011 (unreported), where the Court stated: "... normal discrepancies are bound to occur in the testimonies of witnesses, due to normal errors of observations such as errors in memory due to lapse of time or due to mental disposition such as shock and horror at the time of occurrence. Minor contradictions or inconsistencies, embellishments, or improvements on trivial matters which do not affect the case for the prosecution should not be made a ground on which the evidence can be rejected in its entirety." [Emphasis added] From the passage quoted, I am a bit hesitant to rule out that the claimed discrepancy, on the oral testimony given before the tribunal upon cross examination by the tribunal chairman and the one on the application disqualifies the whole respondent's witness testimony. In my view, the discrepancies on witnesses' evidence should not be taken blindly wholesome. The appellant's learned advocate picked only the areas which would support his appeal for obvious reasons. The respondent replied that there is no contradiction in the testimony given before the tribunal. I visited page 5, 7 and 8 of the tribunal's proceedings cited by the appellant's learned counsel. I found that the issue of borders was testified by the respondent and her witness that her disputed land is bordered by the appellant's late father. Page 5 of the proceedings, the 16 respondent (SM1/PW1) when cross examined by the chairman,

replied: Nimepakana na baba yake mdaiwa katika eneo lenye mgogoro upande wa kusini. Literally meaning, in the disputed land, I am bordered to the respondent's father in the South. Also, at page 5 of the proceedings, PW2 (SM2) Erasto Mbawala told the tribunal, Mdaiwa amepakana na mdai katika shamba hili lenye mgogoro. Meaning the respondent is bordered to the respondent in the disputed land. Further, PW3 (SM3) Sesilia Ponera, at page 7 to 8 ... Maria amepakana ... shamba hili, Kaskazini ni Josepha Haule Kusini ni Paulinus Komba baba ya mdaiwa. Simply meaning, ... Maria is bordered ... in this land, to the North, Josepha Haule, in the South, Paulinus Komba the father of the respondent. I took time to visit the application (Maombi ya Ardhi) filed to the District Land and Housing Tribunal for Songea only to find out that the contradiction and discrepancies claimed by the learned advocate to be that, the respondent under paragraph 3(a) stated that she is bordered by the late Paulinus Komba in the North. In the oral testimony before the trial tribunal the respondent and her witnesses stated that Paulinus Komba the appellant's late father borders the respondent in the South. This discrepancy in my view did not go to the root of the matter. She stated her neighbours. Only the interchange of direction between North and South was taken as failure to state the 17 boundaries of the disputed land. In my view, it is a minor discrepancy which is tolerable. The difference on the time of using the disputed land was submitted as a contradiction, that the respondent stated that she started using the disputed land in 1987 (1985). That she was not certain. Upon perusal of the proceedings at page 5, the respondent replied to the chairman on boundaries and not time she started using the disputed land. PW2 stated that she started using the disputed land from 1997. PW4 stated that she started using the disputed land in 1983. I wish to put the record very clear. The respondent in her plaint to the tribunal at paragraph 6(i) she stated that she owned the disputed land since 1987. In her submission in chief she stated that the Nanjengulila Village Government allocated land to people in 1985. That they applied for the remaining portion and they were allocated. She did not state that she was allocated the disputed land in that year rather, the village government allocated land to people. That she together with other people applied for the remaining portion and the same was allocated to her. She did not state the year. I do not see the contradiction claimed by the appellant's learned advocate which prejudiced the appellant. See Dickson Elia Nsamba Shapwata & Another vs. Republic, Criminal 18 Appeal No. 92 of 2007, Ismail Ally vs. Republic, Criminal Appeal No. 212 of 2016 and Slahi Maulid Jumanne vs. Republic, Criminal Appeal No. 292 of 2016. Also, PW2 stated that the respondent has been using the disputed since 1997. This does not refer to acquiring the disputed land. There is no contradiction as stated by the learned advocate. It is a trite law that, in civil cases the proof is on the balance of probabilities. The party with the heavier evidence wins the case. This is a settled law in our jurisdiction, as was stated in the case of Mary Agness Mpelumbe vs Shekha Nasser Hamud (Civil Appeal No. 136 of 2021) [2022] TZCA 408 (8 July 2022). The Court held that: "We are also guided by the basic rule that he who alleges has the burden of proof as per section 110 of the Evidence Act, Cap. 6 R.E. 2019 as well as the position that standard of proof in a civil case is on a preponderance of probabilities, meaning that the Court will sustain such evidence that is more credible than the other on a particular fact

to be proved.” From the quote above, the court shall sustain the evidence which is more credible. This is what the tribunal did in the application which gave birth to this appeal. I have not seen any reasonable justification to interfere with the decision of the trial tribunal. Consequently, from the records available and the submission made, I am of the considered view that, the respondent’s evidence was heavier than that of the appellant. 19 That being the case, the issue raised whether this appeal has merit is answered in the negative. In the event, I find this appeal has no merit and it is dismissed in its entirety. The tribunal’s decision and decree are upheld. The appellant shall bear the costs of this appeal. It is so ordered. DATED and DELIVERED at SONGEA this 13th day of November, 2024. E. L. KAWISHE JUDGE COURT: Judgment delivered in the presence of Mr. Alex Nyoni, learned advocate for the appellant and in the presence of Ms. Maria Ngonyani the respondent in person. Right of appeal is explained. E. L. KAWISHE JUDGE 13/11/2024 20

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Prepared on 14 October 2026 · Esheria