

TANZANIA / JUDGMENT

Land Appeal Noy

COURT
TANZLIIDECIDED
1 January 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA LAND DIVISION AT PAR ES
SALAAM LAND APPEAL CASE NO. 24792 OF 2024 (Arising from Land Application No 80 of 2023 of
the District Land and Housing Tribunal of Ubungo at Luguruni) GENOFEVA WENDY
OKOTH..... APPELLANT VERSUS EDGER
LEMA.....RESPONDENT

JUDGMENT

Date of last Order: 18/11/2024 Date of Judgment: 25/11/2024 LALTAIKA, J, The Appellant herein
GENOFEVA WENDY OKOTH is dissatisfied with the decision of the District Land and Housing
Tribunal for Ubungo at Luguruni (the DLHT) in Land Application No 80 of 2023. She has appealed
to this Court by way of a Petition of Appeal containing the following grounds: Page 1 of 17

1. The Honorable chairman erred in law and facts by granting ownership to the Respondent while he has claimed that the Applicant proved beyond reasonable doubt that she is the legal owner of the disputed land, and the Respondent is the trespasser.
2. The Honorable Chairman erred in law and fact by ordering exchange of plots beyond its jurisdiction.
3. The Honorable chairman erred in laws and facts to grants reliefs beyond prayers by both parties.
4. The Honorable chairman erred in laws and facts for failure to evaluate proper damages suffered by the Respondent because of the trespassing. A brief factual and contextual backdrop to understand the matter is as follows: the Appellant initiated proceedings at the tribunal, seeking a declaration that she was the lawful owner of the disputed plot and asserting that the Respondent had trespassed on her land. She relied on documentary evidence, including a certificate of title in her name. The Respondent denied trespassing, claiming he had been misallocated the plot by the relevant authority, and suggested that an exchange of plots would resolve the dispute equitably. Upon hearing the matter, the tribunal ordered an exchange of plots between the parties, awarded TZS 3 million as general damages to the Page 2 of 17 Appellant, and directed those costs be borne by the Respondent. The Appellant, dissatisfied, filed this appeal, raising the grounds that I have taken the liberty to reproduce above, for ease of reference. When the appeal was called for mention on the

17th day of October 2024 Mr. Aidan Mbuguye, learned Advocate appeared for the Appellant while also holding brief for Counsel for the Respondent Mr. George Joseph Sang'udi. Parties opted for hearing by way of written submissions. With a nod of approval by this Court, the following schedule was ordered: Appellant's submission in Chief: 30/10/2024, Respondent's Reply: 12/10/2024, Appellant's rejoinder if any: 18/11/2024, Mention to fix the date of Judgment: 18/11/2024 at 10:00 AM I take this opportunity to register my commendations to counsel for their spotless compliance with the scheduled order. This essential habit of time management, which is growing among Counsel in this country, is essential for enabling this Court to fulfil its Constitutional mandate of timely dispensation of justice. The next part of this Judgment is, in that order, a summary of submissions by both parties, my analysis of the law and the verdict. It should be noted however that as per the Court records, appellant's Page 3 of 17 documents were drafted by Mr. Evance Lwekaza Kaijage, learned Advocate. Mr. Kaijage claimed that the Appellant had demonstrated before the tribunal that she was the rightful owner of the land in question and that the Respondent was a trespasser. He criticized the tribunal for ordering an exchange of plots as a response to the ownership issue raised by the parties, asserting that this order contradicted the evidence presented, which the tribunal itself had found sufficient to confirm the Appellant's ownership. It was Mr. Kaijage's submission further that the tribunal's findings were based on the certificate of title submitted by the Appellant, which bore her name. Counsel averred that the tribunal was bound to address the central issue—ownership of the disputed property—by adhering strictly to the law governing land disputes rather than ordering remedies outside its jurisdiction. The order to exchange plots, Mr. Kaijage reasoned, amounted to an unlawful pardon, benefiting the Respondent for his wrongful actions, which contravenes established legal principles. He cited the principle enunciated in *Bi Hawa Mohamed v. Ally Seif* (Civil Appeal No. 9 of 1983), Page 4 of 17 where the court held that no one should be allowed to benefit from their own wrongdoing. He contended that, given the tribunal's finding that the Respondent was a trespasser with ill intentions, it should have declared the Appellant the rightful owner and ordered the Respondent to vacate the land. Addressing jurisdictional overreach, Mr. Kaijage submitted that the Chairman erred in law and fact by ordering the exchange of plots, which he argued exceeded the powers conferred by the Land Disputes Courts Act, 2002, and its Regulations. He maintained that such an order could only arise from mediation or agreement between the parties. He emphasized that the tribunal's mandate was limited to determining the rightful owner of the disputed property and did not extend to granting reliefs beyond those sought by the parties. Regarding procedural fairness, Mr. Kaijage asserted that the Chairman acted improperly by raising the issue of plot exchange *suo motu* and deciding on it without affording the parties an opportunity to address it. He pointed out that the exchange of plots was not among the issues framed or prayed for in the pleadings, and this departure from the issues raised by the parties denied them the right to a fair hearing. Page 5 of 17 To support his argument, the learned Counsel cited several authorities, including *Wegesa Joseph M. Nyamaisa v. Chacha Muhono* (Civil Appeal No. 161 of 2016) and *Joseph F. Mbwiliza v. Kobwa Mohamed Lyeesele Msukuma & Others* (Civil Appeal No. 227 of 2019). He emphasized the principle that courts and tribunals

must confine their determinations to the pleadings and reliefs sought by the parties. On the issue of general damages, he contended that the tribunal erred in law by failing to award general damages as prayed by the Appellant, relying instead on an incorrect finding that the Appellant had failed to prove such damages. He argued that general damages, being a natural consequence of a wrongful act, do not require specific proof and are awarded at the court's discretion. He referred to *Finca Microfinance Bank Ltd v. Mohamed Omary Magayu* (Civil Appeal No. 26 of 2020) and *Tanzania Saruji Corporation v. African Marble Company Ltd* [2004] TLR 155. Mr. Kaijage argued emphatically that the Appellant had proven that the Respondents trespass deprived her of access to and enjoyment of her property, which warranted an award of general damages. He also highlighted the principle that trespass is actionable per se, as explained in R.K. Bangia's Page 6 of 17 *Law of Torts* (without providing additional information but I assume this is a book well known to him). Lastly, Mr. Kaijage argued that the tribunal's award of TZS 3 million as general damages was grossly inadequate given the Appellants seven-year deprivation of property use and the significant hardships she endured. He submitted that the tribunal failed to fully analyze the time, effort, and resources the Appellant expended in attempting to resolve the dispute, rendering the award unrealistic and unfair. This paved the way for Counsel for the Respondent to provide his part of the story as discussed in the next paragraphs. Mr. Sangudi, Counsel for the Respondent, acknowledged that the appellant had filed a suit against the respondent at the DLHT seeking declarations that she was the lawful owner of the disputed property and that the respondent was a trespasser. However, he preliminarily challenged the appeal's competency, citing two issues: the memorandum of appeal was not annexed with a copy of the decree, contrary to legal requirements, and the appellant was simultaneously pursuing a bill of costs at the tribunal, thus engaging in an abuse of court process. Page 7 of 17 On the issue of non-annexation of the decree, he emphasized that attaching the judgment and decree was a mandatory legal requirement under Order XXXIX Rule 1(1) of the Civil Procedure Code Cap 33 R.E. 2019 and other relevant laws. He cited decisions, including *Hangu Jambau v. Nkumi Mtigwa CIVIL APPEAL NO. 9433 OF 2024* and *Chiku Hussein Lugonso v. Brunnids F. S. Paulo, CIVIL APPLICATION NO. 30 OF 1999 [UNREPORTED]* to reinforce the averment that failure to comply rendered an appeal incompetent and subject to dismissal. Regarding the appellant's simultaneous pursuit of the bill of costs and the appeal, he argued that this amounted to "riding two horses at the same time," a procedural impropriety akin to forum shopping. He referred to the Court of Appeal's decision in *The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lam son Sikazwe & Others, CIVIL APPEAL NO. 210 OF 2020* to support his argument. Turning to the substantive grounds of appeal, Mr. Sangudi maintained that the tribunal chairman acted within his jurisdiction and discretion by ordering the exchange of plots, a decision based on the evidence and circumstances of the case. He pointed out that the appellant herself had acknowledged the respondent's misallocation and the tribunal's attempt to Page 8 of 17 resolve the dispute equitably through an exchange of adjacent plots with similar characteristics. He also noted that the tribunal visited the locus in quo to ascertain the situation and justified its decision based on the location and state of the plots. On the appellant's claims regarding proof

beyond a reasonable doubt, Mr. Sangudi argued that this standard was inapplicable in civil cases, which are decided on the balance of probabilities. He contended that the tribunal correctly balanced the evidence, including the respondent's long-standing occupation of the plot and significant investments in good faith. Mr. Sangudi appeared to have taken the claim of "good faith" on the side of his client too seriously. He spent most of his time arguing on this point. He submitted that the respondent took all actions in the matter honestly, believing that he was making improvements to a lawfully acquired piece of land. He explained that the respondent had been allocated the disputed plot by the issuing authority, a fact supported by Exhibit DW-4—a letter dated 19th August 2022 from the Ministry of Lands. The letter confirmed that plots 195 and 197 had been misallocated and recommended an exchange of the plots to resolve the issue. Page 9 of 17 He further noted that the respondent had invested substantial resources in developing the disputed property and argued that ordering its demolition would not serve justice. He asserted that such an order would neither benefit the appellant nor protect the respondents legitimate interests. This perspective, he pointed out, was in line with the reasoning of the tribunal chairman, as evidenced on page 10 of the judgment. He also referred the Court of Appeal decision in *Hamisi Bushiri Pazi & Others v. Saul Henry Amon & Others & The Attorney General*, Civil Appeal No. 166 of 2019 (unreported). Mr. Sangudi emphasized that based on the facts of the present case, the chairman had rightly ordered the exchange of plots 195 and 197. This decision was consistent with the advice of the Ministry of Lands, he opined, as documented in Exhibit DW-4 and further supported by Exhibit DW-3. The learned Counsel listed several reasons provided by the chairman on page 10 of the judgment to justify the exchange, including the proximity and similar size of the plots, the respondent's substantial investment in the disputed plot, and his uninterrupted occupation of the property for over 18 years. He referred to the Court of Appeal's decision in *Masaka Mussa v. Page 10 of 17 Rogers Andrew Lumenyela & Others*, Civil Appeal No. 497 of 2021 (unreported) to support his contention. Turning to the appellant's claim that the chairman had exceeded his jurisdiction by ordering the exchange, Mr. Sangudi contended that this assertion was unfounded. He clarified that the issue of exchanging plots had been pleaded by both parties in their submissions and evidence. Referring to the respondent's written statement of defence, he highlighted that the respondent had sought an exchange of plots as an alternative remedy. He also pointed out that the appellant's own pleadings acknowledged the suggestion for an exchange, as evidenced by paragraph 6(a)(v) of the application and Exhibit DW-4. In response to the claim that the chairman acted *suo motu* in granting the reliefs, Mr. Sangudi argued that this ground of appeal was misplaced. He emphasized that the issue of exchanging plots had been canvassed extensively during the proceedings and was not raised unilaterally by the chairman. He distinguished the cases cited by the appellant, such as *Wegesa Joseph v. Chacha Muhono and others* (*supra*), by asserting that in those cases, the issues were not pleaded, unlike in the present matter. Page 11 of 17 Addressing the issue of damages, Mr. Sangudi argued that the appellants claim for TZS 50,000,000 constituted specific damages and required strict proof, which had not been provided. He clarified that general damages had not been pleaded by the appellant, and the award of TZS 3,000,000 by the tribunal was

discretionary. He asserted that this award was not subject to appeal since it was not explicitly pleaded or prayed for. Finally, Mr. Sangudi submitted that the appellant's delay in addressing the misallocation for 18 years, coupled with the respondent's willingness to resolve the matter amicably, demonstrated that the appeal lacked merit. He concluded by urging the Court to draw inspiration from the cited authorities and equitable principles and to dismiss the appeal with costs. I have dispassionately considered the rival submissions and keenly examined the lower Tribunal's records. The following issues call for my determination as a guide to the resolution of this appeal.

1. Whether the appeal is competent in light of the preliminary objections raised by the Respondent.
2. Whether the tribunal erred in law and fact in determining ownership of the disputed plot.
3. Whether the tribunal exceeded its jurisdiction by ordering an exchange of plots.
4. Whether the tribunal's award of TZS 3 million as general damages was appropriate. Page 12 of 17 On the first issue, the Respondent raised two preliminary objections: (i) That the appeal was incompetent as the memorandum of appeal was not annexed with the decree, contrary to Order XXXIX Rule 1(1) of the Civil Procedure Code (*supra*), (ii) That the Appellants simultaneous pursuit of a bill of costs and the appeal amounted to an abuse of court process. I think these objections should have been raised before hearing of the appeal on merit. Be it as it may, and to avoid any doubt, I will address them and move on to substantive grounds of appeal. On the first objection, it is indeed a settled principle that an appeal must be accompanied by both the judgment and decree. In *Chiku Hussein Lugonso v. Brunnids F. S. Paulo* (*supra*), it was held that such omissions are not fatal if the decree is available in the court record. In this case, the decree is indeed on record. Therefore, this objection lacks merit. On the second objection, the Respondent relied on *The Registered Trustees of Kanisa la Pentekoste Mbeya v. Lamson Sikazwe & Others*, (*supra*) arguing that pursuing both a bill of costs and an appeal constituted forum shopping. While it is true that parallel proceedings can amount to an abuse of process, this principle does not apply when both proceedings emanate from the same decision and address distinct issues. Page 13 of 17 The bill of costs does not prejudice or delay this appeal. This objection is also dismissed. On the second issue that touches upon substantive grounds of appeal, the Appellant argued that the tribunal erred by failing to declare her the rightful owner despite her presentation of a certificate of title, which is *prima facie* evidence of ownership under the Land Registration Act. The Respondent, on the other hand, relied on his occupation and investments on the land, claiming good faith in his acquisition. Ownership of land is determined based on evidence, with a certificate of title carrying significant weight. In this case, the tribunal acknowledged the Appellants certificate but did not make a finding in her favour. Instead, it opted for an exchange of plots, thereby failing to address the core issue of ownership. It is my finding that the Honourable Chairman avoided facing the root of the conflict head-on. This was a misdirection in law and contrary to litigation in an adversarial system. Bravery should be explicit in judgments. On the third issue, the Appellant contended that the order

for an exchange of plots was beyond the tribunal's jurisdiction under the Land Disputes Courts Act, 2002. She argued that the tribunal raised this remedy Page 14 of 17 suo motu and decided on it without affording the parties an opportunity to be heard. It cannot be overemphasized that Courts and tribunals are bound by the pleadings and the issues framed by the parties, unless they find it just to raise a new issue for purposes of resolving a dispute and ensure the parties are adequately heard on the same. In this case, the tribunal's mandate was limited to determining ownership and awarding reliefs sought by the parties. The order for an exchange of plots was therefore ultra vires. On the fourth issue, the Appellant argued that the damages awarded were grossly inadequate given the prolonged deprivation of her property. General damages are discretionary but must reflect the severity of the harm suffered. In *Tanzania Saruji Corporation v. African Marble Company Ltd*, (supra) the apex Court underscored that general damages must adequately compensate the injured party. In this case, the Appellant endured seven years of deprivation and related hardships. The TZS 3 million awarded was insufficient. Before I conclude, I am inclined to state albeit in passing that as "good intentions" and other fallacies such as "substantial investment" have been Page 15 of 17 invoked to arrive to an erroneous and unjust decision. Counsel for the Respondent has tried to play the same cards in this appeal but, unfortunately, no amount of investment is enough to justify trespassing in another person's land. I have also noted that the Appellant has been put in a "corner" of technicalities to make her way out almost impossible. Had it not been to eloquent submissions by Mr. Kaijage, one can be tempted to think that the appellant had exhausted her remedies and estopped from further actions. In my opinion, the right to appeal goes beyond such technicalities, real or perceived. This reminds me the Kiswahili saying "Mwenye Chake Muungwana." The Appellant should not be compelled to surrender her land simply because of proximity and similarity to that of the Respondent. Experts in negotiation know how to handle both position and interest in negotiation. The learned Chairman's deliberation and award left out the interest which could include personal attachment and intrinsic values to the said land. Without prejudice to the orders that I am about to make, should parties seek to resume negotiation to reduce the extent of damage, such technical aspects of negation must be adequately addressed. Page 16 of 17 In the upshot, I find merit in the appeal. The decision of the tribunal is set aside, and I substitute it with the following orders:

1. The Appellant is declared the rightful owner of the disputed plot.
2. The Respondent is ordered to vacate the property within 30 days from the date of this ruling.
3. General damages are enhanced to TZS 10 million, payable by the Respondent to the Appellant.

4. Costs of this appeal and the proceedings in the tribunal are awarded to the Appellant. It is so ordered. '£ \ \ - E.I. LALTAIKA JUDGE 25/11/2024 ■' .jivy-A - ' COURT: Ruling delivered in Court Chambers this 25th day of October 2024 in the presence of Mr. Evance Lwekaza Kaijage, learned Advocate for the Appellant and in the Absence of the Respondent and his Counsel. Page 17 of 17
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/322682/source_file/06f615d3340b4630/Land_Appeal_Noy._24792_of_2024_scnd_29.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/genofeva-wendy-okoth-v-edger-lema-Landownership-tanzlii-2024--6a3ea52d3b1caa9129826d89>

Prepared on 13 October 2026 · Esheria