

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOROGORO SUB-REGISTRY AT MOROGORO LAND APPEAL NO. 25037 OF 2024 (Originating from the decision of the District Land and Housing Tribunal for Morogoro in Land Application No. 10 of 2022) TERESIA AUGUSTINO APPELLANT VERSUS FIDELIS LIBERAT SHAYO 1st RESPONDENT DANIEL MPOMA 2nd RESPONDENT NURDIN KIGURUNULA 3rd RESPONDENT

JUDGEMENT

29/10/2024 & 10/12/2024 KINYAKA,3.: In the present appeal, the appellant, Teresia Augustino is seeking to assaii the decision of the District Land and Housing Tribunai for Morogoro hereinafter the "Tribunai" dated 27th August 2024 in Land Application No. 10 of 2022 which was found in favour of the 1st respondent. In the suit before the Tribunal, the 1st respondent jointly and severally sued the appellant (the then respondent), 2nd respondent and the 3rd respondent over a piece of land measuring 35 metres long and 20 metres wide situated at Mji Mwema Street, in Lukobe Ward, within Morogoro Municipality, hereinafter the "the disputed land". According to the application before the Tribunal, the respondent claimed that he acquired the land in dispute by purchasing the same from the 2nd respondent and that in the year 2019, the appellant without lawful justification invaded the disputed land and made various improvements therein. In a bid to prove his ownership of the land, the respondent tendered before the Tribunal the sale agreement and apart from himself, he lined up three witnesses; Andrew Milinga (PW2), who testified to have been the one who persuaded the 1st respondent to buy the disputed land; Magreth Charles (PW3), the chairperson of the Kihonda Street government who testified to have prepared and witnessed the sale agreement between the 1st respondent on one hand and the 2nd respondent on the other; and PW4, Liberati Shayo, the 1st respondent's husband who informed the Tribunal that his wife bought the disputed land in the year 2005. On the strength of such evidence, the respondent prayed for the following reliefs:

1. That this honourable Tribunal be pleased to be declared that he Is the legal owner ofthe land In dispute;
2. That this honourable tribunal be pleased to grant permanent Injunction restraining the appellant and any other person acting on her behalffrom using and enjoying the iand in dispute;

3. An order for costs of the suit to be borne by the appellant; and
 4. Any other relief this tribunal would have deemed fit to grant. The appellant disputed the respondent's claims. In her amended written statement of defence dated 19th June 2023. Contrary to the respondent's averments that the disputed land is located at Mji Mwema street within the Lukobe Ward, Morogoro Municipality, the appellant stated that the same is situated in Kambi Tano Street in Lukobe Ward, within Morogoro Municipality. She further claimed to have purchased the land measuring 20 x 25 paces from the 5th respondent on 28th November 2019.
- In her defence testimony, the appellant (DW1) tendered the purported sale agreement which was admitted in evidence as Exhibit D1. Her evidence was corroborated with that of Bahati Mohammed (DW2) who testified to be the one who assisted the appellant looking for the land in which she could build a house, and the same turned out to be the land alleged to be subject of the dispute at the Tribunal. The 6th respondent also disputed the 1st respondent's claims in his separate written statement of defence. He stated that as the disputed land is unsurveyed, its boundaries ought to have been clearly described in order to differentiate the same from other lands which are not in dispute. He contested the size of the land averred in paragraph 3 of the appellant's application and stated to have sold the disputed land to the appellant in his capacity as the legal owner of the same. Testifying at the tribunal, the 6th respondent (DW3) told the tribunal that he was the one who supervised the construction of the appellant's house in the land which is now in dispute. Upon considering the parties' pleadings and evidence, a judgment was entered in favour of the respondent as indicated earlier. She was declared as the lawful owner; and the appellant and the 2nd and 6th* respondent were permanently restrained from entering into the disputed land. The appellant and the respondents were ordered to bear the costs of the suit. The outcome of the suit displeased the appellant. She channelled to this court her petition of appeal containing the following grounds of grievances:
1. That, the disputed suit land was not sufficiently described contrary to the dictates of Order VII Rule 3 of the Civil Procedure Code, Cap. 33 R.E 2019 hence vitiated the entire trial;
 2. That, the respondent's (the then applicant) amended application dated on 20/01/2023 seriously contravened mandatory Rule 3(2)(d) and (e) of the Land Disputes Courts (The District Land and Housing Tribunal) (Amendment), Regulations, 2023;
 3. That, the trial tribunal erred in law and in fact when it declared 1st Respondent as the lawful owner of the disputed land while her evidence on record (both oral and documentary) did not tally with her pleading; and
 4. That, the trial tribunal did not consider and analyse Appellant's evidence such as Exhibit D1 in particular hence there was no fair trial. The 1st respondent lodged her reply to the petition for appeal disputing all the grounds of appeal in the petition of appeal. The hearing of the appeal proceeded through written submissions. Mr. Thomas Mashankara prepared and filed the submissions in support of the appellant's appeal. Both the 1st and the 3rd

respondents wrote and filed their respective reply submissions against the appeal. The 2nd respondent did not enter appearance despite being served through substituted service. The matter therefore proceeded *ex parte* against him. In respect of the first ground of Appeal, Mr. Mashankara contended that the disputed land was not sufficiently described contrary to the dictates of Order VII Rule 3 of the Civil Procedure Code, Cap. 33 R.E. 2029, hereinafter the "CPC". He pointed out that the land was not described as to whether it was registered or not, and that neither its size nor the boundaries were stated. He faulted the respondent's description of the disputed land that the same is found in the street of Mji Mwema within the Ward of Lukobe but did not provide more description of the same including its size. He cited the case of Lupembe Village Government Ikolo Ward Kyela District & Another v. Bethlehemu Mwandafwa & Others, Civil Appeal No. 377 of 2020 [2023] TZCA 17313, and averred that being unregistered land, the description was too general and vague because all features covering it for easy and proper identification of the land to enable the Tribunal make an executable decree were not stated. He further referred the Court to the case of Daniel Dagala Kanuda (As the administrator of the Estate of late Mbalo Lusha Mbulinda) v. Masaka Ibeho and 4 Others, Land Appeal No. 26 of 2015, (unreported) and remarked that the amended Land Application No. 10 of 2022 which was lodged before the Tribunal was defective for contravening the mandatory provision of Order VII Rule 3 of the CPC and Regulation 3 (2)(b) of the Land Dispute Courts (District Land and Housing Tribunal) Regulations of 2023, G.N. No. 174 of 2003, hereinafter the "Regulations".

6 On the second ground, Mr. Mashankara attacked the Land Application No. 10 of 2022 as being seriously defective for omitting to indicate Regulation 3(2)(d) and (e) of the Regulations. In his view, it was expected of the 1st respondent to obtain an order for amendment so as to fill in those gaps or lacuna but that was not done. In support of the third ground of appeal, the learned counsel contended that the Tribunal grossly erred in law and fact when it declared that both oral and documentary evidence presented by the 1st respondent at the Tribunal did not tally with her pleadings. He elaborated that in her testimony which was supported by testimonies from PW2, PW3, and PW4, the 1st respondent stated that she bought the land in dispute in the year 2005 from Daniel Mpoma and that appellant invaded it without any lawful course in the year 2019. He remarked that the 1st respondent's testimony did not tally with her pleading. In the fourth ground, the appellant's complaint was premised on the Tribunal's omission to consider the evidence from the 1st respondent. Mr. Mashankara contended that Exhibit D1 (the sale agreement) was not considered and analyzed which according to him; the omission vitiated the entire trial and rendering the judgment as unfair in all four angles. From the above submissions, the learned counsel prayed for this Court to allow the appeal for being meritorious and order trial *de novo* with new set of chairperson and new set of assessors with cost. Submitting against the first ground, the 1st respondent implored the Court to ascertain as to whether the foregoing complaint was raised before the Tribunal. She pressed that the Tribunal was correct to hold in favour of the 1st respondent and that the disputed land was described on the application as found in the paragraph of the judgment as an unsurveyed land. In her view, the provision of Order VII Rule 3 of the CPC was misapplied by the appellant in fronting his complaint in the first ground. She faulted the second ground

of appeal for being baseless and unmerited in law contending that it cannot move the Court to allow the same. She elaborated that she filed the application to the Tribunal but later on, the Tribunal ordered that 3rd respondents should be joined as necessary parties. On the third ground of appeal, the 1st respondent contended that the evidence produced by the respondent tallied with the pleadings as the main suit concerned the matter of land in dispute and the evidence adduced concerned with the land in dispute. She cited the case of NBC Ltd V. MM World Wide Trading Co. Ltd, Commercial Case No. 84 of 2015, to reinforce his contention. Against the fourth ground, the 1st respondent commenced his submissions by asserting that the court are inclined to make determination after hearing the parties basing on the evidence adduced at the trial. She supported the Tribunal's determination of the suit stating that the same was based on the evidence adduced by the parties at the Tribunal. She thus beseeched the Court that the appeal be dismissed and the decision of the Tribunal be maintained as it is with costs. On his part, the 3rd respondent supported the instant appeal for being meritorious. He contended that the appellant deserves everything in her petition of appeal. He informed the Court that he is the one who sold the land in dispute to the appellant through sale agreement, which was tendered in evidence but it was not considered by the Tribunal and no reason was given for the Tribunal's non consideration of the same. It was therefore his prayer for this appellate court to adjudge the appeal according to the law. The closure of the parties' submissions justifies this Court to decide on the appeal. In the course of my decision, I will determine the grounds of appeal by consolidating the first and second grounds which raised matters of law and If need be, I will proceed to determine the third and fourth grounds of appeal. In the first ground, the appellant's complaint is based on lack of proper description of the disputed land in the respondent's Land Application No. 10 of 2022 contrary to Order VII Rule 3 of the CPC and Regulation 3(2)(b) of the Regulations, while In the second ground, the complaint is on contravention of Regulations 3(2)(d) and (e) of the Regulations. I find it crucial to reproduce the provision of Order VII Rule 3 and Regulations 3(2)(b),(d) and (e) of the Regulations. Order VII Rule 3 of the CPC states: "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 a case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number" Regulation 3(2)(b),(d) and (e) of the Regulations provides: "An application to the Tribunal shall be made in the form prescribed in the Second Schedule to these Regulations and shall contain:

- (b) the address of the suit premises or location of the land involved in the dispute to which the application relates." (d) estimated value of the subject matter of the dispute; (e) relief sought. is-10 I agree with the respondent that neither the appellant nor the 3rd respondent complained of the above anomalies before the Tribunal that would warrant the Tribunal's determination of the issue. However, this being a point of law, this Court is obliged to determine whether the dictates of the law under Order VII Rule 3 and Regulations 3(2)(b),(d) and (e) of the Regulations were complied with. In the case of William Sulus V. Joseph Samson Wajanga, Civil Appeal No. 193 of 2019 [2023]TZCA 92(9 March 2023), the Apex Court instructively held

on page II of the decision that: "This is a cherished iegai principai that once a point of law, like the one at issue is raised, the Court has to consider it at the earliest opportunity, regardless of having been improperly raised or raised at a later stage. In other words, it can be raised at any stage of the proceedings even at an appellate stage. In this regard therefore, it was correct for the High Court to determine it as it did." In the appeal at hand, the determination of the Issue raised is crucial as the said provisions of CPC and the Regulations make it mandatory for the plaintiff/application to sufficiently describe the Immovable property in dispute prior to the hearing of the disputes by the court or the Tribunal. My reading of the proceedings of the Tribunal reveals that contrary to the appellant's assertion that the size of the land was not described in the 1st respondent's land application, the respondent indicated the size of the land in dispute as measuring 20 to 35 feet in paragraph 6(ii) of her application before the Tribunal. However, I admit that the description of 20 to 35 feet does not meet a proper description of the size of the land in terms of width, length and appropriate size. Nevertheless, I agree with the appellant that in the land application, the respondent omitted to provide proper description of the dispute land by her failure to disclose boundaries and names of owners of the adjacent parcels of land contrary to Order VII Rule 3 of the CPC and Regulation 3(2)(b) of the Regulations. Again, I have found that in her amended application, the respondent failed to state the estimated value of the subject matter and the reliefs claimed upon the Tribunal's order dated 5th December 2022 for the applicant to amend the application to include the 2nd and 3rd respondents. Such failure contravened the provisions of Regulation 3(2)(d) and (e) of the Regulations. With the above omissions, I find it correct as argued by the appellant that the 1st respondent's amended application omitted to disclose the boundaries and names of owners of the adjacent parcels of land; the estimated value of the disputed land; and the reliefs that she claimed. The missing information were necessary particulars in the land application 12th as provided for in Form No. 1 prescribed in the Second Schedule to the Regulations. Since disclosure of the particulars was a statutory requirement and necessary to identify the suit land, the missing information were an integral part of the application whose absence could not establish the cause of action. The Tribunal ought to have rejected the respondent's land application for contravention of the law. In holding as above, I am fortified by the decision of the Court of Appeal in the case of Olorubare Nginyu v. Kilempu Kinoka Laizer, Civil Appeal No. 416 of 2021 [2024] TZCA 598 (18 July 2024) in the last two paragraphs of 20 where it was articulated that: 'We have considered the counsel rival submissions and were persuaded that, the amended plaint omitted to disclose boundaries and names of owners of the adjacent parcels of land, being particulars necessary to describe the suit property. Since disclosure of the particulars was a statutory requirement and necessary to identify the suit land, the missing information were an integral part of the plaint, whose absence could not establish the cause of action. Considering the issue cropped up in the pleadings, and in view of the provisions of Order VII, Rule 11(a) of the CPC, it was incumbent upon the trial court to address it and if satisfied, reject the plaint. Since the plaint was not rejected and the court proceeded with trial on an incompetent plaint, the resultant proceedings were vitiated and thus a nullity' 13 In view of the above, I hold that Tribunal proceeded to determine the dispute in Land

Application No. 10 of 2022 based on an incompetent application. It follows that the resultant proceedings were vitiated and therefore a nullity. With the above conclusion, it is obvious that the determination of the remaining issues becomes redundant. The determination of the first and second grounds has disposed of the entire appeal. All the same, I do not find basis in the prayer by the appellant that I should nullify the proceedings, quash and set aside the judgment and decree of the Tribunal and order trial de novo. The reason being that if the land application was incompetent, the Tribunal cannot proceed to hear and determine an incompetent application. Consequently, I nullify the entire proceedings of the tribunal in Land Application No. 10 of 2022, quash the judgment and set aside the resultant decree of the Tribunal dated 27th August 2024. Due to the nature of the first and second grounds of appeal that led to the disposition of the entire appeal, I order each party to bear its own costs. It is so ordered. 14 Right of appeal fully explained. DATED at MOROGORO this 10th day of December 2024. Ct. H. A. KINYA JUDGE Vwi 10/12/2024 «0 15

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