

IN THE HIGH COURT OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO 71 OF 2020

BETWEEN

ELIZABETH JOSEPH _____ APPELLANT

VERSUS

GODFREY SHALI STEVEN _____ RESPONDENT

(Arising from the decision and orders of the District Land and Housing Tribunal for Musoma at Musoma Hon. Kitungulu, Chairman, in Land Application no 72 of 2019 dated 28.07.2020).

JUDGEMENT

25th & 29nd January 2021

GALEBA, J.

This appeal is in respect of **Plot no. 38 (Low Density) Block 'BB' Buhare Area in Musoma Municipality (Plot 38)**. The matter was started in the trial the District Land and Housing Tribunal by the respondent complaining that the appellant was encroaching on his plot 38. In response, the appellant disputed the allegations but also she pleaded that she does not claim anything related to plot 38. In the circumstances the District Land and Housing Tribunal confirmed that indeed the respondent is the lawful owner of land. This appeal is challenging that verdict.

In this appeal the appellant raised 3 grounds as follows;

"1. That, the Honourable chairman erred both in law and fact by failing to make proper analysis of the evidence of both parties adduced during trial of the said land case,

2. That, the Honourable chairman erred both in law and fact by failure to consider that the land in dispute is a merely paddy farm therefore not subject for survey,

3. That, the Honourable chairman erred in law and fact by failure to consider that the respondent had never compensated the appellant when he acquired the land."

I will start with the 3rd ground because it has the effect of disposing of the whole appeal. In supporting the 3rd ground, the appellant submitted that when the area was being surveyed, she was not compensated. In reply to that ground, **Mr. Steven** submitted that although the appellant did not raise any such complaint in the district land and housing tribunal, but also according to paragraph 5 of her written statement of defence in the tribunal, she had indicated that the land she had a complaint about was different from Plot no. 38. During the rejoinder, she confirmed to this court, not once, several times, that she has no issues with Plot 38 which was the subject matter in the district land and housing tribunal.

The rejoinder submissions of the appellant diminished quite greatly the level of effort that I had to put in this appeal. It made my work easy because, the decision challenged was to the effect that **Plot no. 38 (Low**

Density) Block 'BB' Buhare Area in Musoma Municipality is the lawful property of the respondent, which, by her submission, she was not challenging. Paragraph 5 of the written statement of defence of the appellant in the tribunal states;

"5. That the contents of paragraph (6)(b)(1) of the application is strongly denied for being tendered unrealistically, good as applicant's own creation without any evidential value. The said Plot 38 Block BB is altogether a different place with purported suit land. The two is detached or separated by street road, thus applicants claims are entirely baseless, but a desperate attempt to deploy replaced evidence without substance (sic). Attached herewith is a sketch map availed by the Applicant marked ANNEXURE TWO for the tribunal to refer from as party of the reply."

Legally, parties are bound by their pleadings; see **James Funke Gwagilo v The Attorney General**, [2004] TLR 161 and **Peter Karant and 48 others v The Attorney General**, Civil Appeal no 3 of 1994. I mean here the appellant is bound by her pleadings that she has no claim on plot 38 which fact she confirmed to me. She told this court that her interest was not in that plot but in the muddy rice farm in the vicinity of the plot. To me that means that there is nothing to challenge in the decision of the trial tribunal. In the circumstances, this ground, fails.

Based on the above discussion, this court upholds the decision of the District Land and Housing Tribunal at Musoma and confirms the findings that the lawful owner of land is the respondent, even without attempting to determine other two grounds for it would be a waste of time. This court further dismisses this appeal in its entirety with costs only that the appellant has a right to appeal to the Court of Appeal of Tanzania according to law.

DATED at MUSOMA this 29th January 2021




Z. N. Galeba
JUDGE
29.01.2021