

TANZANIA / JUDGMENT

CHARLES GREGORY KAMAKA

COURT
TANZLIIDECIDED
27 May 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA SUMBAWANGA SUB- REGISTRY
AT SUMBAWANGA LAND APPEAL NO. 27074 OF 2023 (REFERENCE NO. 20231206000027074)
(Originating from Miele District Land and Housing Tribunal in Application No. 10 of 2023)
CHARLES GREGORY KAMAKA (Administrator of the estate Of the late Gregory Kakumba
Kamaka)..... 1st APPELLANT VICENT S/O
MZURI..... 2nd APPELLANT VERSUS AUGUSTINO S/O CHOMBA
1st respondent PASCHAL S/O MAMBWE ... 2nd respondent FILBERT S/O LYANKUBA ... 3rd
respondent MARTIN S/O MALILO..... 4th respondent ALTURA S/O MSOME..... 5th respondent
LUCIA D/O SUM BA..... ,6th respondent JULIETA D/O MALILO..... 7th respondent Last order:
27th MAY 2024 Judgement: 08TM JULY 2024

JUDGMENT

NANGELA, J.: The appellants, Charles Kamaka (as the Administrator of the estate of the /ate Gregory Kakumba Kamaka) and Vincent Mzuri filed this appeal praying for judgement and order restoring their case which was dismissed by the District Land and Housing Tribunal (DLHT) for Miele District. The brief facts of the appeal are that the appellants had earlier filed a complaint before the DLHT alleging that the respondents had trespassed into his landed property. The Page 1 of 6 property in question is an area of land measuring nine acres and a half situated in Lingamila, Mamba "B" Village, Miele District. However, during the hearing of their complaint before the DLHT, the respondents raised a preliminary objection arguing that the matter was re-judicata. The respondents alleged that, the 2nd Respondent, acting on behalf of the late Gregory Kamaka had a similar matter which was adjudged by the Ward Tribunal of Mamba in Complaint No.35 of 2016 and the 1st respondent won the case. I have noted the Tribunal's decision as well as Misc. Appl. No.43 of 2017 which sought to execute the decree extracted from the decision rendered by Mamba Ward Tribunal in Complaint No.35 of 2016. Although the appellants had argued before the DLHT that the matter before the tribunal was different from Complaint No.35 of 2016 which was adjudged by the Mamba Ward Tribunal, the DLHT made a finding that the matter was res-judicata and, hence, dismissed the complaint. Aggrieved by the decision, the appellants have approached this court on appeal and have raised two grounds, to wit, that:

1. That, the trial tribunal erred in law when it dismissed the original case for what it termed as being "res judicata" while in fact the case was not "res judicata".

2. That, the trial tribunal erred both in law and fact when it failed to accept and, indeed, recognize that the first appellant was not part of Shauri Namba 35/2016 which was decided by Mamba Ward Tribunal. Initially the parties had asked for time to resolve their dispute amicably given that the 3rd to 7th respondents had a concern that they were mere licensee with nothing substantial in the appeal. Although this court was lenient in granting their prayer, they could not resolve their differences and the matter had to proceed to a full hearing. The hearing of this appeal took place on the 27th of May 2024. Except for the 5th respondent who was absent, and the matter had to proceed ex-parte against him, the rest of the parties appeared in court unrepresented and argued their respective positions. Submitting in support of the appeal, the 1st appellant (Charles Kamaka) (also appearing under a power of attorney for the 2nd appellant) urged this court to allow this appeal. His ground for such was that he was not a party to the complaint, which was filed before the Mamba Ward Tribunal, Complaint No. 35 of 2016 and Msc. Civil Appl. No.43 of 2017 before DLHT for Mpanda Katavi, were matters between the 1st Respondent and the 2nd Appellant. He told this court that, at the time, the 2nd appellant was only overseeing the land on behalf of Mzee Gregory Kamaka, the 1st appellant's father (now deceased too) and was not the owner of the land and had no powers to sue or be sued concerning the same. On that account he disputed the correctness of the DLHT's decision. As regards the second ground, the appellants argument was that the 1st appellant was also not a party to the case before the Ward Tribunal and the 2nd appellant was only sued as an Page 3 of 6 overseer while he had no right of ownership of the shamba. He contended that, because the 2nd appellant was not the owner of the shamba, as it belonged to Gregory Kamaka, the right person who should been sued was the administrator of the estate of my late Gregory Kamaka. He thus urged the court to allow this appeal. In response to the 1st appellant's submission, the 1st respondent submitted that, as the records will show, the case before the DLHT was dismissed because it was not a new case but a case that had been earlier decided. He contended that the respondent in the case was one and the same person and, for that matter, he argued that this appeal should be dismissed. As regards the 2nd ground, it was the 1st respondent's contention that, the same should be dismissed because the same documents used by the respondent in Shauri Namba 35/2016 are the same. He submitted that the 2nd appellant Vicent used to say the shamba belonged to him. In view of that, he urged this court to dismiss this appeal and make a find that the decision of the District Land and Housing Tribunal was right. The 2nd, 3rd, 4th, 6th and 7th respondents had one common issue, i.e., that they had nothing to do with this appeal since they are mere licensees having been invited to use the land on hire by the 1st respondent. The held a view that, whosoever is given the said land is not an issue to them since they are not the owners and have never claimed to be. They even urged this court to expunge them names from the record of this case and be paid costs. Page 4 of 6 In a brief rejoinder, the 1st appellant submitted that, the 1st respondent never sued him before the Mamba Ward Tribunal or the DLHT for Mpanda, Katavi. He rejoined that his name was not among the parties. He submitted that there was not even an appeal since the 2nd appellant was only overseeing the farmland. He rejoined further that, it was from such a reason that he filed the matter before the District Land and

Housing Tribunal and joined Vicent because he was the person who was there overseeing. According to him, the true owner and a keeper of the same property are two different persons. He urged this court to allow the appeal. As regards the 2nd to the 7th respondents, he argued that they are the persons he found cultivating his land and they are to sort out themselves and claim from the person who allowed them to trespass on his property. He contended that, such is the person to bear the costs if any. I have dispassionately heard the parties. The issue for me to determine is whether there are any merits in this appeal. Having looked at the record and heard the parties, it is my finding that the DLHT erred in dismissing the complaint on the ground that it was res-judicata. In my view, the appellant was right in his argument that the complaint was not the same as Complaint No. 35 of 2016. In any case, in the Shauri (Complaint) No. 35 of 2016, the respondent herein had sued a wrong person. The person he sued was not even the owner of the property in dispute. As the appellant herein contended, a mere keeper of the same property cannot be regarded as the true owner of the property able to be Page 5 of 6 sued or sue. The two were different persons and in that Shauri (Complaint) No. 35 of 2016 the appellant or his father who was the true owner were not parties thereto. On such a reasoning, I would proceed to allow the appeal, quash the proceedings, decision and the resultant orders of the DHLT. Given that the DLHT did not decide on the merits of the complaint which the appellant had brought before it, I hereby order that the original file be returned to the DLHT and direct that the matter be heard and determined on merits. In the circumstances I make no orders as to costs as each of the parties shall bear own costs. Further, since the 2nd, 3rd, 4th, 5th, 6th and 7th respondents are mere licensees their involvement in this case was uncalled for. They should therefore cease to utilize the property in dispute for the time being until when the dispute is resolved, and a proper arrangement is made between themselves and whoever shall be found to be the rightful owner. It is so ordered. Right of Appeal fully Explained to the Parties. Page 6 of 6

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