

TANZANIA / JUDGMENT

19920109 TZHC Dar es Salaam

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TZHCDECIDED
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'... I IH TIE III.CID: COURT OF TA1JZANIA 11.T Dill ES Sf,J;.IVIMa . : (PC) CI7IL APPEAL HO, 8 OF 1990 ALLI.I,V Cl:i ~ ,... , - DI"" Am ~ ~IJ..J.CU:J . ' ,1.),L.i.,1.,i~t. I . t f & t. G. t t D·O ,0 4 ti O • ' t· 0 0 0·0 • • , / , ~r·T AP'PELTLJJ.~· versus JUD GM EN Te Thia n.ppoel o:riGi-nat<is froi:1 Probate and il.diu.;,1is-tra-'i;io11 Cause No. 109 o:t 1909 filed in the P:ci~Y c·olll't of 13uu"ttn.mi ui-';hin Ilala ni.strict, Docoasec.l Shabrutl Abc.lallcll ~ta, whoso cs~l;atc was tho subject av:tter, l{c:ft bcllind two children and a Widow. Ilis ostato consisted of a hu-'i; built on Ui."IXce,i.stOl'cd area in Duu"Ul:Ullii '11.o pnnar:y com:-'~ appointed Ally Shal:ian:i. 1 one of tho doccascd~:1 ~ to adr.ri.11.ia-'licl' tho estate. tn:t<Jr on -t,b.o c.ow:~t. Wi\G informed "iihn;t the hut in qt.tction uas sold by the :r-csponc.lont to one Ilalir:ia Mc;nya for shs., y:jooj<., Rcsponclent and the clcccc1sed arc full brothers,. At the tioo of the ('.oath of theix father appellant anc.l his sister 'lfcre ninors. B-r fonil.;r arz-anc~.10nts, rosponclo11t was entrustocl witl1 tho hu-t in question., Rcsponc.1-ent clains th2~ ho decided to sell the udd hut after it :.1ac.l follon c.lown due ~i;o ui~opair. Thoue-ri rcsponclont was su.ppoed to 111:l.lcll -';o tho throe hail's tho shs.3000/.. xcolisocl fl'o,1 the soll of tho sui-i; hut to date he has not clone. ~c sell uc1s effected in 1978c m:m.nullilo the buyc:r o:Z tho hut had o;rctecel a six roor:1cd house, 'lllc p:d;:lary couxt orclcrcc.l thnt appellant wa.s cntitloc.l fo possession of ~he sDid n:ewly o;r;ecfoel house. This decision uas :revi.sod by the Dis.,,:dc-'c Court. !Iowc'vcr, the cou:rt clid not c;i;ve an,Y specific ronccly to ~.llc al)l)cllant• In. this .:ipi)enl.1 o.ppcllrur~ is challcn[jinc tho alloe;ec1 cell of tho hut. D..1.t ~clinst this D.re,u~.1ont it is a fact that resi)onclnt ~had sone interest in the said hut. Ilo hold it as a trustee. And his .. claim tha~i; he d.ccidcel to sell tho suit hut because it hac.l fallGn down in disrepair ho.cl not been dis1xr:ovcel,. Tho hut boinc on uiu'cc,i.storod land it 1roulc.l lmvc boon, diffit~J:~ to no.into.in dccoasoc.l property ric;ht over tho smcl ,la,1d aftc:r; the iu.1;i; hac.l fc.llen down.. So his decision (..... ,/2 -, to sc.11 ii was in the bes~i in~etct of the .csta~tc" Tb.ore is no d\7idcnce Hhich cha.llbni;cs -l;iho bona. lido of the said sell. It was done before a witness. Since no probate pJrl:>dcclinc;s liaci boch filed in respect of the estate, iJ.; was not necessary to involve tho court in the saicl sru.e. .And the px:foc of shs• .3000/= is not questioned as beue .fraudulently. undc:rpri9,ocl. As a uhole no faud aa.n ho inputed on tho roeponclcmt and the buyer fox the sole of the smd hu_t. But as noted earlier-, thxouc;h deceasetl's clan a:rrangenct the hut was entrustcel to the responclnt for the 1Jcncfi t of the hoixs. So after sellint; the huJli he uas suppoed to accotmt for the proceeds ~to the iclan .'~ to the two chilcll'cn after_ they llacl ao,ie of age. To date he had not done.. IIs failtn'e fo account for the procced_s, and not fo:r selling the hut, ru:iounJi;ecl to breach of the snicl ~rus_t. The house was sold in

1978. Hence fox over 12 years respondenJli had deprived the doccascd estate of Ji;he financial bcnefi~ arisine- fror.1 the scid sale. Appcll£ln"i; and his co-dld.rs arc entitlocl ·co 1Jc coi.1pensa-
lied for this loss. The best wey this can ho done is by orclc:r-inc peyi:1ent of inJi;crost on the said
purchase m011c,r• In conclusiop., -'iim.s appeal aubstantic:.11.:/' f D.ila. Ilowcvva.r, rosponclent
is ordered to xcr.1j/c to the estate of the dccen.secl the sun. of shs.3000/= . realised from Julie sale
the hut in question., Bo is ,1'l:l:tlL.Q,r ordered to paJr interest of 10 pox ccp.tu,ra per ru1llUi:1 on
the said a.-:1cx.u1Ji; With off ect fron 197:a_ &)cli party is to bcaJ: .W.s.. costs., JUDGE For the
Appellant: Abson~ . For the Respondent: AbscnJli . Orders Ju,.clg;i1cnt .1:ca.cl ovel' in the
a1::iscncc -of tD.c parties• · Hr, ,, \L\l~tu.~ II .. 11:/~MSU:MI .JUTIGE 9/1/92 ., .

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