

TANZANIA / JUDGMENT

nyelusye vs nbc 1997 ltd another 2004 tzhc 16 16 december 2004

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TZHCDECIDED
16 December 2004

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' AT D[loR ES SALAAM 0 C\\L 0r.1 tl0>o ~ 13 \ lOA 12 EDWARD
NYELUSYEooo.oeoooooP1J1INTIFF/APPLIC\NT , A .. , and to include new f~cts and pray for new
reliefso The , new defendant whom the plaintiff wants to add as third for a bank overdraft; and in
the transfer of the Right of Occupqncy with title No 26465 in respect of that house end plot to the
2nd defendant Abubakar Ali Himid who bought it ~t a public auction conducted by Majembe
luction Mart whom he wnnts to add as the third defendant •. The new reliefs which are prayed for
area as follows: First, is a declaration that the sale ~f the suit premises is illegal, null and void ab
initio on ground of fraud.. Second, is a declaration that the transfer of his Right of Occupancy
(Title No 26465 is illegal, null and void ab initio on ground of fraud •. In general, this application
was brought under O •. VI r 17 of the Civil Procedure Code 1966 0 0 It is supported by affidavit
which was sworn by the plaintiff himself on 22 •. 3 .. 2001.. R.17 of OoVI under which this
application was brought provides as follows and I quote: lfr,,174 The court may at any st'3..ge of
the Proceedings allow either party to alter or amend his pleadings in such manner and on such
terms as may be just and all such amendments shall purpose of determining the real questions in
controversy between the Parties". •• the plaintiff or the defendant to amend his pleadings f';
which is intended tc defeat the ends of justiceJ and t. bypass the preliminary objections which
were raised by them in their respective written statement of defences that the suit is improperly
before the court, and that the plaint is bad in law. In considering this application, I have found
that it is absolutely necessary to look at the past history of this case which has been pending in
court for the past six years and three months or so in order to avoid any confusion or abuse of the
court's process. Prior to this application, there were two interparte applications which were filed
by the plaintiff over the suit property and dismissed by this court. The first application was 'for
the orders that the respondents/defendants by themselves, their agents or otherwise howsoever
be forthwith restrained to register the transfer of the Right of Occupancy title No 26465 pending
the hearing of the main suit. This application ~ms dismissed on 2.3.2000 by his Lordship
Manento J, as he then was. In his ruling, he remarked that "the plaintiff/ applicant had not t~{en
any action for over a year after the sale of the suit property and that to say that he will suffer
more mischief if the injunction is n.t granted is nothing but an after thought" 0 This remark was
based on the fact that the sale of the suit property was conducted on 1604-1997 and the plaint
was filed on 2907 1998 0 0 Furthermore, he remarked that I1people should borrow and payor else

they suffer the consequences" •• This remark was based on the fact that the plaintiff obtained a bank overdraft from the 1st defendant to whom he mortgaged his house but later he failed to repay in due course the overdraft plus interest thereon upon which his house was sold by auction to the 2nd defendant/respondent in order to recover the amount of debt which was overdue. of operation of this court's ruling by Manento, J who is now JSC given on 203 2000 with an implied order that the plaintiff/applicant should vacate the suit premises. In his ruling, Chipeta, J (Rtd) who heard the said application observed that the plaintiff's decision to file the suit against the defendants was an afterthought as it was filed more than a year from the date of Registration of transfer of the Right of occupancy. He said that since registration of transfer of the Right of occupancy had already been done to grant the application would be like closing the stable after the horse has already bolted. From the past history of this case which is on record, it clearly be seen that this court presided over by Chipeta, J 8 (Rtd) refrained from granting the application for an order of stay of operation and Or execution of this court's ruling dated 23 2000 by Manento, J now JSC which is to the effect that the plaintiff/applicant should vacate the suit premises. Incidentally, the main relief which was being sought in the main suit was similar to the relief which was being sought in the chamber application. Both in the main suit and chamber application the plaintiff/applicant was seeking for an injunction to restrain the defendants/ respondents, their agents or otherwise howsoever from registering the transfer of the Right of Occupancy Title No 264650. The refusal by this court to grant the main relief which was being sought in the chamber application had negative effect. SHANGWA ~ A. SHANGWA

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