

TANZANIA / JUDGMENT

anania munuo vs adolfu kimaro

2012 tzhc 145 6 august 2012

COURT
TZHCDECIDED
6 August 2012

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT MOSHI MISCELLANEOUS LAND
APPEAL NO. 10 OF 2008 ANANIA MUNUO..... APPELLANT Versus ADOLFU
KIMARO RESPONDENT

JUDGMENT

FIKIRINI, J: Anania Munuo being aggrieved by the Kilimanjaro District Land and Housing tribunal decision appeals to this court. The following were his grounds of appeal: that the tribunal completely failed to evaluate the evidence before it and that the appellant's evidence overwhelmed that of the respondent. That the District Land and Housing Tribunal erred in law and fact for failing to conclude there was a three bedroomed thatched house, two rooms on a block foundation and a pit latrine which were destroyed by the respondent without any compensation. That the receipts of payment and the letter of offer were not genuine as they did not bear the respondent's name instead had the name Josephat Adolf. That the respondent started paying for land rent after the appellant had instituted a complaint. The tribunal misdirected itself when it allowed the respondent's appeal that the disputed plot had been in his possession and that he was the one who trespassed over. Responding to the above grounds, the respondent stated that the District land tribunal rightly decided as the plot had been allocated to the respondent since 1985 and he had receipts for land rent payment and other charges. He as well claimed to be in uninterrupted occupation all these time until in 2007 when the appellant appeared. According to the respondent that was almost 20 years. As for the receipts the respondent stated that the plot was applied way back in 1982 by his late father and he is the administrator as well as heir of the deceased estate, that is why the receipts had the name Josephat and sometime just Adolf. The respondent prayed for the District Land Tribunal decision to be upheld with costs. This appeal was argued orally. Both parties had nothing new from what was stated in their grounds of appeal, except for the respondent who had documents including several land rent payment receipts which he showed to the court. I had carefully perused the records from the tribunals and their decisions as well as the grounds of appeal raised and reply thereto and finally read the record of appeal. I must admit it's obscure. This is because I have been wondering if the appellant was the owner of the said plot and he had some development therein then where was he all these time. He alleged to have been in occupation to the said plot

since 1987. It is in 2007 when he filed his complaint before the Hai Ward Tribunal. This almost twenty (20) years later. If the respondent had been in uninterrupted occupancy for all this years, even if the plot were not allocated to him as it is being alleged still he would have been the owner of the said plot legally by way of adverse possession. The respondent told the tribunal that he had already started developing the land including erecting a structure and planting of trees. That has been confirmed by the visit to locus in quo. This therefore made me concede to the fact that the respondent might fail to prove allocation of the said plot by the land office but was lawfully in occupation by way of adverse possession. Once a person has been in land not his and he start developing the land by planting crops or trees and erect a structure while the actual owner looks upon without doing anything, the owner is said to have acquiesced. The appellant in this case has acquiesced and by so doing gave way to the respondent's adverse possession. This position was well elaborated in the case of Nassoro Uhadi v. Musaa Karunge, Civil Appeal No. 17 of 1977, High Court of Tanzania at Dar es Salaam, the late Mnzava, J. Of course, this court had as well considered other evidence such as the respondent not having proper documents in light of the allocation he claimed. Nonetheless that weighed alongside the fact of long uninterrupted occupation and development therein this court could not find any other better position than concluding that the District Land Tribunal though on a different reasoning but rightly allow the appeal. The appellant had himself to blame for acquiescing while his land was being encroached in. In light of the above this court finds the appeal to have no merit and proceed to dismiss it with costs. The decision of the District Land Tribunal is hereby upheld. It is so ordered. Judgment Delivered this 06th day of August, 2012 in the presence of the parties. P.S. FIKIRINI JUDGE 06th AUGUST, 2012 Right of Appeal Explained. P.S. FIKIRINI JUDGE 06th AUGUST, 2012

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