

TANZANIA / JUDGMENT

anastazia kolumbani vs damas benedict others 2007 tzhc 47 2 february 2007

COURT
TZHCDECIDED
2 February 2007

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IN THE HIGH COURT OF TANZANIA AT PAR ES SALAAM CIVIL REVISION NO. 67 OF 2005 (Origin Civii Case No, 22 o f2004 - Mzonge, SDM) ANASTAZIA KOLUMBANI..... APPLICANT
VERSUS DAMAS BENEDICT & 2 OTHERS.....RESPONDENTS Date o f last order - 4/1/2007 Date o f Ruling 16/2/2007 -

RULING

Shangwa, J. >11 > 'The applicant Anastazia Kolumbani has filed this application for revision of the proceedings and judgment of the Morogoro District Court in Civil Appeal No. 22 of 2004. Her application is supported by affidavit. In filing this application, she was assisted by someone from the Legal and Human Rights Centre, Legal Aid Unit Magomeni. Looking at the Chamber Summons and the affidavit in support of this application, one gets an impression that both documents were drafted by someone who has no experience in legal practice. Both of them contain certain defects which I do not need to go into. As a whole, the major ground for this application is that the District Court of Morogoro condemned the applicant unheard. This ground is located at paragraph 2 of the chamber summons and at paragraph 6 of the applicant's affidavit where the applicant states that judgment was entered against her in her absence on 30th day of December, 2004 and read out to her in July, 2005. The origin of the dispute which is involved in this case between the parties is as follows: Sometimes in 1996, Paulina Fabian who is the wife of the respondent Damas Benedict went to the Primary Court of Mgeta and filed Civil Case No. 25 of 1996 against Anastazia Kolumbani (Applicant). In that case, Paulina Fabian claimed for the 3 recovery of two shambas from Anastazia Kolumbani saying that the two shambas are clan land and that they belonged to Wamanze Clan. She lost her claim. Thereafter, she filed PC. Civil Appeal No. 116 of 1999 in this court. Manento, J as he then was dismissed her appeal with costs. When Anastazia Kolumbani asked Paulina Fabian to pay her costs following this court's decision, she refused to do so. Then, Anastazia Kolumbani applied for execution of the decree for costs by attaching Paulina Fabian's three houses, three huts and six shambas. Her application was granted and the said properties were attached and sold by the Court Broker at a total sum of shs. 1,280,000/=. After attaching those properties, Damas Benedict who is the husband of Paulina Fabian went to the Primary Court of Mgeta and filed Civil Case No. 7 of 2003 in which he claimed that those properties belonged to him and not his wife Paulina Fabian. The Primary Court of

Mgeta dismissed 4 his claim. Thereafter, he appealed to the District Court of Morogoro. The said court held in his favour. Then, Anastazia Kolumbani came to this court and filed the present application for revision of the proceedings and judgment of the District Court of Morogoro on ground that judgment was entered against her in her absence. I have gone through the proceedings of Morogoro District Court in Civil Appeal No. 22 of 2004 and found that the applicant's complaint that judgment was entered in her absence is genuine. The record shows that judgment was u K ' . ' ■ entered against her in her absence and that she was condemned unheard. The following is what took place in Civil Appeal No. 22 of 2004:- Hearing of the appeal took place on 9/6/2004 before Mzonge, SDM in the absence of the applicant Anastazia Kolumbani who was the respondent. The said Magistrate indicated on the Coram that the respondent refused to be served. However, the one who 5 told him that the respondent refused to be served is not mentioned on the record and there is no evidence to show that she was really served and refused to be served. In addition to that, the record shows that on 9/6/2004 when the appeal was heard in the absence of Anastazia Kolumbani (applicant) the court had fixed it for mention and not hearing. In my judgment, as the respondent who is the applicant in this case was condemned unheard, the District Court's judgment in Civil Appeal No. 22 of 2004 cannot stand. It is a cardinal rule of natural justice that no man or * C woman should be condemned unheard. This rule requires that a person who hears must hear the other side. As the Senior District Court Magistrate who heard the appeal between the parties did not afford opportunity to the respondent/applicant to be heard, he breached the said cardinal rule of natural justice. 6 For this reason, I hereby quash the said Magistrate's decision in Civil Appeal No. 22 of 2004 which was delivered on 30th December, 2004 and restore the decision of the Primary Court of Mgeta in Civil Case No 7 of 2003 which was delivered on 30th December, 2003. Consequently, I allow this application with costs. A. Shangwa JUDGE 16/2/2007 Delivered in open court in the presence of the parties this 16th day of February, 2007.

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