

TANZANIA / JUDGMENT

20151211 TZHC Dar es Salaam 1

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TZHCDECIDED
11 December 2015

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' If IN THE HIGH COURT OF TANZANI~ (LAND DIVISION) AT DODOMA LAND APPEAL NO. 23 OF 2013 (From the Decision of the District Land and Housing Tribunal of DODOMA District at Dodoma In Land Case No. 167 of 2009) ANDREW PAUL MBELWA APPELLANT VERSUS MICHAEL MUHUNZI RESPONDENT Date of Last Order: 27/10/2015 Date of Judgment: 11/12/2015 EXPARTE JUDGMENT Sehel, J. This appeal is against the decision of the District Land and Housing Tribunal of Dodoma District at Dodoma {the trial Tribunal) on land Case No. 167 of 2009. The genesis of this appeal was such that the respondent sued the appellant and Mustapha Mululu who is not a party to this appeal. ~ 1 The cause of action against them was that Mustapha Mululu, a relative of the respondent, illegally sold Plot No. 192 Block B, Nkuhungu South {registered in the name of the respondent) {hereinafter referred to as the disputed Plot) to the appellant at a price of Tshs 200,000/= He testified before the trial Tribunal that he bought the disputed plot in 2009 and left his plot to his relative Mustaspha Mululu to process the transfer of title. He said he did construct a small house at the disputed plot. At the trial Tribunal, the respondent claimed for the following reliefs:-

1. A declaration that the purported sale was illegal as such the purchaser be refunded the purchase price.
2. A declaration that the applicant is the legal owner of the suit premises.
3. The declaration that the 1st respondent gives vacant possession of the same.
4. Costs.
5. And any other orders deemed fit to grant. The appellant in his testimony acknowledged that he bought the disputed plot from Mustapha Mululu at a price of Tshs 200,000/= in a year 2003 and that Mustapha Mululu introduced himself to him as Michael Muhunzi and he had original documents that bears his signatures. He said after conclusion of the sale transaction .he developed the Plot by constructing a house in which he lives with his ~ 2 family. On 2009 thereby came the respondent and claimed that the disputed Plot is his. After hearing the case the trial tribunal decreed that:-
 1. the sale transaction is null and void.

2. the appellant to demolish the house he erected therein and leave a possession to the respondent.
3. the appellant if he deem fit he may sue for damages caused.
4. No order to costs. Aggrieved with this finding, the appellant has come to this court with two main grounds of appeal. Namely:-
 1. That, the District Land and Housing Tribunal erred in law in nullifying the sale of the plot of land on ground that the Appellant failed to check encumbrances which did not exist.
 2. That, the trial Tribunal erred in law and in fact in failing to consider that the Appellant had already constructed a house on the plot in issue. By order of the court, the appeal proceeded ex parte after the respondent failed to enter appearance despite being duly served through publication in Majira Newspaper dated 24 th September, 2015. Council Nyabiri appeared to argue the appeal. He submitted that there was no reason for the appellant to be suspicious that there ~ 3 was encumbrances considering the fact that the documents given to him by the advocate was a valid document and he had no reason to doubt the signature. He further argued that even the respondent failed to prove that he handed the documents to someone else. In respect of 2nd ground, he submitted that since the appellant already constructed a house in that Plot it was an error to order a demolition. It would have been proper to order the appellant to compensate the respondent the actual price of the disputed plot. Let me start with the first ground, it is not disputed by the appellant that he bought the house from Mustapha Mululu. His contention is that he believed Mustapha Mululu was Michael Muhunzi. In my view this is a clear case of fraud on part of Mustapha Mululu. In this Case Mustapha Mululu knowingly made a misrepresentation to the appellant that the disputed plot is his while he knew that it is not his property and that through such fraudulent conduct influences the appellant to buy the disputed plot then the whole sale transaction is voidable. In that regard the trial Tribunal was correct when it held that the sale transaction is null and void. It does not matter as to whether the appellant has to be aware of encumbrances or n ~ 4 '' .
- What -is -then the- consequences- of voidable contract. The appellant impressed upon this court that the trial Tribunal should have insisted on the specific performance. Generally specific performance is a discretionary remedy which compels a party in breach to perform its contractual obligations, this means that, there must be a concluded contract between the disputants. This was so held in the case of Stella Masha Vs. Tanzania Oxygen Limited [2003] T.L.R 64 at pg. 75. Since in the present appeal, there is no a validly concluded sale agreement then the only option left to the appellant is to sue his frauder for damages as held by the trial tribunal. All in all, I do not see any merit on the appeal. The appeal is hereby dismissed. I make no order to costs. B.M.A. Sehel JUDGE 11 th December, 2015 5

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Prepared on 13 October 2026 · Esheria