

TANZANIA / JUDGMENT

20160624 TZHC Mwanza

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TZHCDECIDED
24 June 2016

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u IN THE HIGH COURT OF TANZANIA ATMWANZA MISC LAND CASE APPEAL NUMBER 94 OF 2014 {From The Decision Of The District Land And Housing Tribunal of Mara District At Musoma in Land Case Appeal Number 78 of 2012 and Original Ward Tribunal Of Nata Ward in Application No. 85 of 2012} BARNABAS MLIGOAPPELLANT VERSUS CHRISTOPHER MANGARAI RESPONDENT

JUDGMENT

24.05.2016 & 24.06.2016 S.B.M.G. MATUPA, J. The proceedings before Mara District Land and Housing Tribunal that was presided by Ilanga Chairman, was for application for an extension of time within which to file an appeal. The application was made at the instance of Christopher Mangara, the respondent in this appeal. The said - Christopher was unsuccessful before Natta Ward tribunal, c_ () 1 D~ u where he had sued the respondent for the possession of a piece of land. When the matter came before the Chairperson Mr Ilanga on the 4th April, 2013 he _issued an order summoning the respondent to appear before him on the 22 nd April 2013 to which order both parties heeded. The matter was heard by the said Chairperson alone. On that day, it has been recorded in the proceedings that "complete affidavits", whatever that means, and it was further recorded that "hearing on the 29th May 2013." On the said 29th of May, 2013 the matter was heard on the application for extension of time. At the conclusion of the hearing the Chairperson ordered that the proceedings be submitted for a revision. Nowhere else in the proceedings is it noted that the application was for revision or that, parties were heard on an applicatlon for revision_. At the end of the typed proceedings, an endorsement was made thatthe case would be mentioned on the 3rd March, 2014 that means the next year. Odd as it was, another quorum is noted immediately thereafter, 2 v that on the 3rd March, 2014 the said quorum was constituted, and both parties were present before the Chairman. The next on the record is the revisional order that was made on the 11 th of April 2014. In that revisional order, the proceedings, judgement and other orders of the Trial Tribunal were quashed and set a.side, and the applicant was declared a lawful owner of the land in dispute. Application for extension of time th_at was heard was left hanging and nothing was said of it. The appellant was aggrieved of the decision, he has appealed against it on a number of grounds, the first of which being that (with all its grammatical imperfections) "The retrial tribunal erred in law and facts to change the respondent case while the respondent apply to appeal out of . time however the retrial tribunal change it to be revision and at the same give respondent rights to own the dispute land while the

trial tribunal proceedings favour the appellant" This complaint is valid. The record showed first that the quorum was not properly constituted. The chairperson sat alone to dispose of the matter. This was in contravention of section 23 (1) which directs the Chairperson to sit with not less than 3, i.e., three assessors. This did not happen. The legality of the quorum is therefore wanting. Secondly, the complaint that the resulting order was not lawful is also valid on yet another ground. The Chairperson decided to quash the Judgment and proceedings of the Ward tribunal. Having quashed the proceedings there was nothing that remained with him. Yet he proceeded to declare one of the parties a winner of non-existent proceedings. This is odd indeed. The chairperson could still exercise his appellate powers under subsection (2) of section 36 aforesaid. In doing so he could have corrected the decision without, quashing the proceedings. This cause was open to him because under the Courts (Land Disputes Settlements) Act no 2 of 2002 the Tribunal sitting on a revision has the same powers as those on appeal. Whereas an appeal is the function of revisiting the case, a revision is merely a function of correcting illegalities, irregularities and improprieties of proceedings. *4 v True*, as pointed out, the legislation combines the function of appeal and revision in the process of revision. Nevertheless, care has to be taken in exercising the combined functions and powers under the section though. Where a case for revision leads to quashing proceedings, for example, for the reason that the same is found to be incurably defective, the resultant order should avoid declaring rights on the non-existent proceedings. However, where a decision is made to save proceedings or part of proceedings, then rights may be declared on the strength of the evidence and law on the remaining proceedings. However, though it is not expressly prescribed in the Act, the practice is that where there are rights of a party that may be adversely affected, it is prudent to ensure that the party is accorded a right of hearing before the decision on the rights is made. In the present case, there was no hearing that was done before a revision order was made. The chairman was hearing a case for an extension of the period of time within which to file an appeal. He abandoned it undecided. Instead, he embarked on revision proceedings and made a revision order on a matter which he never heard nor did he give parties a right of hearing. This was utterly illegal. I will therefore allow this ground of appeal. With this ground allowed, I need not deal with other grounds. In the result, the illegal order of the District Land and Housing Tribunal in *IS herbyquasbeci--aAEI-set-aside~Tne--matter* ____ _ ___, ____ _ ___, ____ _ ___. shall be remanded back to the District Land and Housing Tribunal for a hearing of an application for extension of time within which to file an appeal out of time that was filed before it. The hearing shall be conducted by a duly constituted bench. Date: 24.06.2016, Coram: Hon. S.B.M.G. Matupa, Appellant: present Respondent: present C/C: N. Nkulangowe

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Prepared on 14 October 2026 · Esheria