

TANZANIA / JUDGMENT

## 19761215 TZHC Mwanza

COURT  
TZHCDECIDED  
15 December 1976

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## IN THE HIGH COURT OF TANZANIA

1. 1v \* JUIhiICTIOI (ic) CIVIL b. 252 OF 1975 (From the decision of the district court. of buk5t buka in Civil pal io o cf 1972 - nefor. C IT i?ibi.tti, £ i&iic.t i\ 0 iti...t - . flU haro iie P. rimer Court Oiginl Civi.l : Cse Uc. 5 of 1972) .Oi1ILE ..... \*. \*..... .....  
l,UP.TENIMUTnJGIL:.. ) . 0 . . . 2 0 i •.,. • 0 • . • UMUi. MUINGIL . ) • • • • .... . . •. 3PURChLthIh BuRcHhtD)• . . . . 0 . . . . . : . ..... JUDGiHt . . . J.: b - j.' ' . . . . 0 0 chile Kauna, thu ap.e11airt ia this case, filed rociemption &roceed1,s in iabaiiie xrim iy Cour .t, in ukoo. ijisriect, and Acme out uisuocess.fully The xrim c 1 Court nlci, tii s th snambci said. to b iortn skis. 1,500/=, aa not clanpioperty, reamption qiestion did not arise Tus. rcaaLtion procedins cre brought against, Rapteni rIutani1a and i. iuinuna i,uit ngiln both vecictors, and rurcheriaurchau r, the buyer .nirda n rponent, On a al by the appeldnt to tc Distriot Couit ne pea1 faile..1, on 'tile . very ground,on inich tile frirry cour LCjOtu till ppl1eitt's claim-. This is terfoxed the 2na ac1. The facts tAlit c)ilv1ously go undisputed, are t the ap1lant rid the vendors of e sLiunoa the first two -espónaents, are reletiv, branching froin' the srne family, Similarly, the pieces of lanLt in 'aestion here, we'a inhe.itcd by and from the fathur of chiã first to rponueata. hxp1leinin,, as to now the shamba ôrne, to fall into tn ±espondents nandb, Novart Kaboko Mzanila, tn. ap ellant's ;icis ii Ahis to sy, and I qi.iote - 'Wefenuants (1) and (2) had tnir fath knoni as :itangila. Mtangila 's fiuther aus kaiza.2 whost fathe,was iaiciai,. The grand fathei- of tue rospónuents (i) and (2) came to my father Lwenuulu villo made a rant of a sinua'ba to him - wiza. when Rw: i ia die,Mutanila ixlhLrized the shamba, which was subsequently inherited by nis sons upon his demise. The plaintiff is the one ojho distributea the shana to them. That is all I inow " The only, issue upon which, the case was decided, by the primary courtaxid Iter by the District Codr, was that 0 as th e'hamba was not a dan shauib'a,. s tetified b/ iitnesses, therefore redemption did not'urise.. Indeed the resporhhcnt'b, aere at pains to assert positively, that the 'shaffioa in quuaftion vias not clan sh.ba, thereby inflencing both courts to hold, it ndeeu. held that there was not a clan property. 1. It becomes necessary - therefore to decide as to vihen or is -not a shamoaclan property. , ilh-at evolutionhs, or , revolutions, ha. the hamba to - go- through to become one? GOing by th9tqrnary Law. of the area, I refer to pare 555 o' Corry & riatnoll, the defini cioii which I -cneider useful f or our urpose s folloois\_ Kiba.nja Kio ruganda - - This 3qqmeis givan to a pintation under family tenure. . - .../2 ibnj icrunia,Cafl bt--cquirect by inflrit1ioe .

only, vry plint-1 tion :ci is iiiheritc from a becQrneE have it, from cort• bco, •th t ti s.haj: fire t feuctali- stically made vaii1 to raspoilalltS (1) . i ict (2) 'a fore fathers, by his father Lviliu!u anct tue at.a risa Ltve c,6 acenLei upon the responnents (i) anh (2) unner the3a:1e fnnaalistic iyarubsna tenure,

- i.e. s tensnts (atw:ra) , as it abkccnently. became to. be dotin nner tanorary base holds (hnfranohi.soient) ict 1968 subsegmently ci :riin •by the C tosurry Leassnolcis (nfranchsement) (menurnent) ct No. 3 of 169. It fobloas therefore, tuat if the responci.ent k'aJ rtc c.exi,ig QI ttat:rV&t, and if, Nobert kakoo as as iit3 out it "mimi iii iw 1ams htwszi wa Nrubnja waiiiu" meaning h was a lanulord in contemporary times, when the let anu 2nu resoiaente waic still "wutwarwa" — tenants, then the ihtarvontion of the 19 68 an, ]969 Cu ary. Lese- holds (nf cecn').iio1q, rnad.e 1 s.onnent owners of their respective shares inuependently, as ttie came piucos could not b. traced, in terms of previous ownershini, to their clan, other then slavish possession. no the silamOus prviously and in feudalistic terms belonged, to the land 1or,he cain pieces could not, be said to belong to the 01:111, and upon sale of them by the respondent (i) and (2) the question of redemption question would ob - vidusly bei-rre- levant. °-Coming to the aiternatie, kiurseaysh appellant,' that the aaba was clan shambas, and if' I have to feD: t thc feudhl attachments that the'shambas have, on the ciefi it'idnbf'Corry & Hartitoilpara \$5551 the shaLnba'duih be 'clan one and herfore redearnable as it
- is inherited from relatives. but I 'gs'tecr from 'this recoDd,' that the appellant ±d'vsrking under malafide initiatives For 'at one'
- sta i4oritert naboko han offered to ony' the same and had "a had
- occassibh, to unsuccessfully litigate aainst the 3rd respondent. Vs - as - vis this litidation, the appellant took no initiative to stop sale, or 'to redeem, altho 5 h it is, aumitted Norbert Kaboko, is an dutsicter to the °clan. On this asoect Norbort Ralioko had - this to say:- "Tlieadliunt (plaint iff) was aware that I wanted to buy ti' same ehamba'. ven hen
- I was litigating with the 3rd 'tespondent, 'the plaintiff was aware."
- t. tha sath time tti appellant equ'vocat'es hua:- 'I nan no information tnst you v)eDe liti.ating witir 'lorbert Kaboko." •' .. " . I fad.i to understhna'why 'the' apllant, is particularly, interested now. However, 'we have the evidence of 'tlfe' lbt respondent, as follows:- . . . , •• . "hn '1 was selling tnis'aharcha my rela lti'vas wee . .! there -, thy, are hIbOGO(J i\hLUMUN ann my" chilure. They wtressed' and signcc the uaal I Ocat for the (appellant) mdci, many tiaci but he failact to a.tend o The sale i certifien by the /Iagi- etrate Iachumu " It would seem unclis:.uteu, that cie. relctives did witness the same,

- •&mplyiri'g.s.anc.tioii. i The hpellant, who happened to liveonly few, miles' away, has not' disputed' that he was snt'for in vain. To me even if, we say no shamba was clan prO icrty, cnou 5 h clan members sanc - joncj its , j. na we cnnot allow n innividual to uxie.o 1 what tiie majority did. ben on tnci other al't'erndtive, rOnemption has no plcc I nov i fore tc disiries he appeal, with costs, and it is so done. C' ° \.' r . • • , .
5. }ntTITI, ,.. 15TH DbCd1aan, 1JJJGJJ 19T.

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