

TANZANIA / JUDGMENT

Judgment Christopher Augustino

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17 May 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF MANYARA AT BABATI LAND APPEAL NO. 55 OF 2023 (Originating from the judgment and decree of the District Land and Housing Tribunal for Babati at Babati, in Land Application No. 54 of 2017) CHRISTOPHER AGUSTINO..... APPELLANT VERSUS KIWANJA KHOJA..... RESPONDENT

JUDGMENT

7th March & 17th May, 2024 Kahyoza, J.: Kiwanja Khoja successfully sued Christopher Agustino, Tsaheli Ammi and Bombo Awaki for trespass to his land measuring one and quarter acre located within Wagwaray village within Maisaka ward before the district land and housing tribunal (the DLHT). Aggrieved, Christopher Agustino, (the appellant) appealed contending that the DLHT did not evaluate the evidence properly, that it granted reliefs not prayed for and that the decision was marred by procedural irregularities. The appeal raised three issues as follows-

- 1) Did the DLHT evaluate the evidence properly?
- 2) Did the DLHT grant reliefs not prayed for?
- 3) Is the decision marred with procedural irregularities? A brief background is that Kiwanja Khoja claimed that he owned the disputed land from 1974 when his father gave him the land inter vivos. In 1996, Kiwanja Khoja leased it to Saafu Ami. Later, he found out that his land had been invaded. Christopher Agustino, the invader, contended that he was allocated the suit land by village leaders. Kiwanja Khoja complained to the village leaders in 2015 and a resolution was reached that they wrongly allocated the land to Christopher Agustino. The village leaders resolved that they allocated the disputed land to Christopher Agustino wrongly and decided to revoke the allocation and give possession back to Kiwanja Khoja. Christopher Agustino was not willing to surrender the disputed land as advised or directed by the village leaders, hence Kiwanja Khoja sued him before the DLHT. The DLHT after hearing the evidence of Kiwanja Khoja (Pw1) and Kasturi Nicodemu (Pw2), on one side and that of Christopher Agustino, on the other, decided in favour of Kiwanja Khoja. Christopher Agustino Appealed. Tsaheli Ammi and Bombo Awaki did not appeal. Did the DLHT evaluate the evidence properly? It is upon the above evidence, I am compelled to determine the issues raised. The record speaks loudly that the appellant did not tender evidence to prove

that the village leaders allocated him the disputed land. He had no minutes of either the village council or the village assembly. The procedure of allocating land is clear. The appellant had nothing to prove that he was allocated the disputed land and when the allocation took place. Not only that but also, the appellant did tender evidence to refute the respondent's evidence that he owned the suit land. Given the evidence on record, I have no reason to fault the DLHT's decision, that the respondent gave heavier evidence. The village have mandate to allocate the village land and not the land which is owned by another. Section 8 of the Village Land Act, [Cap. 114 R.E.2019] (the VLA) provides that- "8.-(1) The village council shall' subject to the provisions o f this Act, be responsible for the management o f all village land." The village leaders or land committee or council had no mandate to allocate the respondent's land. There is no proof that the village leaders complied with the law in allocating the land. The appellant deposed that he was allocated the disputed land by the chairperson and three members of the committee. The village council has more than 4 members, it is close to 25 members. The body which allocated the land to the appellant was not well constituted, let alone having no mandate to allocate the land which is previously owned. In addition, there is no evidence that the village assembly met to approve the decision of the body, which allocated the land to the appellant. The appellant has no ground to claim the disputed land. I dismiss the first ground of appeal. Did the DLHT grant reliefs not prayed for? The appellant did not substantiate this ground of appeal. I had an overview on the relief the DLHT granted the respondent, to say the least, I did not see the ground of complaint. The DLHT declared the respondent the lawful owner and ordered the village council to follow the procedure to allocate land. I dismiss the second ground of appeal. Is the DLHT's decision marred with procedural irregularities? The appellant complained that the decision of the DLHT was marred with irregularities. It is unfortunate that the appellant did not expound his complaint. I looked at the decision and proceedings to find out if there existed irregularities. Unfortunately, I did not detect irregularities complained of. All in all, the irregularities which did not cause any injustice even if they exist, they cannot be the ground to alter the judgment of the DLHT. See section 45 of the Land Disputes Courts Act, [Cap. 2016 R.E 2019] which provides- "S. 45. - No decision or order o f a Ward Tribunal or District Land and Housing Tribunal shall be reversed or altered on appeal or revision on account o f any error, omission or irregularity in the proceedings before or during the hearing or in such decision or order or on account o f the improper admission or rejection o f any evidence unless such error; omission or irregularity or improper admission or rejection o f evidence has in fact occasioned a failure o f justice. " [Emphasis added]." In the end, I find the appeal meritless and dismiss it with costs. I uphold the decision of the district land and housing tribunal. Dated at Babati this 17th day of May, 2024. JUDGE Court: Judgment delivered in the the virtual presence of the appellant, and the respondent. Ms Fatina (RMA) is present. John Kahyoza. Judge.

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