

TANZANIA / JUDGMENT

civil decision 2024 12 23 16 50 22

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT
KIGOMA LAND APPEAL NO. 000012300 OF 2024 EDUWARD B. LUHULUMBA
COMPLAINANT / APPELLANT / APPLICANT / PLAINTIFF VERSUS MIKAEL
PUTEN RESPONDENT / DEFENDANT

JUDGMENT

RWIZILE, J, The appellant sued the respondents over the land measuring 8 acres situated at Kakirungu village in Kasulu. The respondents did not appear despite due service as proved by the appellant to the tribunal. After proof of service, the District Land and Housing Tribunal (DLHT) heard it ex-parte. The evidence of the appellant did not prove the case; therefore, the suit was dismissed. The appellant was aggrieved by the judgement and decree, hence this appeal with the following three grounds of appeal:

1. That, the trial tribunal erred in both law and facts for failure to hold that village council was a necessary party since the Village council is alleged to have allocated the suit property to the respondents and by virtue of joining the village council the trial tribunal had no jurisdiction to determine the matter.
2. That, the trial tribunal erred in both law and fact for failure to scrutinize the cogent evidence as it was adduced by the appellant which shows that the suit property is his property.
3. That, the trial tribunal erred in both law and facts in dismissing the appellant's suit while the same was not time barred as there was no proof that the respondents' have been using the suit property for more than 12 years. Before this court as well, the respondents did not appear despite being duly served through the village leaders. At the hearing, the appellant was allowed to argue his appeal exparte, as he did before the tribunal. In material terms there is no submission clearly dealing with the grounds set forth by the appellant. He was not represented and did not ask this court for written submissions. Suffices to say, upon going through the record of appeal and grounds, it is pertinent to start determining the first ground of appeal, which according to him is about none-joinder of the necessary party. Joining of the parties to the case is governed by Order 1 of The Civil Procedure Code [CAP. 33 R.E. 2019]. Specifically, rule 3 of the same Order deals with joinder of the defendants. The

case of Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman and another, (CAT), Civil Revision No.6 of 2017, on pages 25 – Page. 1 26, the Court of Appeal set two tests for determining the question whether a party is necessary to the case: “First, there has to be a right of relief against such a party in respect of the matters involved in the suit and; second, the court must not be in a position to pass an effective decree in the absence of such a party.” The appellant did not state grounds he believes the tribunal did not join the party. But it has been observed, party of his evidence as shown hereunder on page 6 of the typed proceeding stated as follows; “Ndipo nikaanza tena mwaka 2023 Octoba mbele ya Baraza la Kata, wajibu maombi walieleza wamepewa na serikali ya Kijiji hivyo eneo sio lao” The above literally means that, the appellant started the dispute in October 2023 before the Ward Tribunal, where the respondent pleaded, they were given that land by the village government and therefore it does not belong to them. True of his statement, it seems, the village council may have indeed allocated the said land to the respondents. It ought therefore to be made party of the case. In the case of Tang Gas Distributors Limited v. Mohamed Salim Said and 2 Others, Civil Application for Revision No. 68 of 2011, on page 38 the consequence of non-joinder of parties was stated thus: - "... that it is a material irregularity for a court to decide a case in the absence of a necessary party. Failure to join a necessary party, therefore, is fatal...". From the forgoing, it is clear to me that the appellant is right. The tribunal ought to scrutinize the evidence before her, and order such an amendment. The first ground therefore has merit. Having determined the first ground in this manner, this appeal therefore succeeds. Since this ground determines the entire appeal, there is no reason to deal with other grounds. The decision of the tribunal is set aside. Since it is an *ex parte* decision, the appellant to bear own costs. Dated at KIGOMA this 26th of November 2024 . A. K RWIZILE JUDGE OF THE HIGH COURT Page. 2

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