

TANZANIA / JUDGMENT

20151210 TZHC Dodoma 1

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I IN THE HIGH COURT OF TANZANIA AT DODOMA LAND CASE APPEAL NO. 26 OF 2012 ELIUD NJAMAS.....PLAINTFF VERSUS BUSHIRI R. MSHANA.....DEFENDANT

JUDGMENT

19/5/2015 & 10/12/2015 A. MOHAMED, J; The appeal is directed against the decision of the Dodoma 57 District Land and Housing Tribunal ("the DLHT") in Application No. of 2011 where the decision was in favour of the respondent. He has the following four grounds of appeal: That, the DLHT erred when it decided in favour of the respondent without taking into consideration the weight of evidence adduced by the appellant That, the DLHT erred for failure to analyze the evidence and

- hende1e.ncd up favouring the respondent basing on poor and weghtless evidence adduced by the respondent which has led tod miscarriage of justice .. 3 That, the DLHT erred by admitting forged documents adduced by the respondent 1 p
- 4. That, the DLHT erred for not invoking the doctrine of esfoppels according to the circumstances of the case. The brief facts of the case are that the appellant and one Ramadhani Abdi Mshana, now deceased, were close friends. The appellant claims that in 1994 the two opened a garage business and were allocated a plot described as Plot number 31 Block 57, Area "A" Kizota Within Dodoma Municipality by the Capital Development Authority ("the CDA"). In 2003, before the Certificate of Occupancy was issued, Ramadhani died. The appellant continued to run his garage under the name of "Njamas Garage". In 2007, the respondent as the administrator of the late Ramadhani was issued with a Certificate of Occupancy in Ramadhani's name by the CDA. The appellant lost the case at the DLHT as he only showed receipts of Property tax payments in his name whereas the respondent had a Certificate of Title. On 19/5/2015 when the appeal came up for hearing, the parties agreed to argue the appeal by way of written submissions and both complied with this court's scheduling order. in the appellant's written submissions in support of all his grounds of appeal,- he-contended ThaT- his evidence at the DLHT proved that he had good title to the disputed land through acquisition and ownership. He further argued that the respondent secretly and unlawfully processed Ihe lille behind his back after the death of Ramadhani He wenton toargue that the respondent's failure - to - - 2 call an officer from the CDA to prove

that it was Ramadhani who had initiated the process of obtaining the title to the land ought to be interpreted that he wanted to conceal his fraudulent intention. The appellant cited the case of Hemed Said V. Mohamed Mbilu

[1984] hR which held that "The court is entitled to draw an inference that if the witnesses were called they would give evidence contrary to the party's interest" He urged this court to freshly analyze the evidence adduced at the DHLT which he claimed would help this court to reach a different decision. And in support of his argument he cited the case of Martha Michael wejja V. Attorney General and 30 others [1 984] hR 35 which held that: "...in the first appeal the court is entitled to look at and evaluate the evidence afresh and come to its own conclusion" Finally the appellant reiterated that the respondent acquired the title to the land illegally in order to eliminate his interest in the said land. In reply, he respondent maintained that the appellant has failed to substantiate his grounds of appeal but rather he focused on the ground that the respondent fraudulently obtained the title which allegation was not supported by the trial tribunal's proceedings He . . - further argued that the appellant did not pray his appeal be allowed and left the matter in the court's hands. The respondent opposed the appellant's claim that the said title was fraudulently obtained. He argued that the title to the disputed plot in the name of Ramadhani was tendered in the DLHT to which the appellant's advocate objected on the ground it was issued after Ramadhani's demise. The DHLT properly held that if was possible that the process of obtaining the title was commenced before Ramadhani's demise but was issued to the respondent as the administrator of the deceased. The respondent argued that if the claim of fraud was true, then the respondent should have had reported it to the police. He cited the case of Omary Yusuph V. Rahrna Ahmed Abdulkadir, CAT, Dsm which had this to say: "When the question whether someone has committed a crime is raised in civil proceedings, that allegation need be established on a higher degree of probability than which required in ordinary civil cases." The respondent further argued that the appellant had bdm1tted in the DHLT that he had never made an applicationJo the CDA for grant of the plot in dispute.

- On the question of the appellidnt's claim to the disputed plot, the respondent argued that the appellant only produced receipts of 4 Property Tax payments to the Dodoma Municipal Council in his name to wit exhibits D1, D2 and D3 which do not evidence ownership to the disputed land. And that any person duly authorized by the owner can pay the same and includes a tenant. He distinguished the case of Hemed Said V. Mohamed Mbilu [1984] TIR which he argued supported the respondent's case as it was the appellant who was disputing Ramadhani's ownership of the land ought to have called the CDA witness to support of his claim.
- Having heard the parties' respective contentions together and having perused the record of proceedings of the lower tribunal, this court has only one question before it; whether the respondent has fraudulently acquired the title to the disputed land. After anxious consideration of the matter, I will from the outset state that I am satisfied that the appellant

has failed to substantiate his claim that the title was fraudulently acquired by the respondent. In the DLHT, the respondent tendered Exhibit P1 which was letters' of AdministratiOn appointing the respondent as the administrator of the estate of Ramadhani Mshana. He also tendered the Offer of. in respect of Plot No. 31 Block 57 Area A in the name of Ramadhani Mshana These two documents have not been successfully discredited. I find they are genuine as per the trial tribunal's finding.. In support to his claim on ownership to the land, the appellant tendered Property Tax payments in his name to the bornMoniciaiourfcII to wit D1, D2 and D3 it is clear these 5 13 documents do not establish ownership as was argued by the respondent. They only verify that the property fax in respect of the plot has been paid. It is immaterial who paid it. As regard, the claim the two exhibits P1 and P2 were forgeries, it was the appellant's duty to substantiate his claim which he has miserably failed to do. There is nothing to indicate he had made a complaint to the relevant authorities, not even a letter to the CDA. I accordingly find that the appeal is devoid of merit and dismiss it. After the foregoing, I find the DLHT made its decision basing on sound and credible evidence and I uphold it. I accordingly dismiss the appeal with costs. It is so ordered. A. MOHAMED JUDGE 10/12/2015 V

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