

TANZANIA / JUDGMENT

emmanuel clemence vs helena kaawe mgana 2021 tzhc 5997 11 august 2021

COURT
TZHCDECIDED
11 August 2021

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IN THE HIGH COURT OF TANZANIA (DODOMA DISTRICT REGISTRY) AT DODOMA LAND CASE
APPEAL NO. 31 OF 2019 (Arising from the District Land and Housing Tribunal for Iramba at
Kiomboi in Application No. 14 of 2012) EMMANUEL
CLEMENCE.....APPELLANT VERSUS HELENA KAAWE
MGANA.....RESPONDENT

JUDGMENT

Date of Last Order: 02/08/2020 Date of Judgment: 11/08/2020 Dr. A. J. Mambi, J. The appellant has appealed to this court against the decision of the District Land and Housing Tribunal for Iramba at Kiomboi in Application No. 14 of 2012. The records reveal that the District Land and Housing Tribunal made the decision in favour of the 1 respondent by declaring the Respondent the lawful owner of the land in dispute. The appellant was aggrieved by the decision of the trial tribunal and through the same advocate, filed similar for grounds of appeal as he did in his two appeals namely; Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 respectively that he also filled in this court. The appellant counsel who was the same advocate in appeal Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 filed similar memorandum of appeal preferring four grounds as follows:

1. The District Land and Housing Tribunal erred in law and in fact in deciding that the Respondent is the lawful owner of the land in dispute without considering the instructions from the judgment of the High Court in Land Case Appeal No. 39 of 2013.
2. That, the District Land and Housing Tribunal erred in law and in fact in deciding for the Respondent is the lawful owner while in the previous judgment in Application No. 26 of 2012 the same Chairman decided in favour of the Appellant herein. ?
3. That, the District Land and Housing Tribunal erred in law and in fact in deciding that the Respondent is the lawful owner of the land in dispute while the case was not heard nor the Appellant herein did not file his written statement of defence.

4. That, the District Land and Housing Tribunal erred in law and in fact in not considering the fact that, the Appellant is the lawful owner of the land in dispute. During hearing of this appeal, the respondent was represented by similar advocate Mr. Paul Nyangarika who also appeared in appeal No.29. Likewise, the Learned Counsel Erik who appeared for other two different parties (Tatu Mpanda in Land Appeal Case No.29 of 2019 and Fank in Land Case Appeal No. 29 of 2019) against the same respondent has appeared again for the appellant in this matter. The appellant Counsel had very similar submission and argument as he did in the two appeals that are; Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019. In his submission, the appellant learned Counsel very briefly submitted to that the tribunal Chairman did not comply within the directives of hon. Judge Sahel (as she then was) of this court. He contended that the chairman was ordered to re-write separate judgments but he ended up determining the matter afresh and changed his mind on the 3 previous decision where the appellant was declared the owner of the disputed land. In response, the respondent through this advocate had also similar submission and arguments like he did in both Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 respectively. The learned Counsel briefly submitted that the appellant grounds of appeal have no any merit. He argued that since this court nullified the previous judgment that consolidated three matters (Appeal No.29, 30 and 31) then that judgment is not recognized. He was of the view that the Tribunal Chairman rightly composed new three separate judgments as directed by this court. I have carefully considered through the grounds of appeal, submissions of both parties, and the records from the trial court. Indeed I did not spend much time in dwelling with grounds of appeal and submissions, since the appellant filed similar grounds of appeal and made similar submissions as he did in both Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 respectively as the matter involved the same respondent but different appellants. Similarly, the respondent who was represented by the same advocate who also appeared in Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 respectively had very similar submissions. This means, I will rarely have different findings for the grounds of the appeal and submission which are the same and the respondent is the same as in Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019. As I observed in my other judgments in two similar appeals in both Land Case Appeal No. 29 and Land Case Appeal No. 30 of 2019 respectively, the appellant counsel consolidated his all grounds appeal forming one key issue arising from an order of this court. This means as I noted earlier, the counsel abandoned his other grounds of appeal which are almost similar. In this regard, I will definitely have the same main issue to be determined. The issues as I observed earlier, is whether the trial Tribunal Chairman complied with an order of this court in Civil Appeal No.39 of 2013 that was made on 9/10/2015 by Hon. Judge Sahel (as she then was). Indeed the records from the trial tribunal speak by themselves. It is on the records that in land case No.26 of 2012 the Chairman wrongly consolidated the application to form one judgment at the stage of judgment writing. It is also on the records that the Tribunal Chairman conducted different proceedings for each application but having realized difficulties in dealing with assessors' opinion from different application he decided to write one judgment for all applications. Having been dissatisfied by the decision of the DLHT. one Charles

Magana filed an appeal to this court against Frank Pyuza, Tatu Mpanda and Emannule Clemnce in land case appeal no 39 of 2013. As I observed earlier, this court in in land case No.26 of 2012 observed that it was wrong for the trial tribunal chairman to consolidate the three applications. I wish to court the observation made earlier by this court as follows: “I find that the consolidation the three applications after the conclusion of the hearing of evidence occasioned a miscarriage of justice in terms of section 45 of the Land Disputes Courts Act, Cap 261”. For easy reference, I also wish to quote an order made by the previous presiding Judge after observing such irregularities. The Hon. Judge made the following order and I quote: “I proceed to quash and set aside the consolidated judgment and direct that the file be remitted to the trial chairman to rewrite judgment for each application.” The above quotation of an order is clear that the Hon. Judge ordered the tribunal chairman to re-write three separate judgments for each application. Conversely, the question to be asked is that, did the tribunal chairman comply with the court order?. The answer in my view absolutely YES, since the records from the trial tribunal are clear that the tribunal chairman did re-write separate for each application as directed. The appellant in this court has also claimed that it was wrong for the Chairman to depart from his previous judgment. In my view, this claim has no merit, since the consolidated judgment was invalid and nullified by this court; the tribunal chairman was not required to follow his previous non- existed judgment. Basing the above reasoning and on my earlier, it is my findings that the Trial tribunal was right in its decision. I thus uphold the decision of the trial tribunal by dismissing this appeal. The respondent is thus declared to be the lawful owner of the disputed land as made by the tribunal. 6 No orders as to the costs. Dr' A. J. MAMBI JUDGE 11/08/2021 Judgment delivered this 11th day of August, 2021 in presence of both parties. Dr. A.iJ. MAMBI JUDGE 11/08/2021 Right of Appeal to the Court of Appeal fully explained. Dr. A. J. MAMBI JUDGE 11/08/2021 7

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