

TANZANIA / JUDGMENT

19871117 TZHC Dar es Salaam

COURT
TZHCDECIDED
17 November 1987

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~ IN THE HIGH COURT OF TANZ 1.J'HA AT DAR ES SALA~1 CIVIL APPEAL NO. 41 OF 1985
(Original Kilombero br,1 1 s Court in Civil Case No~ 4 of 1984). FARAJI! ISSA MBULILO
APPELLANT versus VICTORIAN MFAIK.E RESPONDENT

JUDGMENT

MAINA 2 J. The parties entered into a contract whereby it was agreed that the appellant Faraji Issa Mbuliio would construct a house I t for the respondent, Victorian Mfaike, for S~s. 17,000/=• The appellant received cash Shs, 5,500/= as advance payment~ He started the construction ,but the respondent a:1.leged that the house was not built according to the plc,n and further that the appellant had built the house without observing the bounderies of the plot, The house was demolished; The district court ordered the appellant to refund the money which he received as advance payment~ There was believable evidence that the appellant built the house without following the approved plano The rooms ".")l"~ smaller than what the approved plan provided. • Furthermore, the appellant did not construct the house within the bounderies of the plot. He did not follow the bounderies and so he built I it too close to the road. He agreed be fora mom~::~-3 of the reconciliation board to demoiish the whole foundation and start afresh•• The appelialnt demolished the foundation because it was of poor workmanship •and the rooms were not according to specifications and also because it was not built within the bounderies ~. He told this court he did not see one of the beacons~ If that was so, he should have reported to the respondent or to the Land Office a.o that he could be shown where the beacons marking the bounderies were~ 'f•h •: 1 •' • ,?~.~:>' ~::~'li>J~?~::~\ The appellant. f s allegat.io:h

- ' ' ,~.~::~;~:,; .h~ij~::~~"•~ ;~, ,_~::~;~:<~:,lhd~:. t~e trial . ~o~rt, I II r~fused him a.ri Opportunity to call witnesses cannot be accepted.; The record shows that he specifically told the magistrate that he had no witness to call~. I, am satisfied that the trial court arrived at a sound decision that the appellant had breached the contract~. It was due to his fault that the foundation of the house had to be demolished. He must refund the money which he received from the respondent. The appeal is dismissed with costs. (~. ~. ~lj"\ l,"-W__, W• J. l\lAINA ~, JJJJDGE MOROGORO 17th November, 1987. Appeila.nt - present. Respondent.: present. I

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