

TANZANIA / JUDGMENT

19711012 TZHC Mwanza2

COURT
TZHCDECIDED
12 October 1971

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- j \ IN TBE HIGH COURT OF TANZANIA AT NFAYZA. Appellate Jurisdiction 1 (P(Q) CIVIL APPEAL NO. 19 OF 1970 (From the decis±on of the District Court of Bukoba District at Bukoha in Civil \Appeal No.361 o 1968 Before CA. 1 welengera Fsa, District ilagist ria te . Original Liivil Case No.15 of 1968 of the Primary Court at\Katma Bef'c ORuhugu, iagistrate.) FELICIAN FERDINAND. APPELLANT(Orig.Defendant) vs EMANIJEL BALILEA, ... RESPONtENT(Orig.Plaintiff) . . SJPPLENENI'ARY JUDGMENT. --- • 20 C - JONATHAN, Ag.J. On the 14th rayp 1970 this Court disrnisss an appeal an order of the district court awarding compensation for improve-- ments by the respondent to a piece of land which was the subject of the proceedings in the primary and district courts. It was ordered in the judgmnt of this 0 ourt that the assessment made by the primary court \f the crops on the land should be submitted to this Cout for final determination of the appeal. It appears that the primary court's assessment was founded on a visit to ~ he shamba only by one of the assessors and in the absence of the primary court magistrate. The district magistrate cosidered, auite correctly, that there had been a basic irregulariy and ignored the assessment thus arrived at. To speed up the matter, he personally viewed the land accompanied by two assessors and in the presence of the respondent and an agent of the appellant.. They counted 33 cdffee trees and 157 banana trees all planted in 1956. There wre some 16 other coffee trees planteã in 1960 while there were dher coffee trees 59 in number [4
- - which were planted in October 1969 i.e. sevennonths after the primary court had made its\count. In a unanimous decision, th e district court refused to award compensation for these later trees. That decision was oper. The coffee trees planted in 1956 were assessed at shs.5,- per tree, those planted in 1960 at shs.3/- each, while the bana\as were assessed at shs.5/- per tree. That gave a total assessment of shs.998/-. At the, resumed hearin of the arpeal, the respndcnt disputed the assessment claim\ing that it included crops on a piece of land which he had ben given in 1966. I confess I did not understand why he ccmained. It woulö seem on the face of it that more trees were counted than were on the dispided land. If that was the case, then only the appellant could be heard to complain. Be that as \it may, the respondent was present during the count, when he does not appear to have raise any ccplaint. He was Quite helpful during that coun for the -2- record shows him as having sup11dLthe information as regards the periods during which the various trees were plarted. I cannot imagine that he would have failed to point out if there was any mistake as to which

trees should be counted. As the parties have raised no objections to the tsr of compensator I have no reason to interfere and would accept them as fair. In the result, having regard also to the earlier judgment of this court to which reference has been made above, the appeal from the order awarding comensaticn is dismissed with costs, and the cmpensation to be paid to the respondent is fixed at sbs.998/-. Delivered in Court this_iday ofOcl971. W~ol (P.M. Jonathan.) Ag. Judge. —coURT Hlcm e Ai)pearances . for the appellant.

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