

TANZANIA / JUDGMENT

20151020 TZHC Mwanza

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20 October 2015

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~r;r ; ('-""T"... :1 i .. i:l(iI~. tCt~Jf,,,i³/₄---- . . . • 1 . -- ... 1 . A. ~ . ~--- --- '-lr:/ . IN THE HIGH COURT.Q,kfe1;\uNJ!~;R_~~~}l~joF TANZANIA ----- IN THE DISTRICT REGISTRY AT MWANZA LAND APPEAL N0.89 OF 2014 (From the Decision of the District Land and Housing Tribunal of Musoma District at Mara in Land Case No.359 of 2014) FELICIAN MU
HERE APPELLANT VERSUS DEOGRATIUS WEGINA & 2
OTHERS RESPONDENT

JUDGEMENT

Ebrahim, J. Thi_s case emanates from Miscellaneous Land Application No. 359 -of 2014 whereby the appellant herein filed the said application to claim back his motor vehicle following the decision of Bukuku J, in Land Appeal No. 18 of 2013. Unfortunately, the main case that led to the decision of f~Ji_l:- District Land and. Housing Tribunal on Land Case No, 135 of 2012 wnich~ o,t.....- was the subject of Land Appeal No.. 18 of 2013 was not part of the Court's records hence unknown. However, what could be gathered from the records of the Court is that the appellant filed Miscellaneous Application No. 135 of 2012 disputing the exparte judgement issued against him where he was ordered to pay Tshs. 573,000 which was dismissed by the chairman 1 . ' of the District Land and Housing Tribunal without affording the appellant right to be heard. The proceedings and the decision of the Chairman in that case were quashed and set aside by Bukuku, J on 3rd July 2014 and ordered that the matter be remitted back to the District Court so as parties could be heard. ,----, , /! The appellant :~_t~)f then filed Miscellaneous Land Application No. 359 ~.q[f]tI.Y-- of 2014 which again was dismissed by the Chairman of the District Land and Housing Tribunal for being in non-compliance with the decision of the High Court of 3rd July 2014. Aggrieved again, the appellant has preferred this appeal. In his petition of appeal, the appellant has raised four (4) grounds (.f,s)-/ ~peal that:-

1. That the Chairman of Musoma District Land and Housing Tribunal Mr. Ilanga M. T. misdirected himself on point of law and fact when he dismissed my application without giving me the opportunity of being heard (Copy of Misc. Application No. 359/2014 attached).
2. That the Chairman misdirected himself on point of law and fact when he misconstrued what Justice Bukuku had said in his decision in Land Appeal No.18/2013 (copy attached) because:-

- (i) That the Judge had quashed and set aside the proceedings/ the decision of the District Land and Housing Tribunal in Misc. Application No.135/2012 (ii) That I had the right to claim back my vehicle which had been attached as a result of the decision in Misc. Application no.135/2012/ . . (iii) That the decision to re-file or not to file bill of costs is mine and has nothing to do with my vehicle 2
3. That the Chairman of Musoma District Land and Housing Tribunal dismissed my case without requiring the Respondents to reply to my Misc. Application No.159/2014 acting as their advocate.
4. That this Honourable Court is requested to view attached copy of Application No.359 filed in the District Land and Housing Tribunal at Musoma and Court Order issued in its dismissal by the same Tribunal on 28th August, 2014 so as to make a fair Judgment. However, the crux of the matter is that the appellant is complaining against the tribunal's order which was given without affording him right to be heard again. At the hearing of this appeal both the appellant and the respondent appeared in person, unrepresented. In support of his grounds of appeal the appellant submitted that he filed application No.359/2014 praying for the return of his car at District Land and Housing Tribunal which was dismissed by the chairman following the order of Hon. Bukuku, J on appeal No.18/2013 which related the proceedings in Misc. Application No.135/2012 and ordered the matter to start de-nova. He submitted further the chairman did not avail him chance to hear even the respondents and he acted on their favor. He submitted also that the car was sold but He was not even given the balance of the money after deducting the money that he owed them. He countered the reply by the 1st respondent that he did not adhere to the directives of the High Court as not being true for he only applied for the return of his car. Therefore he prayed for the appeal to be allowed with cost and his car with Reg.No.T485 ANM, Toyota Corolla be returned which has the value of Tshs.5, 000,000/= In reply, the respondent contended that the appellant failed to fulfill the court order from the Bill of Cost. The DLHT issued execution order after 30 days and the car was attached on 27.03.2013. He contended further that he was paid his money hard cash Tshs.535, 000/=. He contended also that Bukuku, J on case No. 18/2013 quashed the proceedings and decision of DLHT and remitted the matter back to the Trial Tribunal for parties to be heard, the appellant filed another application No.359/2014 which was dismissed by DLHT for not following the order of the High Court. Further, there is no evidence as to whether his car is worth 5 million. Therefore, he prayed for the Court to dismiss the appeal with costs. In rejoinder, the appellant stated that, the order of judge Bukuku, did not preclude him from applying for the return of his car. Evidently, the matter that needs to be determined by this court is pertaining to the interpretation of the judgement of Bukuku, J of 3rd July 2014 and what transpired thereafter. For the clarity of the matter, I feel obliged to reproduce the said order. The order stated that; "That I do quash and set aside the proceedings and decision

of District Land and Housing Tribunal and order that the matter be remitted back to the Trial Tribunal where both parties can be afforded an opportunity to be heard on the application (Emphasis is mine). 4 From that order, it is glaringly clear that all that transpired in Miscellaneous Application No.135/2012 and the resultant orders thereof were quashed by the High Court hence parties returned to their original positions before the decision of the District Land and Housing Tribunal in Miscellaneous Application No.: 135/2012. As a result, application no. 135/2012 is supposed to be heard afresh from the beginning. Consequently, the order of the tribunal in the said application is no longer valid. Although the applicant could have applied for the return of his car under the same file i.e. 135/2012, nevertheless after he had made his application he was entitled to be heard as he had the right to claim for the return of his car. Further to that, with respect to the trial tribunal, the chairman misdirected himself again in two folds; first, on 26.08.2014, he did not afford parties right to be heard on the filed application no. 359/2014. act of dismissing the application before inviting parties to address the purpose of filing the same, was fatal procedural irregularity. The Court of Appeal has in a range of cases stressed on the fundamental principle of right to be heard. See the case of Mbeya- Rukwa Autoparts and Transport Ltd V Jestina George Mwakyoma [2003] T.L.R. 251; Selcom Gaming Limited V Gaming Management (T) Ltd and Gaming Board of Tanzania [2006] T.L.R and Ausdrill Tanzania Limited V Mussa Joseph Kumili and Another, Civil Appeal No 78 of 2014 (unreported), to name a few. In all the occasions, the Court of Appeal reversed or nullified the decision of the trial court and I am obliged to follow suit. 5 'secondly, if at all the trial chairman wanted to avoid duplicity of claims, he would at least have struck out the application after hearing the parties and not dismiss it. Otherwise it was not grossly wrong for the applicant to make formal application to be returned his car. If the trial chairman had afforded parties their right to be heard on the application, he would have determined the validity of the application and whether the car has already been sold hence overtaken by event and eventually determine the rightful option. All said and done, the decision of this Court by of Bukuku, J on Land Appeal No, 18 of 2013 of hearing the Miscellaneous Application Non 135/2012 de-nova still stands. Further, the decision of the trial tribunal in Miscellaneous Application No. 359 of 2014 is hereby nullified. ' the matter is remitted to the Trial Tribunal where both parties can be) afforded right to be heard and the matter be determined on merits by another Chairman with competent jurisdiction. It is so ordered. Judge Mwanza 20 th October, 2015 6

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