

TANZANIA / JUDGMENT

20100604 TZHC Dr es Salaam

COURT
TZHCDECIDED
4 June 2010

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1 IN THE HIGH COURT OF TANZANIA AT DAR ES SALAAM CIVIL APPEAL NO. 192 OF 2002 (From original Civil Case No. 8 of 1999 in the District Court of Morogoro) JOHNTMBA
APPELLANT VERSUS LIVI MAFOLE RESPONDENT Date of last Order : 25/2/2010 Date of Judgment : 4/6/2010

JUDGMENT

- Shangwa J. • This appeal is against the decision of the District Court of Morogoro in Civil Case No. 8 of 1999. In his 2 Memorandum of Appeal, the Appellant has raised six grounds of appeal. All of them appear to be interrelated and I think that the first ground of appeal is sufficient to dispose of this appeal. It reads as follows:- " That the trial District Magistrate erred both in law and in fact in not considering that the disputed land was properly and legally allocated to the Appellant by the Morogoro Municipal Council'. As the first ground of appeal is sufficient to dispose of this appeal; I will only dwell on it. The Respondent Livi Magole does not dispute the fact that the Appellant was allocated the land in dispute by the Morogoro Municipal Council but that the piece of land which was allocated to 3 him was his as he owned it under customary Land tenure. This piece of land is located at plot No. 11 block "E" Service Industry area within the Municipality of Morogoro. The Appellant produced in evidence the letter of offer of the land in dispute dated 6/5/1992. This letter was admitted in evidence by the trial court as exhibit Pl. In my opinion, as the piece of land in dispute was allocated to the Appellant by the Morogoro Municipal Council which has authority to allocate land within the Municipality of Morogoro, the District Court Magistrate erred in entering judgment in favour of the Respondent instead of entering judgment in favour the Appellant. All land owned under customary land tenure within the Municipality of Morogoro had to be surveyed in accordance with the Morogoro Municipal Council's town Master plan and re-allocated accordingly. Therefore, the question of 4 double allocation alleged by the Respondent does not arise. The Respondent who claims to have owned the land in dispute under customary land tenure is supposed to claim for compensation from the Morogoro Municipal Council which allocated it to the Appellant. For these reasons, I allow this appeal with costs. A.Shangwa JUDGE 4/6/2010 Delivered in open court this 4 th day of June, 2010 in the presence of both parties. ~ A.Shangwa JUDGE 4/6/2010 .I

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