

TANZANIA / JUDGMENT

19911029 TZCA Arusha

COURT
TZCADECIDED
29 October 1991

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

- ~ - COURT OF APPELLATES OF TANZANIA AT ILIUSI. CHIEF JUSTICE KISANGU AND JUSTICE N. V. S. _TIT. O. SLTORO IULI 7 OTHJRS APPELLANTS 1. JID M. i. TIY. i. SI: INTIYJ: ... i. JID 4 OTJDIB RESPONDENTS (Appeal from the Judgment and Decree of the High Court of Tanzania at Arusha.) / (Chua 2 J. dated the 26th day of October, 1988 in ~ ~ ~ ~ Civil Case No. 2] of, 1982, ::, / ., - ' ~ , JUDGMENT OF THE COURT / \ tg. sl. uGJ. iJ; eM .., _ This appeal arises from the decision of the High Court (Chua., J.) at JUSB. a disallowing the appellants' claim, inter alia 3 to recover 1 \ . . < ' a parcel of land comprising 172 acres situated in Mareu Villa. go, ~ I District. The facts giving rise to the claim are briefly summarized, as follows: The appellants and the respondents live in Mareu Village, \ 1.11' Ulu District. In 1971 they decided to go. "Uja. maa." by pooling . . together part of their individual land holdings and working it jointly. This scheme came to be known as Mareu Uja. maa. Co-operative Society which was duly registered in December, 1972. Subsequently, however, the appellants became dissatisfied with the affairs of the Co-operative Society and one after the other decided to 'quit' the Society. In this suit they claimed that they never joined the Co-operative Society in the first instance, and that they never pooled together a part of . . . j , " _ t i ~ ~ 2 their land for co-operative use. According to them the respondents simply invaded their land and appropriated it to the Ujamaa Co-operative Society. The High Court found that the appellants at first voluntarily joined the Ujamaa Co-operative Society and did contribute some of their land to the Society. , The Court went on to find that " subsequently the appellants decided to quit but could not retrieve the land so contributed to the Society because 'If a provision in the Society 's constitution which prohibited the recovery of land by a member who resigned his membership' > The Court observed that such a provision was ' unfortunate, and that if the appellants were free to come to Uja. maa. Co-operative Society with their land, they should also be able to, walk out with their land upon their resignation. However, the learned judge held that the appellants were bound by such provision of the Society 's constitution and as such they could not recover their land" - While considering this issue the learned judge stated that the provision in the Society's constitution which prohibited recovery of land by a member who resigns and which did not guarantee prompt compensation to such a member, violated a basic right of the individual as guaranteed under article 24 of the country's constitution. The learned judge in his judgment raised a constitutional issue which, however, was not raised during the trial, and when this appeal came before us for the first time we, by our

order dated 21.4.90, remitted the matter to the trial judge for him to try and decide on the constitutional issue, and having done so he accordingly sent back the file to us for final disposal of the appeal. I

- --- Deputy Attorney-General who appeared as amicus curiae, raised inter alia, the issue of jurisdiction, It is transpired that the suit in this case involved unsurveyed land and that the High Court pursuant to section 63 (1) of the Magistrates Courts Act 1984 had ordered that the suit involving such land should be commenced before itself. --- Mr. Chenge submitted that the section did not confer any such power on the High Court, and for that submission he relied on the decision of this Court in the case of Arusha Municipal Council v. Lyngimili Construction Company Ltd. Civil Appeal No 25 of 1989 (Unreported). This same issue was raised in that case where, after dealing with it exhaustively the Court held that section 63 (1) above cited did not empower the High Court to order that a suit involving unsurveyed land be commenced before itself. That case was decided on 30.7.90 and after the matter in the present appeal had been remitted to the High Court on 21.4.90 to try the constitutional issue. Thus Mr. Chentf concluded that once the High Court had no power to order the commencement of this case before itself then the proceedings were wrongly commenced; therefore that Court. That is to say, the High Court, it is said, lacked jurisdiction over the suit with the consequence that the civil and all the proceedings and orders subsequent thereto were null and void. Mr. B. Lobulu and Mrs. F.K. Musei representing the appellants and the respondents respectively readily conceded to Mr. Chenge's submission and, in our view, rightly so. In the circumstances, therefore, the proceedings in this case are declared null and void. I find want of jurisdiction, and they are accordingly set aside.
- I order that
- 4. Admittedly the appeal raised important questions of basic rights of the individual under the Constitution but in view of the decision we have taken, the matter has obviously been overtaken by the event and has to await a decision on some future date when it is brought before the Court. The question of costs has been of some concern, but considering all the circumstances of the case we think that the ends of justice would be met if the parties bear their own costs in this Court and in the Court below. It is ordered accordingly. DATED at ARUSHA this 29th day of October, 1991. ROBERTO ICTSANGA JUSTICE OF APPEAL AOMOMO OMAR JUSTICE OF APPEAL N.S, MNZAVAS JUSTICE OF APPEAL. I certify that this is a true copy of the original.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE [https://media.tanzlii.org/media/judgment/326639/
source_file/3c3b4b19baaaa40d/19911029_TZCA_Arusha.pdf](https://media.tanzlii.org/media/judgment/326639/source_file/3c3b4b19baaaa40d/19911029_TZCA_Arusha.pdf)

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/jurisdiction-tzca-1991--6a3ea5253b1caa912981c5fb>

Prepared on 14 October 2026 · Esheria